

THE VIRUS AND THE VOTE: ADMINISTERING THE 2020 ELECTION IN A PANDEMIC

A Compendium of Research from the
Stanford-MIT Healthy Elections Project

July 1, 2021



STANFORD-MIT
HEALTHY ELECTIONS PROJECT

MIT ELECTION DATA
SCIENCE LAB



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THE VIRUS AND THE VOTE: ADMINISTERING THE 2020 ELECTION IN A PANDEMIC

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PREFACE & EXECUTIVE SUMMARY

By Nathaniel Persily and Charles Stewart III

The first COVID-19-related death in the United States was announced on February 29, 2020, the day of the South Carolina primary. International news about the early spread of the coronavirus and the initial reaction from American public health professionals to its quick spread in this country made it clear that the presidential election was facing an existential threat. Election officials who held primaries in early- and mid-March found themselves increasingly making public health decisions to guard both their voters and their staff. The larger societal challenges quickly overwhelmed the ability of states to hold primaries at all, leading to hastily canceled and postponed elections. The one early primary that was not postponed, Wisconsin, provided cautionary tales in the form of closed polling places, poll worker shortages, and massive transitions to mail balloting.

This legal, social, and public health turmoil prompted lawyers and interest-group advocates to marshal for a fight to secure the right to vote. As important as much of this work was, our instinct was that litigation would only go so far, if election officials did not have the tools, resources, and information they needed to administer healthy, secure, and well-run elections. What was missing, we thought, was a non-partisan evidence-based approach to election management during a pandemic.

Out of that ambition, the Stanford-MIT Healthy Elections Project was born. As the first cases of COVID-19 were being reported in late February, we had already been approached by the William and Flora Hewlett Foundation about creating a university-based effort to help provide the public with reliable information about the administrative challenges the nation would face in the upcoming election. Even before the pandemic hit, the 2020 election faced significant challenges from disinformation, polarization, and eroding confidence in democratic institutions. The pandemic exacerbated these problems and posed many new ones that election administrators had never confronted.

The two of us had worked together previously as part of the Presidential Commission on Election Administration (PCEA) in 2013. The last successful bipartisan effort on election reform, the PCEA dealt with a host of problems evident in the 2012 election, ranging from long polling place lines to election technology to natural disasters and voting. Pandemics were not on the agenda back then, but the Commission's orientation toward providing practical solutions derived from the experience of local administrators provided a model for how we might approach the challenges that COVID-19 posed to the 2020 election.

No playbook existed at the beginning of 2020 describing how to convert the election infrastructure to deal with voting under conditions of social distance. The early attempts during the primary season yielded mixed results, and provided critical learning experiences. Therefore, the first thing we did was gather (and publish at www.healthyelections.org) all the information we could about the challenges and successes of those early primaries. We even looked elsewhere, to South Korea, which had successfully run its election in the spring.

At the same time as we began our research, a panoply of civil society organizations dedicated to voter information and engagement began reorienting themselves to deal with the pandemic. Established organizations, such as the Center for Technology and Civic Life, Center for Civic Design, Democracy Works, the Center for Election Innovation and Research, the Center for Equitable Elections, URI Votes, and the Bipartisan Policy Center, as well as a host of new entrants to the civic tech space, had begun to mobilize to respond to the needs of election officials. In addition, new consulting efforts of former election officials, such as the Elections Group, led by Jennifer Morrell and Noah Praetz, who had run elections in Arapahoe County, Colorado and Cook County, Illinois, respectively, provided much needed guidance to election officials and civil society groups alike. The Healthy Elections Project worked closely with these groups to provide funding and direct services to jurisdictions throughout the summer and fall of 2020.

One area of particular concern was poll worker recruitment. The primary election experience in Wisconsin, in which Milwaukee shuttered 97 percent of its polling places and the governor called out the National Guard to staff polling locations, provided an object lesson in how an election could meltdown if it were improperly staffed. Given that senior citizens made up the bulk of veteran poll workers, and they were most vulnerable to the virus, a new crop of poll workers needed to be recruited and trained in just a few short months.

The Healthy Elections Project worked with a number of organizations to assist in poll worker recruitment. First among them was PowerthePolls.org, which led an

unprecedented, coordinated effort to sign up 700,000 volunteers and facilitate training around the country. In addition, groups such as Campus Compact and Students Learn Students Vote Coalition, worked with the Healthy Elections Project to mobilize students on campuses around the country. Several organizations of lawyers also worked to recruit poll workers from their ranks. During the primary season, with help from the Healthy Elections Project, the law firm of Hogan Lovells initiated an effort with the Association of Pro Bono Counsel to recruit lawyers in key states to serve as poll workers. The American Bar Association led a separate effort as well. Finally, the Healthy Elections Project was instrumental in leading Facebook to include a poll worker recruitment portal in its Voting Information Center. Through that portal, over 100,000 people signed up with their local election offices to become poll workers.

Poll worker recruitment was only one aspect of our work with Facebook. The Stanford Design School (D School) provided explanatory videos on a number of election administration issues that Facebook placed in its Voting Information Center. Former election officials, such as Jennifer Morrell and Tammy Patrick, who directed elections in Maricopa County, Arizona, produced videos explaining provisional ballots, mail ballot processing, ballot canvassing, recounts and related issues. These videos were often served by Facebook as an authoritative source to users alongside newsfeed content dealing with similar issues.

The D School's work went far beyond providing content to Facebook. They created training videos for the Michigan Secretary of State, which demonstrated how to use the various voting machines deployed in that state during the 2020 election. They created signage for polling places and guides to assist with poll worker training, setting up safe polling places, and dealing with problems at the polls. All these tools were placed on a separate website, healthypolls.stanford.edu, and delivered to jurisdictions around the country.

One of the most important resources the Healthy Elections Project provided the public was our [COVID-19 Election Litigation Tracker](#). The search tool, case summaries, issue tags, and litigation documents proved to be an invaluable resource for the media seeking to cover the hundreds of lawsuits that were filed before and after the election. Broadcast and cable news networks, as well as the nation's leading newspapers, cited the Litigation Tracker when presenting data about the onslaught of election related lawsuits. In addition to the tracker itself, the Healthy Elections Project produced detailed analysis on topics, such as mail ballot litigation and post-election litigation, that became extremely important after Election Day, as the Trump campaign continued to challenge election results.

Public education and engagement were a large part of the Healthy Elections Project. In addition to the research assembled here and the nearly-100 memos published on the website, shorter versions of thirty-two memos were published on the popular blog, LawFare, to reach a larger audience. In addition, our op eds in the *New York Times*, *Washington Post*, *Wall Street Journal*, *The Atlantic*, *Slate* and a host of other publications drew attention to what we considered critical election administration issues in the run-up and aftermath of the 2020 election.

Through public education and direct services, the Stanford-MIT Healthy Elections Project achieved what it set out to do. For the 2020 election, it represented a unique effort lodged in two premier universities to produce research relevant to the crisis in election administration that the pandemic generated. Over 150 students helped produce over one thousand pages of original research. (For the initial research regarding the primaries, we also benefited from the assistance of a talented team of lawyers at Morrison & Foerster LLP.) We attempted to leverage that research into direct action that would assist local and state administrators faced with unprecedented challenges related to increased mail voting and safe polling place voting. What follows here is a compendium of research the Project produced, including updates to key pieces previously published, as well as explorations of new topics that became salient after Election Day.

SUMMARY OF RESEARCH

One of the challenges in assembling this volume is that the research produced by the Healthy Elections Project was, at times, organized chronologically, at others, geographically by state, and at still others, thematically by topic. Such was the nature of a project that attempted to chronicle the failures and successes of individual states over the course of the ten months preceding the election, while providing useful information on the emerging challenges the entire country would confront as the November general election approached. Although this means a healthy amount of duplication appears in this compendium, we hope that readers interested in particular sub-topics will more easily be able to navigate to the issues that interest them.

We reproduce as the introduction to this volume our article that appeared earlier in the *Journal of Democracy*, “The Miracle and Tragedy of the 2020 U.S. Election.” In it we describe the paradox of the 2020 election: namely, that the administration of the election was successful by any measure and beyond anyone’s expectation, but that, nevertheless, large swaths of the population believe that it was not free and fair. Republicans view the election as marred by fraud and dysfunction, especially in states that President Trump narrowly lost, and Democrats consider the election to be largely problem-free. By most objective measures, whether record turnout or other markers

of election administrative success, the election infrastructure not only weathered the pandemic, but it also achieved new heights of participation, access, efficiency and security. However, the signals sent in the election's aftermath, echoing those sent throughout the campaign, reverberated with Trump supporters who believed the election was stolen.

In Chapter 1, we synthesize the more than thirty memos we produced during the primary election season. The story told there is one of lessons learned and multiple baptisms by fire. In many respects, the United States was fortunate that the pandemic hit when it did. The primary elections, for all their problems, provided a training ground when best practices could be developed and the worst problems could later be avoided. States had varying degrees of success with their transition to vote-by-mail. They also learned valuable lessons throughout the spring and summer about the challenges to recruiting poll workers and siting and maintaining healthy polling places.

Chapter 2 assembles our battleground state profiles. We focus on the presidential battleground states, not because they were the only ones experiencing significant challenges. Indeed, every state faced largely the same set of challenges, even if their institutions or electoral systems showed different levels of resiliency to the pandemic. We focus on the battleground states because meltdowns there would have threatened the legitimacy of the presidential election. The states we cover include Florida, Michigan, Nevada, North Carolina, Pennsylvania, Wisconsin, Arizona and Georgia (both the general election and the senate runoff elections).

Chapter 3 examines the many issues related to in-person voting. We include our research on the election administration supply chain, poll worker recruitment, early voting, polling place management, and election observer rules. Although we focus on management issues related to the pandemic, the challenges to the 2020 Election expanded well-beyond voting with social distance. As Election Day approached, genuine concerns emerged about voter intimidation and violence. We, therefore, added those topics to the range of issues concerning the successful adaptation of polling places and the in-person voting infrastructure to deal with the pandemic.

Chapter 4 presents the research from the Healthy Elections Project on all aspects of the mail voting experience. The shift to mail voting was the most significant administrative change for the pandemic, with nearly half of Americans voting by mail. This transition was also the most controversial innovation in election management, as President Trump cast doubt on the security of mail voting and alleged it was ripe for fraud. Throughout the late summer and early fall, new issues rose to prominence and demanded investigation. For example, we present here our research on ballot drop

boxes, “naked ballots,” and issues regarding the U.S. Postal Service — topics that might not have seemed terribly relevant even in the early stages of the pandemic. We also provide our research on ballot collection (otherwise known as “harvesting”), signature verification, and mail voting litigation.

Chapter 5 presents our research on counting, recounting and litigating the vote. When we initiated the Healthy Elections Project, we had hoped our work would be complete by November 3. However, as is now well-known, the post-election period was as active as the pre-election period. In many of the court cases detailed in that section, the adaptations made to deal with the pandemic became the source of constitutional controversy. Not only was fraud (or rather “irregularities”) alleged in various states with respect to every aspect of the mail voting and in-person experience, but plaintiffs alleged that the state courts, secretaries of state, and local administrators violated the U.S. Constitution by going beyond the strict provisions of election statutes passed by legislatures. Although courts rejected virtually all of the seventy or so challenges brought in the post-election period, the litigation provided another forum to propagate misinformation about the security of the vote.

In Chapter 6, we provide some further examination of the problem of election-related misinformation and social media. This is just a small taste, however. Readers interested in those topics should also read the report, [“The Long Fuse: Misinformation and the 2020 Election,”](#) prepared by our sister project at Stanford, The Election Integrity Partnership (eipartnership.net). These concluding chapters to our volume provide brief descriptions of the tech platform civic information tools developed for this election (such as Facebook’s Voting Information Center described above) and a listing of state-specific election-related misinformation narratives that appeared online.

ACKNOWLEDGMENTS

The work of the Stanford-MIT Healthy Elections Project required an unprecedented effort from a large team of people. Over 150 students participated in one capacity or another. We are especially indebted to the research directors of the project, Zahavah Levine and Chelsey Davidson, who shepherded this volume to publication and managed all critical elements of the research, writing and editing throughout the summer, fall and winter. On the MIT side, Claire DeSoi oversaw the development of the website and the administrative apparatus for the project. At Stanford, Haifa Badi Uz Zaman provided indispensable support to many of the students and faculty involved in the project. Matt Masterson and Ben Ginsberg provided much-appreciated quality assurance in editing the final drafts of the chapters in this report. Our partners in the civic tech and democracy field and the consulting groups of former election officials helped rescue this election from certain doom. We thank all the individuals and foundations that provided the necessary resources for both our project and those of our partners to thrive under incredibly challenging circumstances.

Finally, we wish to send our greatest note of appreciation to the local and state officials who worked tirelessly to pull off this election. They, and the voters they serve, are the real heroes of this election. We are lucky as a nation to have such a large core of dedicated public servants who risked their lives to ensure the election would go forward under incredibly difficult circumstances. We will forever remain in their debt.

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INTRODUCTION



Introduction:

The Miracle and Tragedy of the 2020 U.S Election

April 1, 2021

Abstract:

The 2020 election was both a miracle and a tragedy. In the midst of a pandemic posing unprecedented challenges, local and state administrators pulled off a safe, secure, and professional election. This article discusses metrics of success in the adaptations that took place—record-high turnout, widespread voter satisfaction, a doubling of mail voting without a concomitant increase in problems often associated with absentee ballots, and the recruitment of hundreds of thousands of new poll workers. However, a competing narrative of a "stolen election" led to a historically deep chasm between partisans in their trust of the election process and outcome.

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Introduction

The 2020 U.S. election was both a miracle and a tragedy. It was a miracle in that election administrators, facing unprecedented challenges from a pandemic, were able to pull off a safe, secure, and professional election in which a record number of Americans turned out to vote. It was also a tragedy, though, because, despite these heroic efforts, lies about vote fraud and the performance of the system have cemented a perception among tens of millions of Americans that the election was "rigged." This manufactured distrust has deeply damaged our democracy; the path to repairing it is not at all clear.

The Capitol Insurrection of 6 January 2021 will forever constitute the image of the 2020 election and the distrust that accompanied it. Despite the heroism and success we detail below, more than a hundred members of Congress voted to question and overturn the results in one or more states.

The enduring images of the 2020 election should have been very different. During the primary elections early in the year, the picture looked bleak, as poll-worker and polling-place shortages caused long lines of frustrated voters to risk their lives, while thousands of absentee ballots were rejected in places that had little experience with large-scale voting by mail. In the general election, however, an army of new poll workers, wearing personal protective equipment (PPE) and often administering the voting behind Lucite barriers, staffed polling places. Absentee voting also set records, as rates of canceled mail ballots were dramatically lower than before the pandemic.

How did the country pull off a successful election under pandemic circumstances? What changes to the election infrastructure were necessary to accomplish this task? How can we reconcile this measurable success with convictions, strongly held by a sizeable share of the electorate, that the election was rigged? These are the questions this article seeks to answer.

Given the unfounded, partisan criticism that the election was "rigged" and "disastrous," it is difficult in hindsight to reimagine what a true electoral disaster would have looked like and how close the United States came to experiencing one. The primary-season meltdowns in several states painted an ominous picture of institutional collapse threatening the general election. In several respects, the election system benefited from the timing of the pandemic, coming as it did in the middle of the presidential-primary season but hitting hardest just as Joseph Biden wrapped up the Democratic Party's nomination. The baptism by fire in the primaries provided necessary lessons in how to solve pandemic-related problems so that both mail and polling-place voting could work properly come November.

The primary season began with few covid-related concerns, as Iowa, New Hampshire, South Carolina, and Nevada held their primaries and caucuses in late February. Super Tuesday (March 3) also came at the beginning of the pandemic, with California the only state of the fourteen holding primaries that day which had thus far recorded a case. Ohio, with its primary scheduled for March 17, became the first state to sound the alarm when the state's public-health director ordered all polling places closed. The state then switched to almost all-mail balloting and extended the time to vote in the primary through April 28.¹ Most other states with March primaries then postponed their elections until May and June. By late March, governors throughout the country had issued stay-at-home orders. The presidential- nomination process escaped pandemic-related disaster by just a few weeks, as Biden's nomination seemed by that point all but assured.

Wisconsin was one of the states that did not reschedule its primary, and it became the cautionary tale as to what to avoid when conducting elections during a pandemic.² On the ballot in that primary was an election for the state Supreme Court; partisan concerns replaced the flexible attitude toward postponement seen in other states. As the April 7 primary date approached and more than 2,500 covid cases were confirmed in the state, Governor Tony Evers ordered the election postponed. However, Republican legislative leaders successfully sued, and the Wisconsin Supreme Court ordered the election to go ahead as scheduled. Only on April 6 did it become clear that the primary would be held the next day.

The last-minute wrangling among the governor, the legislature, and the courts exacerbated the state's lack of preparedness to run a primary during the pandemic. The state faced a shortage of seven-thousand poll workers. To replace them, the governor mobilized 2,400 members of the National Guard. The state closed only 15 percent of its planned polling places, but the largest cities cut back dramatically on the numbers of polling places they made available. Milwaukee, the state's biggest city, went from 180 polling places to just five, while Kenosha County went from 22 to ten and Green Bay opened just a pair of polling places instead of the 31 it normally would have. Hardest hit were voters of color; their turnout rate lagged whites by more than twenty percentage points.

¹ For a list of primary-date changes see "[2020 State Primary Election Dates](#)," National Conference of State Legislatures, 3 November 2020

² For a complete description of the Wisconsin primary, which is only summarized here, see Grace Scullion et al., "[Wisconsin's 2020 Primary in the Wake of COVID-19](#)," Stanford-MIT Healthy Elections Project, 30 June 2020

Absentee voting rescued the Wisconsin primary from complete disaster.³ Nearly 60 percent of the 1.5 million voters who turned out cast their ballots absentee, compared to 3.6 percent in the 2016 primary. Total turnout declined from 2.1 million in 2016, when competitive primaries for both parties brought out both Democrats and Republicans. (Most of the dropoff in 2020 was concentrated among Republicans.) Rejection rates of absentee ballots decreased from 2016, as 13,614 ballots were rejected because of "insufficient certification" and another 7,085 were rejected because they were late or did not have a postmark. Rejection rates for African Americans were about twice that of whites, however, and rejections of first-time voters' ballots were about a third higher than had been typical in previous elections.

The states with primaries scheduled for after April 7 heard the warning shot from Wisconsin loud and clear. Most shifted significantly toward mail balloting for the remainder of the primary season. As a result, absentee voting exploded in the primaries, but only in states that voted after March. Among states that voted in February and March, mail-ballot usage was virtually unchanged.⁴

Beginning with Wisconsin's April 7 primary and ending with Louisiana (July 11), every state saw a dramatic increase in mail-ballot usage—on average, 60 percentage points greater than 2016. Figure 1 depicts the shift in the mode of voting in the primaries that took place once the pandemic hit.

With increasing rates of mail balloting in the primaries came increases in ballot rejections. A nationwide study conducted by NPR estimated more than 550,000 mail ballots were rejected during the primaries, as compared to 318,728 in the 2016 general election.⁵ Given the dramatic rise in mail balloting, though, the share of rejected ballots even for the primary went down in many states. Georgia's decline in mail-ballot rejections was particularly notable, dropping from 17 percent in the 2016 primary to less than 1 percent in the 2020 primary.⁶ Not every state experienced a drop, however. North Carolina—a state with relatively few mail ballots—saw its rate of mail-ballot rejections climb from 7 percent in the 2016 primary to 10 percent in the 2020 primary, mostly because of a dramatic increase in ballots that lacked a signature.⁷

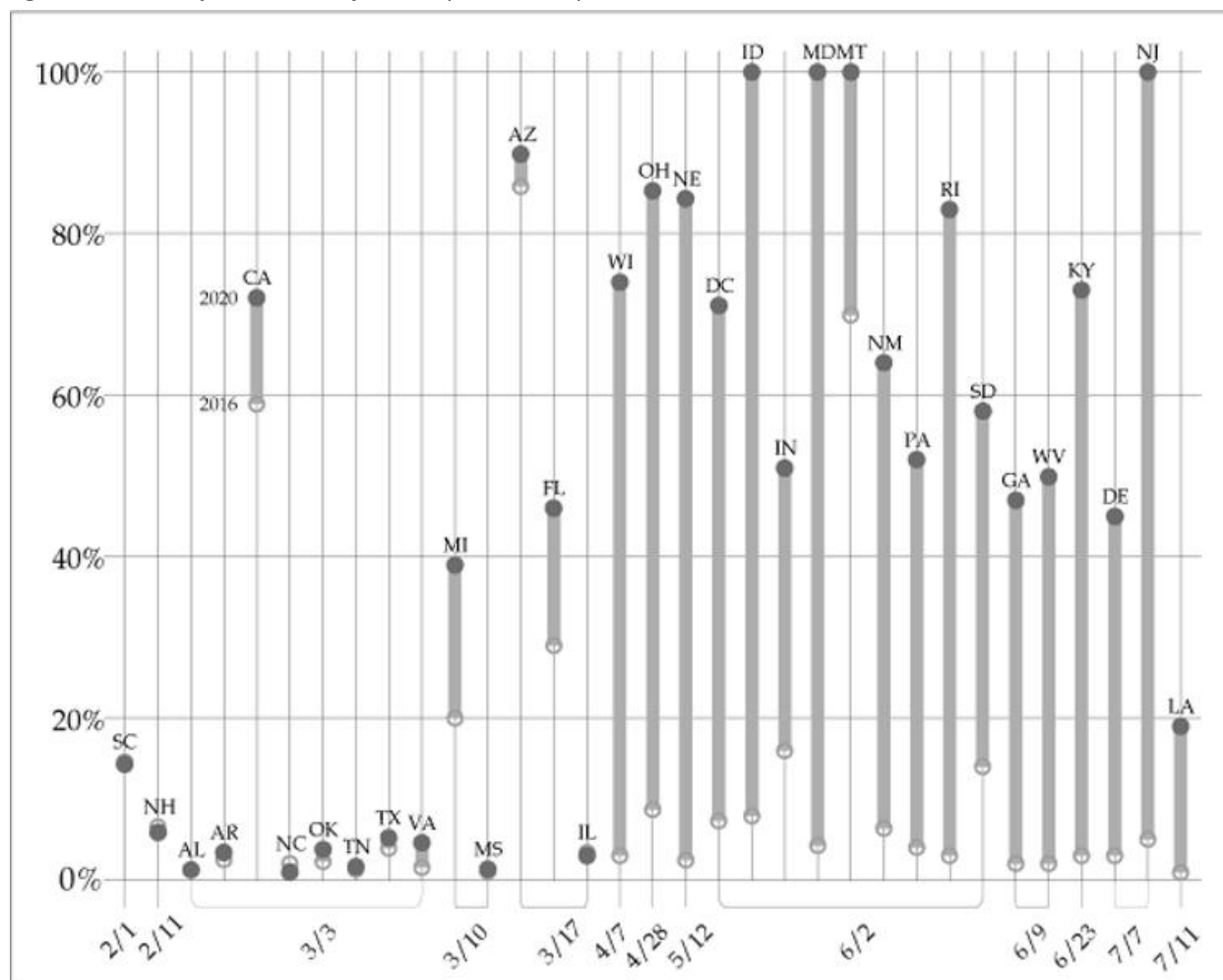
³ See John Curiel and Angelo Dagonel, "[Wisconsin Election Analysis](#)," Stanford-MIT Healthy Elections Project, 6 August 2020

⁴ The exceptions were California, which was already transitioning to a quasi-vote-by-mail system in most counties; Florida, which has a flexible vote-by-mail system that swung into play during its March 17 primary; and Michigan, where voters had in 2018 passed a referendum providing no-excuse absentee voting.

⁵ Pam Fessler and Elena Moore, "[More Than 550,000 Primary Absentee Ballots Rejected in 2020. Far Outpacing 2016](#)," Hawai'i Public Radio, 21 August 2020

⁶ Kevin DeLuca, "[Georgia Primary Election Analysis](#)," Stanford-MIT Healthy Elections Project, 15 September 2020

⁷ Blair Read, "[North Carolina Election Analysis](#)," Stanford-MIT Healthy Elections Project, 19 July 2020

Figure 1. *Percent of ballots cast by mail in presidential primaries, 2016 and 2020.*

Sources: Data gathered by the Stanford-MIT Healthy Elections Project using state election department reports and media accounts. Not all states provide data. Only states that held primaries in both 2016 and 2020 are displayed.

Just as Wisconsin provided the cautionary tale for polling-place voting, New York City's June 23 primary demonstrated the problems that plagued mail balloting. A whopping 84,000 ballots, representing 21 percent of all those coming from the city, went uncounted.⁸ Some ballots arrived late, while others were missing postmarks or the voter's signature on the oath envelope. Ballot-design problems and poor coordination between local officials and the U.S. Postal Service seemed to underlie many of the rejections.

⁸ Carl Campanile, Nolan Hicks, and Bernadette Hogan, "[Over 80,000 Mail-in Ballots Disqualified in NYC Primary Mess](#)," New York Post, 5 August 2020.

The primary period showed election administrators, policy makers, and the public that only an unprecedented effort could save the November election. New York highlighted problems with absentee voting, and illustrated what might happen if states with more traditional laws and practices did not change their ways, at least on an emergency, one-time basis. Wisconsin provided an object lesson regarding the fragility of the in-person voting infrastructure, and a reminder that millions of people still preferred to vote in person even when doing so was dangerous. The nation's election community had its work cut out for it in preparing for the fall.

Mobilizing to Cope with Covid

The shift to mail voting and healthy polling places in the general election did not "happen." States had to change their laws. Governors, health officials, and judges needed to impose emergency measures to deal with the pandemic.

Twenty-nine states and the District of Columbia enacted 79 different bills to expand voting access in 2020.⁹ Some states, such as California, New Jersey, Vermont, and Nevada, mailed every voter a ballot for the first time. Twelve states mailed absentee-ballot applications to all voters, and eight expanded eligibility for mail voting (whether by designating covid concerns as a valid excuse or by removing excuse requirements altogether). Four states enacted new "notice-and-cure" processes so that voters could remedy mistakes related to mail balloting; four provided prepaid postage for all mail ballots; four extended ballot-receipt deadlines; and five moved to permit the preprocessing of mail ballots so that ballots would be ready for counting once polls closed.

With respect to polling places, states relaxed rules on who could become a poll worker, raised the pay of poll workers, and required that jurisdictions not reduce polling-place numbers below a certain minimum. Some of these changes were permanent, while others were designated emergency steps taken only to deal with the pandemic. Many states that did not willingly make these changes were forced to do so by courts as a result of litigation.¹⁰

Along with policy makers and courts, civil society groups made an unprecedented effort to help local election administrators deal with the pandemic. The Stanford-MIT Healthy Elections

⁹ ["Voting Laws Roundup 2020,"](#) Brennan Center for Justice, 8 December 2020; ["Changes to Election Dates, Procedures, and Administration in Response to the Coronavirus \(Covid-19\) Pandemic, 2020,"](#) Ballotpedia, 19 November 2020

¹⁰ Connor Clerkin et al., ["Mail Voting Litigation During the Coronavirus Pandemic,"](#) Stanford-MIT Healthy Elections Project, 29 October 2020

Project, which we led, was a small part of that effort. Other organizations, such as the Center for Tech and Civic Life (CTCL), the Center for Secure and Modern Elections, the Center for Inclusive Democracy, the National Vote at Home Institute, Democracy Works, the Center for Civic Design, the Center for Election Innovation and Research, and a multitude of state-based organizations worked with election officials to provide resources and technical assistance in support of mail voting and safe polling places.

A key achievement of this civil society mobilization was the recruitment of poll workers. Following the primaries, poll-worker shortages appeared to present a critical threat to the November election. In previous elections, roughly half the poll workers nationwide had been more than 61 years old, putting them into a higher-risk group amid a pandemic.

A host of organizations representing students (Campus Compact and Students Learn Students Vote), lawyers (the Association of ProBono Counsel and the American Bar Association), physicians, and other groups mobilized to fill the need. None was more influential than PowerthePolls.org. Working with the database of election offices provided by WorkElections.com and a multitude of partners at the state level, Power the Polls initiated a national poll-worker recruitment program that signed up more than 600,000 volunteers. (To give some context, roughly a million people served as poll workers in the 2016 election.) Exactly how many of those who signed up ended up serving is not known, but poll-worker shortages did not appear to afflict any major jurisdiction in the November election.

Perhaps the most unprecedented outside effort to bolster the election infrastructure came in the form of philanthropic contributions to election offices. Through the CARES Act, Congress had appropriated \$400 million for assistance to election jurisdictions.¹¹ In the end, private philanthropy contributed even more. Mark Zuckerberg and Priscilla Chan alone contributed \$400 million.¹² This money was administered through a CTCL grant program to more than 2,500 election jurisdictions. It paid for staffing, mail-voting equipment, drop boxes for ballots, PPE for poll workers, election security, polling-place rentals and sanitation, staffing and real-estate costs, poll-worker training, and a host of other things. By all accounts, these added funds were critical to the successful administration of the election. The same could be said for corporate in-kind donations, which included the arenas that National Basketball Association franchises

¹¹ H.R. 748, CARES Act, Public Law 116-136.

¹² Nicholas Riccardi, "[Mark Zuckerberg Donates \\$100M More to Help Election Offices](#)," Associated Press, 13 October 2020.

lent for use as early-voting centers as well as other kinds of donations that were made through groups such as Business for America.¹³

One final set of outside actors deserves mention: internet platforms. Google and Facebook were widely reviled in 2016 for being sources of foreign election interference through both advertising and organic content. While they continued in 2020 to serve as platforms on which domestic disinformation and propaganda prospered, they developed products to provide and amplify authoritative information from election officials. The Google Civic Information API, developed from the Voting Information Center run by Democracy Works in consultation with local election offices, powered numerous web portals that provided information on polling places, voter-registration procedures, ballot-dropbox locations, and much else.¹⁴ Facebook's Voting Information Center provided similar data, as well as information from third parties such as the Bipartisan Policy Center that could be deployed in users' feeds to mute the impact of other, potentially less authoritative, stories on the voting process.¹⁵ In addition, Facebook reports that the portal, which also produced top-of-feed reminders, assisted more than 4.5 million people in registering to vote and more than a hundred-thousand people in signing up to serve as poll workers.¹⁶

Success Against All Odds

The most basic measure of the success of an election is turnout. By this metric, the 2020 election was an unalloyed success by U.S. standards. Nearly 160 million votes were cast in 2020, up by more than 20 million from 2016. This amounted to two-thirds of the eligible electorate, six points higher than 2016 and the highest turnout rate since 1904.¹⁷

Turnout as a percentage of the voting-eligible population increased in every state, although there was considerable variation. The most significant increases came in the West and along much of the Eastern Seaboard. The smallest increases—they were in the low single digits—occurred in the country's midsection, where states went to the least trouble to increase access to the polls and where the presidential race was mostly uncompetitive.

¹³ "[NBA Arenas and Facilities Being Used for 2020 Election](#)," NBA.com; Alex Tausanovitch, Sarah Bonk, and Richard Eidlin, "[17 Ways Companies Can Help Americans Vote Safely](#)," Center for American Progress, 9 September 2020

¹⁴ "[Google Civic Information API](#)," Google

¹⁵ "[Voting Information Center](#)," Facebook

¹⁶ "[A Look at Facebook and U.S. 2020 Elections](#)," Facebook, December 2020

¹⁷ "[Voter Turnout Data](#)," United States Elections Project

What explains the turnout surges and where they occurred? Our own statistical analysis finds that heightened electoral competition in the battleground states and the availability of election-day registration (EDR) were important. The most competitive states (measured by the margin of victory) and states that instituted EDR after 2016 saw the biggest turnout increases that pass the standard criteria of statistical significance.¹⁸ Mailing a ballot to all voters and adopting no-excuse absentee voting did not have statistically significant effects.

Turnout was not the whole story, of course. The main story, indeed, was the shift to mail balloting. Even if efforts to encourage more voting by mail played a modest role in boosting turnout, the shift to vote-by-mail was as much as anything an effort to protect public health in a high-intensity election. Mail balloting had already been increasing in importance over the past two decades, as 21 percent of voters cast votes by mail in 2016, up from 8 percent in 1996. But that figure doubled in 2020 as 46 percent of voters cast their ballots by mail. Election-day voting dropped by half, consequently, from 60 percent of voters in 2016 to 28 percent in 2020.¹⁹

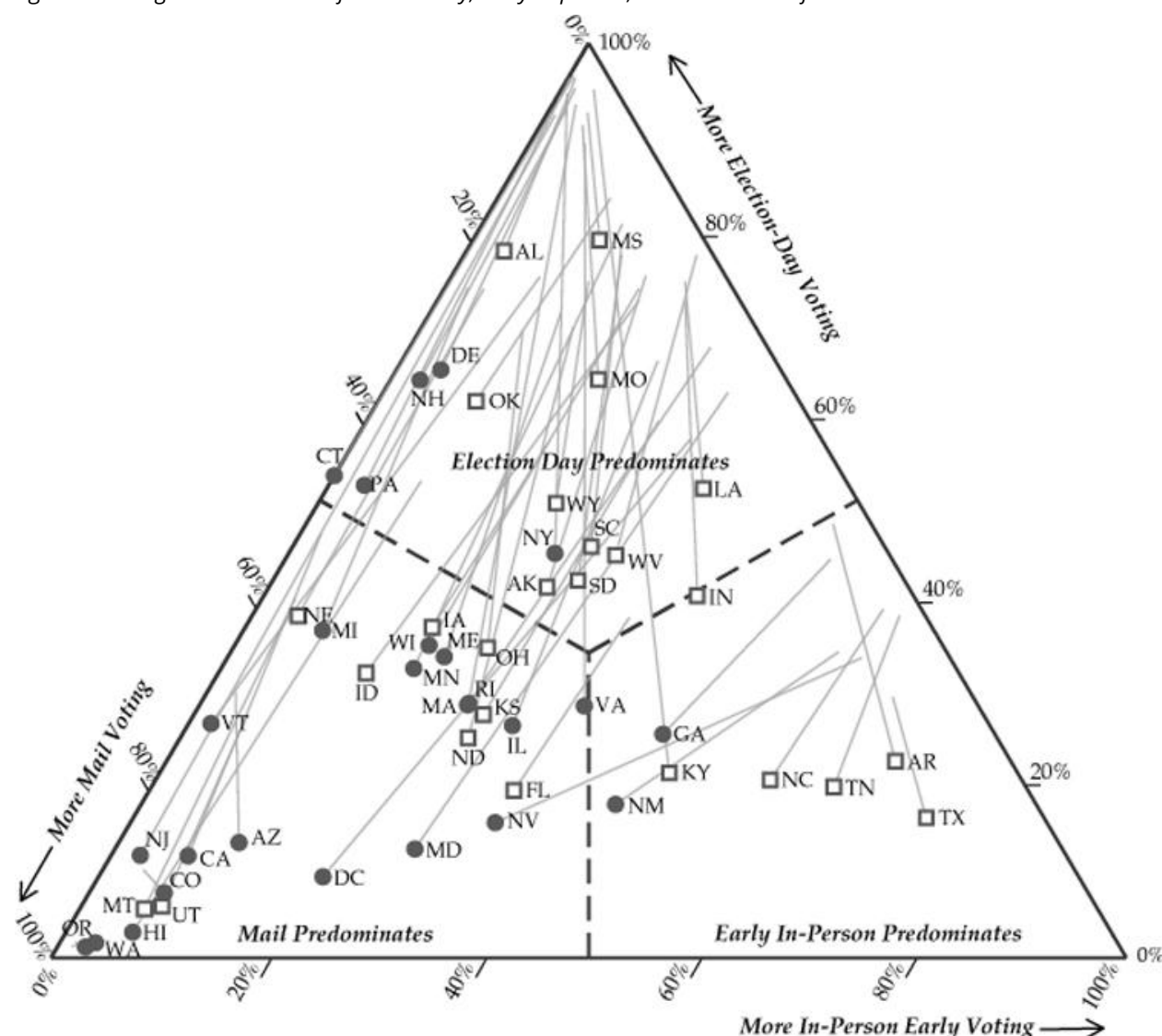
The national trend toward mail voting masks considerable variability in the degree of change across states and, in some cases, the exact mix of election-day, early in-person, and mail voting. This is illustrated in Figure 2, which uses a ternary plot to show the changing mix of voting modes from 2016 to 2020. This plot employs points to show the mix of voting modes used in each state, as reported by voters in the 2020 Survey of the Performance of American Elections (SPAЕ).²⁰ Attached to each point is a line that indicates the distribution of modes in 2016. Election-day voting dominated in the states toward the top of the plot; states toward the lower right mostly voted in person before election day; and mail balloting dominated in states toward the lower left.

¹⁸ The findings discussed in this paragraph are based on multivariate regression analysis available from the authors upon request.

¹⁹ Data on voting-mode usage from 1996 to 2016 come from various years of the U.S. Census Bureau's Voting and Registration Supplement. Statistics from 2020 were calculated from responses to the Survey of the Performance of American Elections (SPAЕ).

²⁰ Undertaken by MIT every presidential-election year since 2008, the SPAЕ is a post-election survey that is meant to gauge the experience of voters in the most recent presidential election. The survey is designed to allow comparisons across states. In 2020, the sample size was 10,800 respondents. In every state, at least two-hundred interviews took place.

Figure 2. Change in distribution of Election Day, early in-person, and mail ballots from 2016 to 2020.



Sources: U.S. Census Bureau, Voting and Registration Supplement, 2016; Survey of the Performance of American Elections, 2020.

Note: Circles represent states won by Joseph Biden. Squares represent states won by Donald Trump.

The most common type of change was toward the southwest in the graph—that is, substituting election-day voting for mail ballots. In only eight states (Arizona, Arkansas, Indiana, Kentucky, Louisiana, Mississippi, Missouri, and Texas) did the increased share of in-person voters before election day exceed the increased share of mail voters.

Postelection responses to the SPAE describe the reasons behind the shift to mail balloting. Overall, 59 percent of respondents who stated that they were very worried about family

members catching covid reported having voted by mail, compared to 28 percent who said they had no covid worries. This difference was visible within each party. Among Republicans, 42 percent who were very worried about covid voted by mail, while only 26 percent who had no covid worries at all said they had cast their ballots this way. Among Democrats, those figures were 62 and 35 percent.

A state's legal regime dramatically affected its rate of absentee balloting. Voters in states with no-excuse absentee voting used mail ballots at a much higher rate (55 percent) than voters in other states (35 percent); voters in states that mailed ballots to all registered voters likewise voted by mail at double the rate of other states (81 percent versus 40 percent). The only policy that did not appear to affect usage rates was mailing an absentee-ballot application to all voters.²¹ Our analysis of relevant statistics indicates that the biggest increases in mail-ballot usage from 2016 to 2020 came in states that mailed ballots to all registered voters and that also had largely Democratic electorates.²²

During the run-up to the November election, officials and commentators in the field expressed concern about whether voters who were new to mail voting would complete the vote-by-mail process successfully. In prior elections, voter mistakes and administrative problems had resulted in hundreds of thousands of mail ballots being turned down.²³ With the volume of mail ballots seemingly set to double or triple, there was heightened concern that voters using mail voting for the first time might be disenfranchised, and that controversies over mail-balloting problems would generate broader doubts about the election's legitimacy. Efforts by election officials, civil society, and the courts addressed these concerns. In the end, voters followed directions and returned their ballots quickly.

Fears also arose over late-arriving ballots. All states have deadlines for the receipt of mail ballots. Most require ballots to be "in hand" by the time the polls close on election day. A few allow a ballot to arrive within a given period after election day so long as there is proof (usually in the form of a postmark) that it had been mailed by the date of the election. With millions of voters poised to cast their first-ever mail-in ballots, and in view of the Postal Service's well-known struggles, many worried that large numbers of voters would have their ballots tossed simply because the mail was too slow in delivering them. In 2016, late arrival was the

²¹ The rate of mail-ballot usage among voters in states that mailed an application to all registered voters was virtually identical (48.8 percent) to the rate among voters in states that did not (47.6 percent).

²² The statistical analysis referenced here is available from the authors upon request.

²³ Charles H. Stewart III, "[Reconsidering Lost Votes by Mail](#)," Harvard Data Science Review 2.4 (Fall 2020)

most common reason save one for the rejection of postal ballots.²⁴ Would the same happen in 2020?

It appears that it did not. Although comprehensive statistics have yet to be published, examination of absentee-ballot files from a few states reveals that a surprisingly small number of mail ballots arrived after November 3. Georgia, for instance, saw the number of ballots that arrived after that date (and which were therefore rejected) fall from 0.8 percent of ballots returned in 2016 to 0.2 percent in 2020. Consequently, although the number of mail ballots cast grew sixfold in the state, the number of ballots rejected for arriving too late grew only slightly (from 1,836 to 2,368). The numbers were similar in Wisconsin, despite the number of ballots cast by mail growing fifteenfold, from 91,000 to nearly 1.4 million.

In North Carolina, as part of a legal settlement, the deadline for the receipt of absentee ballots after election day was lengthened from the normal three-day period to nine days because of the pandemic.²⁵ In the course of the election, the number of mail ballots rose fivefold, from 198,035 in 2016 to 1,026,364 in 2020. Yet the number of ballots that arrived during the new nine-day grace period increased by only about five thousand (to 16,313). Indeed, the number of ballots that were rejected for arriving too late actually declined from 1,038 in 2016 to 797 in 2020. North Carolina was not unique: Data from the SPAE indicate that a greater percentage of mail voters reported returning their ballots more than a week before Election Day (73 percent) than had done so in the past two presidential elections (61 percent in each). Voters heeded the warnings and returned their ballots with enough time to spare.

Finally, preliminary evidence suggests that mail ballots were rejected at much lower rates in 2020 than in 2016. Final statistics from the 2020 election were not available at the time of this writing in March 2021. However, the website FiveThirtyEight has been able to gather data from 22 states plus the District of Columbia, and reports that rejection rates are down from the 2016 level in all but three of these jurisdictions.²⁶ The website Ballotpedia, relying on different data sources in some cases, reports rejection rates as dropping in fourteen of twenty states.²⁷

Direct analysis of the absentee-ballot files from the states that make them readily available tells a similar story. For instance, Wisconsin reported that only 0.2 percent of absentee ballots were

²⁴ ["The Election Administration and Voting Survey: 2016 Comprehensive Report—A Report to the 115th Congress,"](#) U.S. Election Assistance Commission

²⁵ This settlement was challenged by Republican legislative leaders, but a 5–3 majority of the U.S. Supreme Court upheld it. See Christopher Middleton, ["North Carolina: 2020 Election Policies and Practices,"](#) Stanford-MIT Healthy Elections Project

²⁶ Nathaniel Rakich, ["Why So Few Absentee Ballots Were Rejected in 2020,"](#) FiveThirtyEight, 17 February 2021

²⁷ ["Election Results, 2020: Analysis of Rejected Ballots,"](#) Ballotpedia, 10 February 2021

rejected for any reason, compared to 1.8 percent in the April presidential primary and 2.3 percent in the 2016 presidential election.²⁸ The percentage rejected for "certification insufficient," which includes a missing voter or witness signature or a missing witness address, was a miniscule 0.07 percent (1,434 ballots out of nearly two-million returned). In Georgia, the number of mail ballots that were cast grew sixfold in 2020, to 1.3 million.²⁹ But the overall number of rejected mail ballots declined from about 6,056 in 2016 (2.9 percent of all mail ballots returned) to 4,003 (0.3 percent). Of the state's 2020 rejected mail ballots, 1,563 were for either missing or invalid signatures.

The Maintenance of In-Person Voting

Although the shift to voting by mail was the element of election administration that drew the most public attention, election officials were equally attentive to the challenges of maintaining polling places for both early voting and election day. Even with the big shift to mail balloting, maintaining polling places remained critical to the safe and effective conduct of the election. Some voters needed services that could only be provided in person, others distrusted the Postal Service, and still others heeded President Donald Trump's calls to vote in person. Many voters, including Democrats, still strongly desire to vote in person.³⁰

According to one report, the 2016 election had involved about a hundred-thousand polling places, nearly 21,000 of which were eliminated in 2020.³¹ Half the eliminated polling places were in California alone, which mailed ballots to all registered voters. Most of the other states with the biggest drops in the number of polling places either mailed ballots to all registered voters (Nevada, New Jersey, and Vermont) or worked hard to divert voters to early voting at centers set up for that purpose (Kentucky and Maryland).

²⁸ "[November 3, 2020 Election Data Report](#)," Wisconsin Elections Commission, 3 February 2021

²⁹ Here we include ballots recorded as arriving after November 3, because the bulk of ballots rejected on account of signature problems are recorded as arriving after that date. This fact, and other details in the state absentee file, suggest that when recording these ballots, counties regularly entered the date on which they were rejected rather than the date on which they were received.

³⁰ In a poll that the Pew Research Center took in August, before any states had begun distributing mail ballots, 60 percent of Trump supporters and 23 percent of Biden supporters said that they intended to vote on election day. African Americans were the demographic group most likely to express a preference for voting early and in person. See "[Views of the 2020 Campaign and Voting in November](#)," Pew Research Center, 13 August 2020

³¹ Cameron Joseph and Robert Arthur, "[The U.S. Eliminated Nearly 21,000 Election Day Polling Locations for 2020](#)," VICE News, 22 October 2020. The authors thank Cameron Joseph for sharing the data that formed the basis of this report.

The type of facility in which people voted also changed in 2020. Between 2008 and 2016, the three most common sites for polling places had been schools (25 percent of in-person voters), churches (17 percent), and community centers (16 percent). In 2020, the top three were "other" government buildings (courthouses, municipal buildings, or city halls, but not schools, community centers, firehouses, or police stations) at 23 percent, community centers at 21 percent, and schools at 18 percent. In other words, in-person voting shifted to larger facilities over which local governments had greater control.

Although we cannot yet document precisely how well local officials maintained access to in-person voting, we can assess the experience of voters who cast ballots in person and judge indirectly how well the system performed. Here, as with mail voting, the conclusions are mostly positive, although things were far from perfect.

First, despite the net reduction of 21,000 polling places and the relocation of thousands more, in-person voters did not report greater difficulty finding their polling place in 2020. Second, among the other measures that the SPAE has followed over the years to assess the experience of in-person voters, 2020 was no different from past years. Third, in-person voters largely encountered polling places where they felt that safety measures were appropriately in place.³²

That said, other public-health measures were less often observed. Barely half of in-person respondents (56 percent) reported that they found voting booths spaced out to respect social distancing, while fewer than half reported finding protective barriers between themselves and poll workers or seeing voting booths cleaned between uses (47 and 42 percent of respondents, respectively).

The one measure on which voters reported having a worse experience than in 2016 was the time spent waiting to vote in person. This was not surprising given the demands of social distancing and the closure of many polling places during the pandemic. The benchmark that we use is the percentage of in-person voters who had to wait more than thirty minutes to vote (the standard suggested by the Presidential Commission on Election Administration in its 2014 report).³³

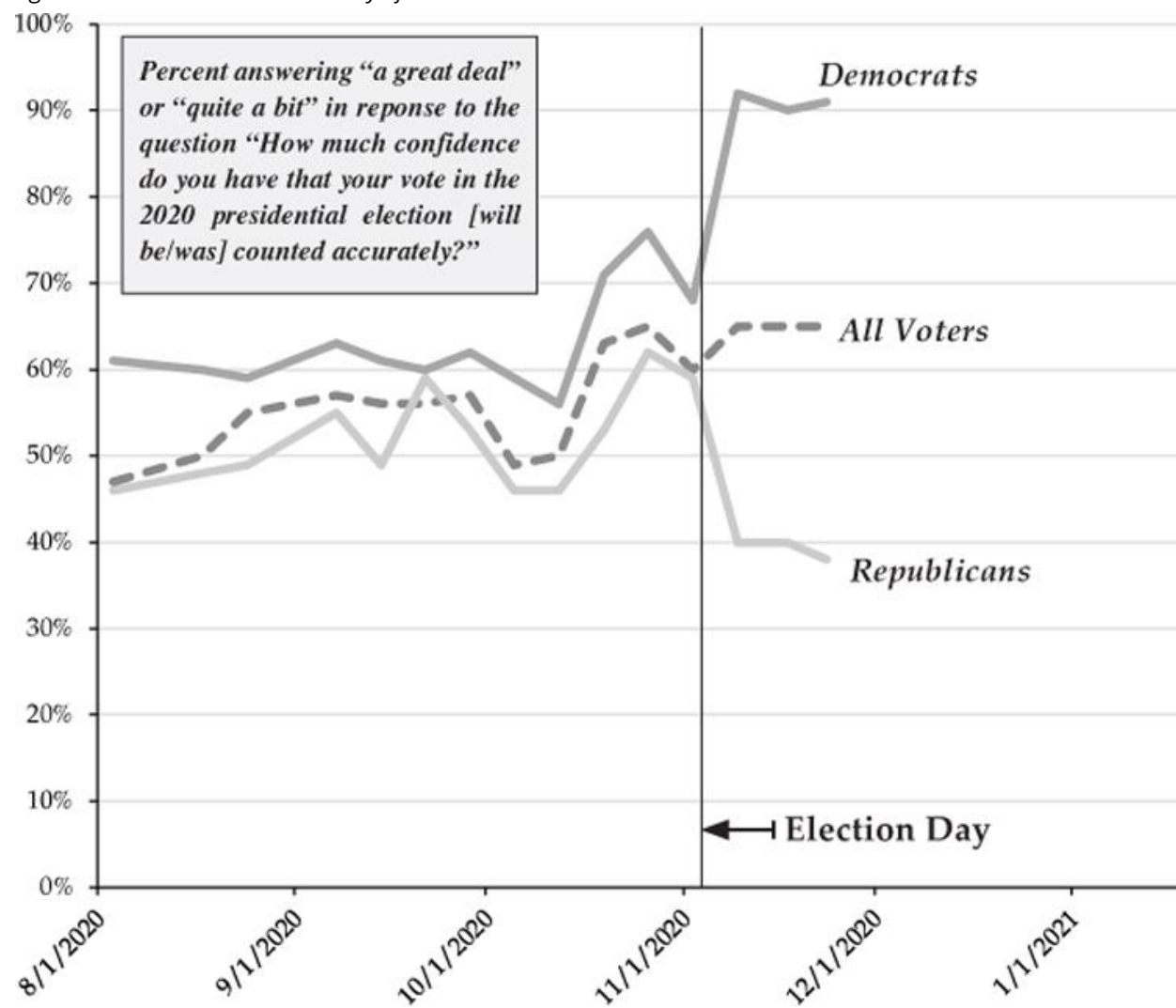
Wait times increased in 2020 up to levels not seen since 2008, the election year with the longest wait times on record. Roughly one in five early voters waited more than a half-hour to vote, as did one in seven election-day voters. The racial gap in wait times had closed for election-day

³² Charles Stewart III, "[How We Voted in 2020: A First Look at the Survey of the Performance of American Elections](#)," MIT Election Data and Science Lab, 15 December 2020

³³ "[The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration](#)," U.S. Presidential Commission on Election Administration, January 2014

voting in 2016, but not for early voting. The same remained true in 2020, just at longer wait times. On election day 2016, the share of both white and African American voters who had needed to wait more than thirty minutes had been 8.5 percent. In 2020, those proportions rose to 14.3 and 15.6 percent, respectively. In 2020 early voting, the disparity was greater: More than a quarter (26.6 percent) of African American early voters needed to wait a half-hour or more to vote, while this was true for just over a fifth (20.5 percent) of white early voters. This gap of six percentage points was similar to the nine-point gap (18 percent versus 9.2 percent) that had been observed in 2016.

Figure 3A. *Trust in election: accuracy of vote count.*

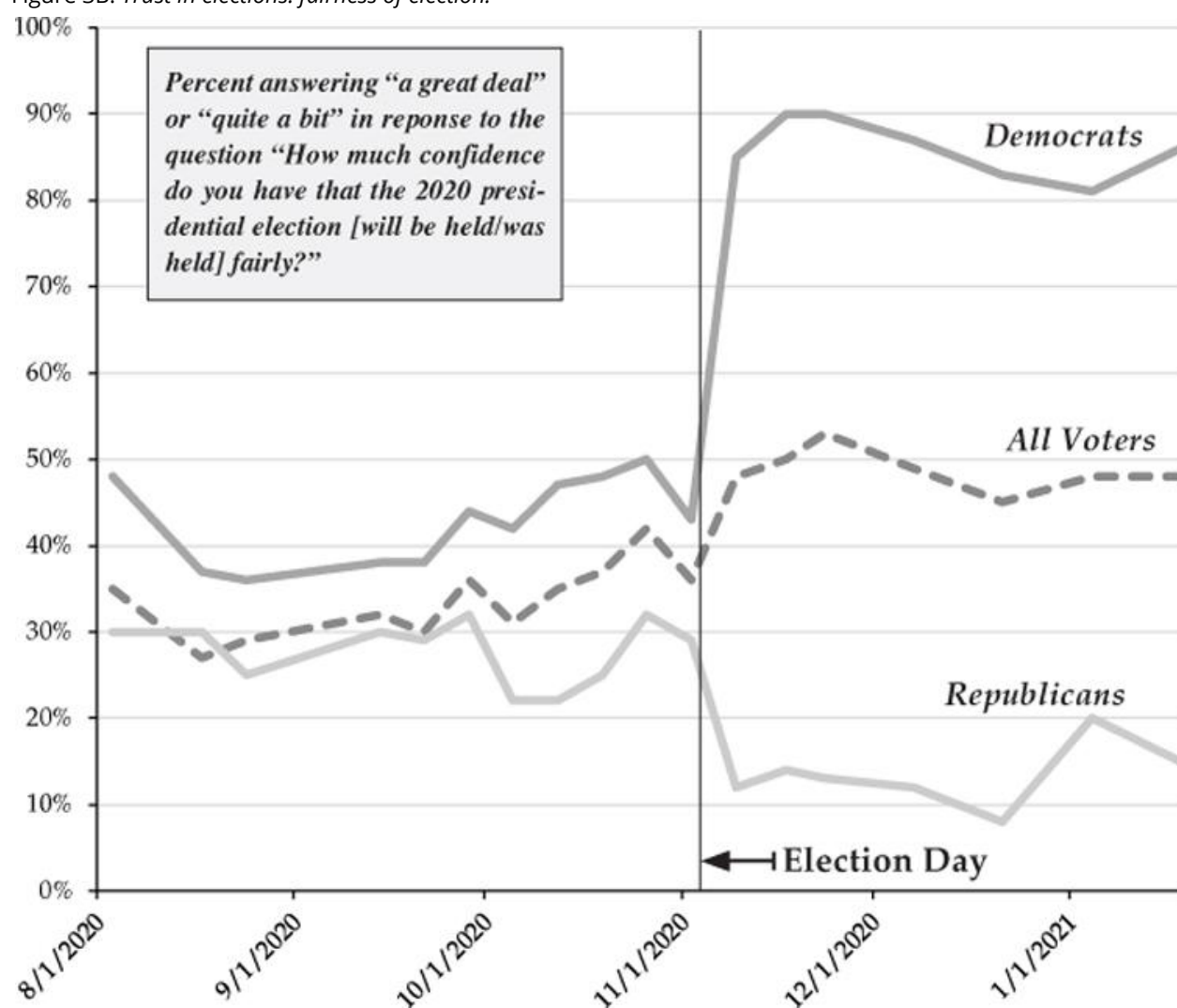


Source: Economist/YouGov poll.

Perception versus Reality

The story told here of a historic and heroic administration of the 2020 election is based on the observed facts and data. A competing narrative of dysfunction and a "stolen election" emerged in the election's aftermath, propagated by President Trump and his supporters. Seeds of that narrative actually preceded the election, as Trump and his surrogates had primed the U.S. public, and more particularly his supporters, to expect fraud of historic proportions, which would be the cause of his defeat, if he lost. That lie then became weaponized on January 6, as the "Stop the Steal" movement descended on the Capitol for a deadly attempt at insurrection.

Figure 3B. *Trust in elections: fairness of election.*

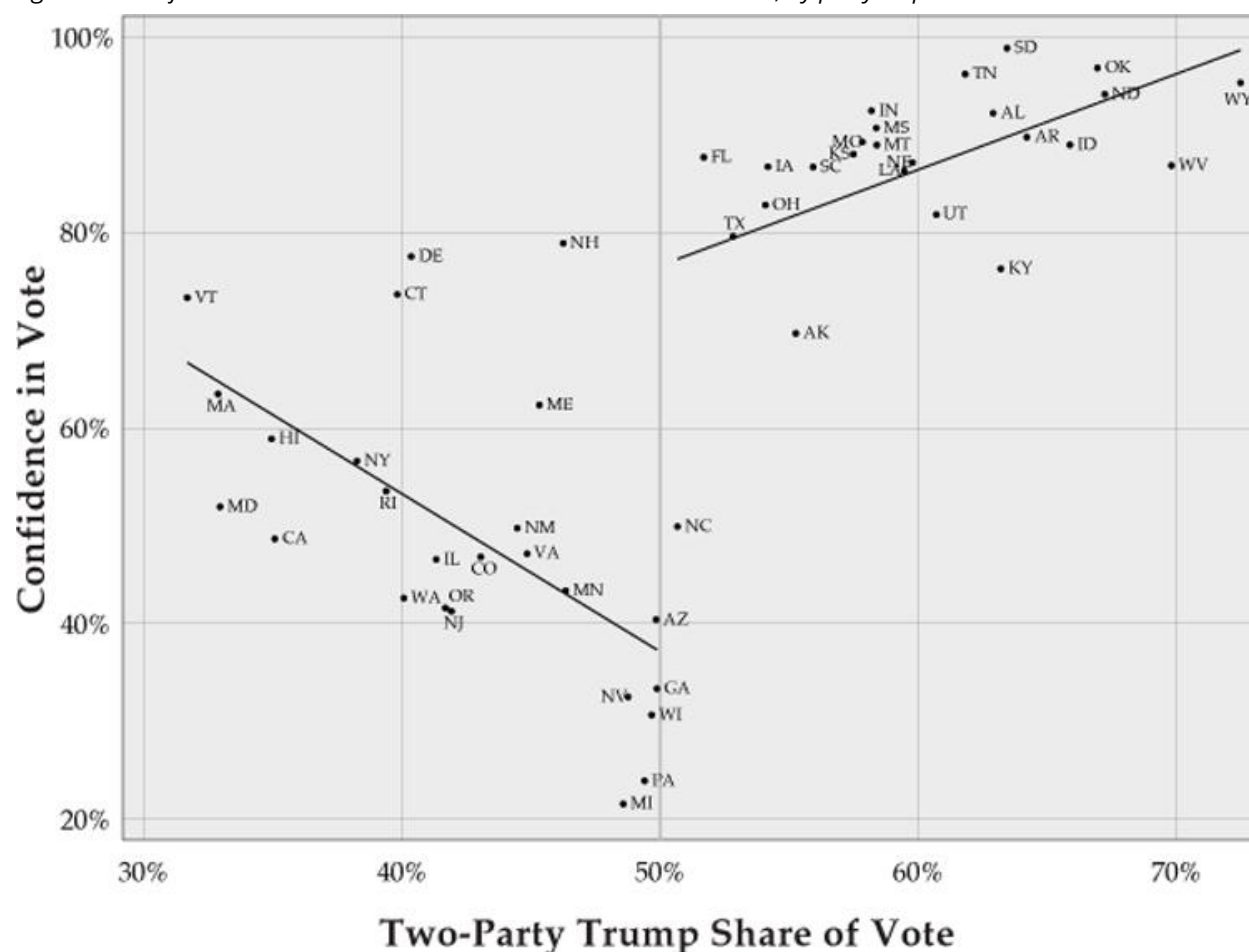


Source: Economist/YouGov poll.

Partisan polarization concerning the fairness of a presidential election is not new, and to a large degree the basic patterns in 2020 mimicked what political scientists have found over the past two decades. In the case of 2020, roughly half of respondents to the Economist/YouGov series of polls between August and election day expressed "a great deal" or "quite a bit" of confidence that their own votes would be counted accurately in the upcoming election, while between 30 and 40 percent expressed confidence that the election would be "held fairly" (with Democrats slightly more confident on both measures than Republicans).

After November 3, the overall measures of confidence remained roughly unchanged, but the degree of partisan polarization exploded. (See Figure 3.) Before the election, Democrats were 10.9 points more confident their votes would be counted accurately than Republicans; after Election Day, this gap was 51.7 points. The gap in confidence that the presidential election was fair increased even more sharply, going from 15 points prior to November 3 to 72.6 points afterward.

Figure 4A. Confidence that state votes were counted as intended in 2020, by party: Republicans.



Source: Survey of the Performance of American Elections (SPAEE).

Note: The y-axis shows the percentage of Republican respondents who were either very or somewhat confident that votes in their state were counted as intended.

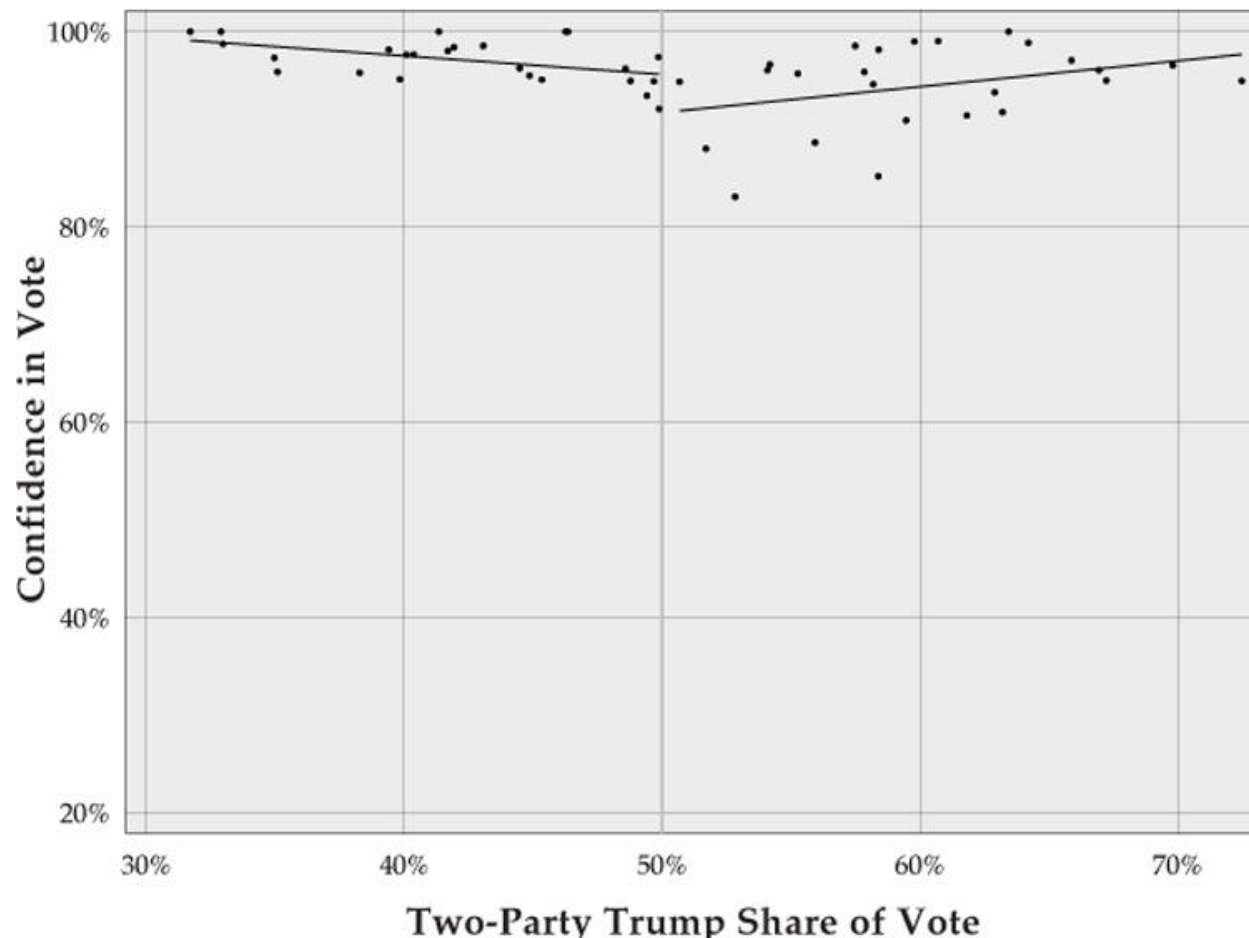
As documented in earlier studies of voter confidence, the partisan split over assessing the election's fairness can be attributed, to some extent, to the "winners-and-losers effect," with the losing candidate's supporters more likely to question the integrity of the process.³⁴ In comparison to recent elections, however, the 2020 gap is extreme. A study of changes in voter confidence from before to after election day in the 2004, 2008, and 2012 presidential elections found that on average the gap between the parties increased 22 points on the question about confidence in one's own vote being fairly counted, and 32 points on the question about confidence in the overall fairness of the election.³⁵ We find that the net changes in 2016 were similar—17 and 18 points, respectively. In 2020, by contrast, the net gaps in confidence and trust increased 41 points for one's own vote and 58 points on the election's fairness overall.

Although this yawning partisan gap in perceptions of the accuracy and fairness of the 2020 election may be historic, the degree of partisan mistrust that has opened up at the state and local levels is also new. That mistrust will likely have more important near-term consequences, because of the preeminent role that states play in determining election policy. In the past, even when the two parties disagreed about the fairness of the national result, they were willing to acknowledge that local elections were conducted well, with only a small dose of loser's effect thrown in. And, as recently as 2016, the two parties were virtually identical in how they judged state and local election administration.

³⁴ Michael W. Sances and Charles Stewart III, "Partisanship and Confidence in the Vote Count: Evidence from U.S. National Elections Since 2000," *Electoral Studies* 40 (December 2015): 176–88; Betsy Sinclair, Stephen S. Smith, and Patrick D. Tucker, "'It's Largely a Rigged System': Voter Confidence and the Winner Effect in 2016," *Political Research Quarterly* 71 (December 2018): 854–68.

³⁵ The method is this: First, calculate the gap in confidence (as expressed before the election) between supporters of the candidate who would go on to win and supporters of the candidate who would go on to lose. This is the preelection difference. Second, calculate the same gap after the election. This is the postelection difference. Third, calculate the difference-in-differences, which is simply the postelection difference minus the preelection difference. In 2020, for instance, the average preelection gap on the question about one's own vote was 11 points (Democrats were more confident), while the average postelection gap was 52 points. The difference between the two was 41 points, which is the estimate reported in this paragraph. (All figures given in this note are rounded.)

Figure 4B. Confidence that state votes were counted as intended in 2020, by party: Democrats.



Source: Survey of the Performance of American Elections (SPAEE).

Note: The y-axis shows the percentage of Democratic respondents who were either very or somewhat confident that votes in their state were counted as intended.

Not so in 2020. The Republicans most distrustful of the accuracy of state election results live in states that Trump barely lost. In fact, the chasm in trust between Republicans in states where he barely lost and those in states where he barely won is vast—40 percentage points.

Data from the SPAEE help to illustrate the point. Figure 4 plots the percentage of respondents from the two parties who were either very or somewhat confident that votes in their state were counted as intended against the percentage of the two-party vote received by Trump. The discontinuity right at the 50 percent mark in the Republican graph is stark. Among Republicans, simply living in a state that Trump barely won is worth approximately 40 points in confidence regarding whether state votes were counted properly, compared to living in a state that Trump barely lost.

Republicans report being especially distrustful of the state vote count where Trump lost by less than three percentage points. And Republicans feel even more dissatisfied in states with high use of mail ballots—such as California, Maryland, New Jersey, Oregon, and Washington—and much less dissatisfied in states with low mail-ballot usage (Connecticut, Delaware, Maine, and New Hampshire).³⁶ The gap among Democrats' perceptions across different states was much smaller, and the usage of mail ballots had no influence on their attitudes toward the state vote count whether Trump won their state or lost it.

In almost every state, Democrats feel more confidence in the 2020 vote count than do Republicans, and by a wide margin. It is unsurprising, therefore, that immediately after the election news reports began to surface of efforts by Republican legislators to rein in forms of voting that Democrats seemed to favor. Across the country, state lawmakers from the Republican Party have put forward scores of bills to restrict mail balloting. The states with the most legislative activity are Arizona, Georgia, New Hampshire, and Pennsylvania.³⁷

A Test Passed, a Future in the Balance

How the country interprets the 2020 election will, in many respects, shape the future of U.S. democracy. The electoral system confronted and passed its most severe test in recent memory. Any fair appraisal would focus on the heroism of election officials, civil society actors, and voters, who turned out in record numbers despite the threat of a pandemic. It would lead to renewed attention to the needs of election officials and the changing expectations of voters who increasingly seek flexibility in how they vote.

That legacy is far from guaranteed, however. The doubt cast on all aspects of the electoral process, from voting machines to ballot dropboxes to mail balloting, threatens Americans' faith in the machinery of democracy and in those who dedicate their lives to administering it. On the receiving end of hate mail and death threats, large numbers of officials who administered the 2020 election are anticipating retirement, citing the political pressures of the job as a primary

³⁶ This point is confirmed by a simple multiple regression in which we add the percentage of ballots cast by mail to the lines fit in the two figures. Among Republicans in states that Trump lost, each percentage-point increase in the use of mail ballots decreased state-level confidence by 0.239 points; in states that Trump won, the corresponding coefficient is 0.002 points. The former effect is significant at $p < 0.026$; the latter as a p -value of 0.967.

³⁷ "[Voting Laws Roundup: February 2021](#)," Brennan Center for Justice, 8 February 2021

reason.³⁸ It remains to be seen who will replace these veterans, given the pressure, low pay, threats, and lack of support from political leaders.

One consequence of the election may be a leadership crisis in election administration, as exhausted and frustrated officials step down and state and local governments struggle to find replacements who are equally dedicated to tireless and fair implementation of election laws. An even worse future will be in store if the next generation of election officials who step forward do so out of a conviction that the 2020 election was fundamentally flawed.

For longtime observers of election administration and law, the 2020 election offers a number of obvious lessons that should demand immediate attention in state capitals and Washington, while the memory of the election is fresh. In particular, we stress the needs to fund election administration sufficiently, to clarify emergency legislation relating to elections, to cement ties between election officials and social-media outlets for communicating with voters, to enact comprehensive postelection-auditing programs, to develop workable observation procedures, and to acknowledge fully the critical role that the Postal Service plays in conducting elections. Other obvious issues that need attention include regularizing the use of drop-off locations for mail ballots, requiring greater use of the internet to track absentee ballots and manage mail-ballot transactions, establishing uniform standards for curing absentee-ballot defects, reforming the Electoral Count Act of 1887 to clarify the procedures for resolving disputes over Electoral College votes, and making election day a school holiday.³⁹

Instead, the motivating memory driving much election-administration lawmaking is amplified through a continued barrage of false claims about the election. As state legislatures convene and begin their work, efforts are mounting to restrict absentee voting—by instituting heightened identification requirements, by shortening the period during which such ballots can be requested, or by eliminating no-excuse absentee voting. By the end of March 2021, state legislatures had seen the filing of at least 3,914 bills dealing with election administration, more than half of them addressing absentee or mail voting.⁴⁰ While some of these bills are earnest attempts to adapt what was learned from the 2020 election to future mail-ballot policy, in most states these bills will likely provoke heated partisan debates in which grievances from the election will be relitigated. The overattention to mail voting to the neglect of the other pressing

³⁸ Fredreka Schouten and Kelly Mena, "[High-Profile Election Officials Leave Posts After a Tumultuous 2020](#)," CNN, 19 February 2021. See also Marie Albiges and Tom Lisi, "[Pa. Election Officials Are Burnt out and Leaving Their Jobs After 2020 'Nightmare'](#)," Philadelphia Inquirer, 21 December 2020.

³⁹ Nathaniel Persily and Charles Stewart III, "[A 12-Step Rehabilitation Program for American Election Administration](#)," Lawfare, 27 January 2021

⁴⁰ [National Conference of State Legislatures](#), State Elections Legislation Database

issues that arose during the election will result in a lost opportunity to improve the functioning of the election-administration system.

As the United States navigates its way forward, the stakes could not be higher. The 2020 election demonstrated how false claims about election fraud can lead to deadly results. At the same time, the election also demonstrated the resilience of U.S. voters and election administrators. The open question at this point is whether, when we look back on 2020, we will see it as a turning point in strengthening the mechanics of voting, or as the moment when a new generation of violent voter suppression began.

CHAPTER 1

THE 2020 PRIMARIES



CHAPTER 1: THE 2020 PRIMARIES

INTRODUCTION

The challenges that defined the administration of the 2020 election—namely the enormous increase in use of mail voting and the need to secure safe, accessible, in-person voting amid a novel coronavirus pandemic—first surfaced during the primary elections. When the primary season began in February 2020, the coronavirus was quickly spreading through much of the world, but its impact on the election had not yet come clearly into view. By Super Tuesday (March 3), only one state holding its primary that day had recorded a case of coronavirus (California). But by the time of the late March primaries, the pandemic’s threat to election administration was impossible to ignore. Ahead of the Ohio primary scheduled for March 17, the state’s public health director ordered all polling places closed. Statewide stay-at-home orders quickly followed through much of the country, prompting many primaries to be rescheduled as states rapidly prepared to scale up mail voting and other emergency alternatives. Some states that did not reschedule their primaries, such as Wisconsin, saw mass polling place closures and poll worker shortages. These and other challenges, such as mail ballot supply chain issues, persisted throughout the spring and summer primaries. But in facing these and other challenges, election officials were able to use the primaries as trial runs for the upcoming November general election, testing various measures to adapt the election infrastructure for the pandemic.

The spring and summer primaries led to the development of best practices for scaling mail voting and conducting safe in-person elections. The research in this chapter analyzes state approaches to conducting primary elections during a global pandemic, including common challenges and innovative practices. The appendix includes links to over 30 papers published by Stanford-MIT Healthy Elections Project in summer and fall 2020 analyzing the primary elections of key states. A summary of the report follows.

The 2020 Primary Elections

The first state primaries and caucuses of the 2020 elections cycle were held at around the same time as a new coronavirus was beginning to spread through the United States. The pandemic did not threaten to derail the Republican presidential nomination process, because Donald Trump faced no realistic challenger. The same was not true on the Democratic side, which began with more than two dozen potential candidates. If the pandemic had hit most severely about a month earlier than it did, the Democratic nomination process might have fallen into disarray. As it happened, Joe Biden had all but sewed up the nomination by the time the pandemic posed

serious threats to the voting process. Many other races were on the primary ballots, though, and the experience of election administrators over the spring and summer of 2020 running those primaries became invaluable for developing best practices for the general election in the fall.

The 2020 Primary Elections

March 10, 2020

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Other Contributors: *This paper draws extensively from research which first appeared in coverage of the primaries by the Healthy Elections Project. For a full list of reports detailing the primaries, see Appendix A: List of 2020 Primary Reports.*

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I. Introduction

The pandemic hit the United States just as the 2020 presidential primary season was underway. The sporadic chaos of the primary season provided a chilling and cautionary tale for what the nation might expect in November if it failed to adapt the election infrastructure to the pandemic. In many respects, the United States dodged a bullet, as the Democratic and Republican nominations were largely wrapped up by the time states executed their lockdown orders. Still, each of the spring or summer primaries, whether held for President or lower offices, served as a learning experience for election officials to prepare for the transition to increased mail balloting and reconfigured polling places for the general election.

II. Rapid Coronavirus Response

The presidential nomination process began in Iowa, the state that has, by tradition, started its prolonged caucus voting process before any other state. As the Iowa caucuses got underway February 3, 2020, there were [11 confirmed cases of coronavirus reported in the United States](#). The U.S. Department of Health and Human Services had declared the spread of the virus a [national public health emergency](#) but said the [“risk to the American public remains low at this time.”](#)

There were no reported cases of coronavirus in Iowa as large groups of citizens gathered for several hours throughout the state on the evening of February 3 to caucus for a Democratic nominee. Similarly, there were no reported cases in New Hampshire when a record number of voters flowed into polling places on February 11 to vote in the nation’s first primary of 2020. And there were no coronavirus cases reported yet in Nevada for its caucus on February 22 or in South Carolina for its primary on February 29.

By the time of “Super Tuesday,” March 3, just one of the 14 states holding primaries that day had recorded a case: [California](#), with 40 cases. Just one week before Super Tuesday, the [U.S. Centers for Disease Control and Prevention](#) announced that public health officials had identified in California the nation’s first case of the coronavirus in a person who had not been traveling out of the country or had any exposure to someone already known to be infected with the coronavirus.

California’s [presidential primary](#) on March 3 took place as scheduled, but the state primary still suffered coronavirus-related delays. On March 20, one day after issuing an executive order

directing all California residents to stay at home because of the pandemic, Governor Gavin Newsom issued a second [executive order](#), extending the deadline by which election officials had to certify and audit their March 3 results. For upcoming special election primaries, the order called on election officials to mail absentee ballots to every registered voter in their counties.

All 14 states scheduled to hold their presidential primaries on Super Tuesday held them as planned (Alabama, Arkansas, California, Colorado, Maine, Massachusetts, Minnesota, North Carolina, Oklahoma, Tennessee, Texas, Utah, Virginia, and Vermont). By this time, most competitive candidates in the Democratic presidential field had thrown their support behind one candidate, former Vice President Joe Biden. But six states primaries scheduled for March 10 (Idaho, Michigan, Mississippi, Missouri, North Dakota, Washington) and three of four primaries scheduled for March 17 (Arizona, Florida, and Illinois) stayed on schedule.

The primary schedule began to shift after March 11, when the [World Health Organization](#) declared the spread of coronavirus to be a pandemic, and on March 13, when President Trump signed an [executive order](#) declaring the outbreak in the United States to be a “national emergency.” On March 13, Louisiana’s governor also issued an executive order, postponing all public events—including the April 4 primary. On March 14, Georgia’s governor called for a [state of emergency](#) and the next day, Georgia’s [secretary of state](#) suspended in-person early voting (which had begun March 2), postponed the March 24 primary until May 19, and directed that absentee ballots be mailed to every Georgia voter.

[Ohio’s first three cases](#) of coronavirus on March 9 had jumped to [50 by March 16](#). At 10:12 p.m. on the night before the March 17 primary polls were set to open, Ohio Health Director Dr. Amy Acton closed all polling locations to help stop the spread of the coronavirus. The state then switched to an all mail ballot process and extended the time to vote through April 28. (Limited in-person voting was available at 88 of the state’s usual 4,000 polling places on April 28 for voters with disabilities and those without a home address).

Overall, 34 states and the District of Columbia were able to conduct their presidential primaries on the date originally scheduled. Rescheduling the exceptions, which included the battleground states of Georgia, Wisconsin, and Pennsylvania, sometimes came with political complications.

Most states with presidential primaries scheduled later than March 17 rescheduled them for dates in May or June, and several limited voting to primarily or exclusively vote-by-mail. The exceptions were Wisconsin, Kansas, Nebraska, and Oregon. Oregon did not need to make changes to its primary process; the state had been conducting its elections by mail only for years and was able to keep its May 19 primary date. Kansas stayed with its May 2 primary date

but switched to all mail voting. [Nebraska's secretary of state bragged](#) that “Nebraska Voters refused to allow the coronavirus pandemic to prevent them from exercising their right to vote” and stuck with their May 12 date. But only 15 percent of those voters showed up on Election Day; 78% used an early voting option and 16% voted by mail.

The governor of Wisconsin, one of the key battleground states in the presidential election, signed an [executive order](#) on April 6 to change the date of the state’s primary from April 7 to June 9. But the state legislature asked the state supreme court to block enforcement of the order and six hours later, [the court did so](#). (The Republican National Committee challenged another part of the executive order at the U.S. Supreme Court, asking the Court to stay enforcement of an extended deadline for receipt of mail ballots, from April 7 to April 13. The Court, in its [first coronavirus-related ruling](#), granted the stay on a 5-3 vote.)

Another major battleground state, Pennsylvania, changed its primary date from April 28 to June 2 by vote of the state legislature on March 24. Pennsylvania’s Department of State issued [updated guidance](#) for staffing and managing polling places for its rescheduled primary.

Nationally, the number of coronavirus cases had jumped to [over 7,000 by March 17](#), and most remaining states began pushing back the dates of their primaries to May and June and even August. State political and election leaders were seeking time to mitigate the increasing threat to public health of having hundreds of thousands of voters congregate in public voting spaces. By the end of March, governors in [most states had issued mandates](#) for their citizens to stay at home except to secure groceries or other critical needs. And most states sought ways to reduce the need for in-person voting and increase the use of absentee balloting.

Absentee balloting addressed two coronavirus-specific problems: The first, and most obvious, was the need to ensure polling places could accommodate the recommended six-feet of space between voters in line and in the voting booth. This often required states and local governments to relocate or re-design existing polling places. The second challenge was to staff in-person voting places at a time when a previously reliable pool of poll workers—senior citizens—would be less likely to serve. In the past, senior citizens had been a reliably available population of temporary workers to staff polling places. Now, they were among the most vulnerable to the life-threatening respiratory illness.

While many of these issues were common to almost every state during the primaries, some problems and solutions were unique to individual states or counties within states. Cuyahoga County, Ohio, took the temperature of voters coming into the polls and required those who had a fever to [vote outdoors](#). Statewide, Ohio’s secretary of state partnered with the Ohio Grocer Association to allow voters to pick up absentee ballot request forms at participating [grocery](#)

[stores](#). In New York, officials tried to [cancel its primary](#), but a judge mandated it be held as scheduled. Iowa sent out [pre-filled postcards](#) to every active registered voter that could be mailed back to request absentee ballots, raising concerns about breach of privacy. And the governors in several states, such as [Wisconsin](#) and [Iowa](#), called out the National Guard to help with logistical needs in running primary voting during the coronavirus crisis.

Added to these challenges were concerns that arise during every primary season but were exacerbated by the threat of the coronavirus. There were conflicts over where funding would come from for all the additional expenses incurred from printing more ballots and finding new polling places; disagreements over how and when absentee ballots would be verified and counted; and partisan political fights and litigation throughout the primary process. The challenges of the 2020 primary voting, and the innovations adopted to address those challenges, served as important lessons for states as they prepared for the November general election.

III. Expansion of Absentee Balloting

From February until mid-March of 2020, about 11.3 percent of voters used an absentee ballot in primary voting. But after many governors issued stay-at-home orders, that percentage jumped to 51.5 percent for the rest of the primary season, according to the [Pew Research Center](#). For states unaccustomed to such a significant percentage of voters using absentee balloting, the primaries required some adjustments. According to the [Brennan Center](#), “at least nine states sent actual mail ballots to all active registered voters during at least one of the primaries,” and 19 others sent absentee ballot request applications.

A. Coping with the Challenges of Increased Absentee Voting in the Primaries

All states saw a sharp increase in mail ballots. In D.C., more than 92,000 of its voters requested absentee ballots during its primary — 15 times the usual number. [D.C. officials scrambled](#) to keep up, resorting to delivering some ballots by hand and others by email to meet the unprecedented demand. Many other states encouraged voters to use absentee ballots but also found it difficult to get absentee ballot materials to voters in a timely manner. In Maryland, more than one million absentee ballots never arrived to registered voters or arrived too late to mail back, according to the [Washington Post](#).

More than 1.1 million voters used absentee mail ballots in the [2020 Georgia primary](#), compared to only 37,000 who used them in the 2016 primary. One week after the June 9 primary in Georgia (which had been rescheduled from its original date of March 24), there were still [tens of thousands](#) of absentee ballots waiting to be counted. In addition to the sheer volume of ballots, much of the delay was caused by [human error](#) in filling out the absentee ballots, thus requiring ballot-by-ballot review by election officials to resolve discrepancies.

In some states, encouraging voters to use absentee ballots became a politically contentious issue between political parties and even among members of the same political party. When the Georgia secretary of state, a Republican, announced plans to mail applications for absentee ballots to the state's 6.9 million registered active voters, the state Republican Party objected. It said sending out ballot applications added to the administrative burden of local election officials and could lead to voter fraud. Republicans in the state senate introduced legislation to prevent the secretary from sending out unsolicited absentee ballot applications in the future. Democratic legislators opposed the bill, and it was eventually [withdrawn](#) in the House.

A similar scenario played out in Minnesota. The state held a [primary](#) specifically for the presidential nomination on March 3, just days before the state confirmed its [first coronavirus case](#). This was Minnesota's first primary since changing over from the use of the caucus format, and turnout in 2020 was almost three times what it was for the caucuses in 2016.

[Minnesota](#) also had a primary date scheduled for August 11, to choose candidates for a U.S. Senate seat. In preparation for this second primary, under the growing coronavirus pandemic, Minnesota's Secretary of State Steve Simon, a member of the Democratic Farmer-Labor Party, urged state legislators to pass a [bill](#) that would allow every registered voter in Minnesota to automatically receive a ballot in the mail. Republican state lawmakers [opposed](#) the secretary's proposal and instead proposed adding new polling places.

Iowa Secretary of State Paul Pate, a Republican, announced in March that he would exercise the office's emergency powers to mail absentee ballot applications to all of the approximately two million active registered voters for the state's [June 2 primary](#). This primary, too, involved a hotly contested U.S. Senate seat. In [his statement](#), Secretary Pate said his office would mail out the ballot applications because the "safety of voters while casting their ballots is our top priority" and "it is important for Iowans to make their voices heard by voting. The safest way to vote will be by mail." The vote-by-mail promotion resulted in [record voter turnout for the June primary in Iowa](#). But it drew the ire of the Republican-controlled state legislature. Republican leaders ushered through a bill requiring that, in the future, the secretary of state had to get permission first from a special Legislative Council. The bill passed and the Republican [governor signed it](#). When the secretary of state requested permission to proactively send out ballot applications

for the November general election, the Republican-led Legislative Council [approved the request](#).

The Iowa voter outreach prompted other political clashes. Two counties mailed ballot applications that already had each voter's personal information (including their voter identification number) filled in. The purpose was to make it easier for voters to request an absentee ballot.

Secretary Pate instructed counties that the ballot application forms had to be blank, and the Republican Party filed lawsuits to stop the two counties from using the pre-filled applications. Republican leaders said requiring voters to fill out their own applications helped prevent voter fraud. But the state's Democratic Party said it made it harder for voters to request ballots because many voters would send them back without including their "voter identification number." The Democratic Party filed lawsuits to enable counties to send out pre-filled applications and/or make it easier for election officials to fill in any missing data themselves by looking up a voter's identification number in their own records. In October, the [Iowa Supreme Court](#) upheld the secretary's requirement that voters fill in the applications themselves; it also ruled that election officials could seek to fill in any missing data by contacting the voters themselves.

"The purpose of both requirements," stated the court, in [League of United Latin American Citizens of Iowa v. Iowa Secretary of State](#), "is to protect the integrity and security of the absentee ballot system by requiring the individual requesting an absentee ballot to provide personal identification information to verify his or her identity."

B. Reforming "Excuse" Requirements for Absentee Balloting

Most states, even states that did not pro-actively encourage voters to use mail ballots, made clear that any voter who was concerned about the coronavirus pandemic and wanted to avoid going to a polling place on election day could use a mail ballot. Some states, including many with [primaries in August, pared](#) back restrictive criteria that previously limited absentee voting to voters who could provide a specific excuse. Connecticut, which held its delayed state presidential primary on August 11, had previously limited the use of absentee ballots to individuals who would [state, under penalty of perjury](#), that they needed an absentee ballot for one of five excuses:

- “(1) My active service in the armed forces;
- “(2) my absence from the town in which I am eligible to vote during all of the hours of voting;
- “(3) my illness or physical disability;
- “(4) the tenets of my religion which forbid secular activity on the day of the primary, election or referendum; or
- “(5) my duties as a primary, election or referendum official.”

On May 11, Connecticut Governor Ned Lamont signed Executive Order No. 7QQ enabling “no-excuse” absentee voting due to the coronavirus, [saying](#) “[n]obody should need to make a decision between their health and their right to vote.” On July 31, the governor also signed [legislation](#) that extended no-excuse absentee voting to the November general election. The rule change for the Connecticut primary hit a snag when officials realized a week ahead of the vote that election officials had mistakenly neglected to mail out 20,000 ballots. Nevertheless, expanded access to absentee voting led to a [ten-fold increase](#) in absentee ballot requests and a record-breaking number of absentee voting.

According to the [Brennan Center](#), “only five states—Arkansas, Louisiana, Mississippi, Tennessee, and Texas—did *not* let every person who feared spreading or contracting coronavirus cast a mail ballot during at least one of their primaries...”

Louisiana generally limited the use of absentee mail ballots to four categories of voters: service members stationed outside the state, citizens living overseas, people over 65 years of age, and people with physical disabilities. Any voter seeking to use the “[physical disability](#)” excuse had to submit a “Disabled Application” form and submit either “proof of disability” that the voter was physically unable to go to the polls or a physician’s letter “certifying that the voter by reason of their disability is homebound.”

In order to vote by mail in the [Texas primaries](#), a voter also had to submit a written application, identifying one of the following reasons for the request: They would be absent from their county of residence throughout the duration of the voting period ([§ 82.001](#)), had a disability ([§ 82.002](#)), over the age of 65 on election day ([§ 82.003](#)), confined in jail ([§ 82.004](#)), or participating in the address confidentiality program administered by the attorney general ([§ 82.007](#)). “Disability” was defined by the election law as having “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health” ([§ 82.002\(a\)](#)). The [Texas Supreme Court](#) declared in May that a lack of immunity to the coronavirus did *not*, in and of itself, meet this definition of “disability,” but the court added that state election officials “have no responsibility to question or investigate a ballot application that is valid on its face.”

During the 2020 primaries, three of the five states which initially did not allow fear of contracting the coronavirus as a legitimate excuse to request an absentee ballot amended their policies.

[Mississippi](#) did not allow absentee ballots for voters with a fear of contracting the coronavirus during its delayed primary in June, but later in the year the state amended its policy to allow absentee ballots for anyone “who is under a physician-imposed quarantine due to coronavirus during the year 2020 or is caring for a dependent” under such a quarantine.

Missouri made a similar change, allowing voters to obtain an absentee ballot if they could [attest to either having the coronavirus](#) or being in one of eight specific at-risk groups for “severe” complications should they develop COVID-19. On June 4, Governor Mike Parson signed [SB 631](#), which enabled anyone in Missouri who did not already qualify for an absentee ballot to do so for the August 4 and November 3 elections. The application required that the voter’s signature be notarized, but the legislation exempted from the notary requirement anyone in the statutorily defined class of at-risk registered voters.

Tennessee voters were able to obtain absentee ballots for that state’s [August primary](#) by citing fears of coronavirus infection, after a state court [held](#) in June that Tennessee had to provide an absentee ballot to any eligible voter who asked to vote by mail in order to avoid transmission or contraction of the coronavirus. Further, in *Lay v. Goins*, the court held that any qualified voter who determined it “impossible or unreasonable to vote in-person at a polling place due to the coronavirus situation” should be eligible to check a box on the absentee ballot indicating that they were hospitalized, ill, or physically disabled and, as such, were unable to vote in person. However, a day before the state’s primary, the state Supreme Court [ruled](#) that this exception would not be available for the November general election. For November, voters would need a specific excuse, such as exposure-based quarantining, caretaking, or suffering from an underlying health condition—to vote absentee.

C. The Primaries as a Learning Experience for Voters and Administrators

For many voters who obtained absentee ballots during the 2020 primaries, voting by mail was a new experience. They needed to get up-to-speed on deadlines for requesting ballots, where and how to make those requests, deadlines for returning them, as well as the specific instructions for filling out the official envelopes in which the ballots were returned. According to [an analysis by National Public Radio](#), an “extraordinarily high number” of absentee ballots were

rejected during the 2020 primaries—558,000, up 75% from 318,000 in the 2016 general election. The [Washington Post](#) counted 534,000.

Design complications with the absentee balloting process often confuse voters. In 16 states, after the voter marks their preferred candidates on the ballot, they are instructed to put the ballot in a special internal envelope—sometimes called a “secrecy sleeve”—and seal it. Then, the voter puts the secrecy sleeve into the official return envelope. State law in some of the 16 states that provide voters with a secrecy sleeve call for the rejection of any ballots returned without the secrecy sleeve—so-called “naked ballots.” Before Pennsylvania’s June 2 primary, the Department of State issued a directive saying that there was no statutory requirement to reject “naked ballots,” and some counties chose to accept ballots returned without an inner envelope. But in a September 8 decision, the [Pennsylvania Supreme Court ruled](#) that the legislature, in setting up the law, “intended for the secrecy envelope to be mandatory.”

In most cases, the legal necessity of secrecy sleeves depends on whether other required voter authentication requirements—such as the location for voter signatures—are printed on the secrecy sleeve itself, rather than the outer envelope. In states, such as [Kentucky](#) and [New Hampshire](#), where the inner envelope doubles as a voter certification document or a place for the voter’s signature, the ballot will be rejected without one. In the 2020 primary, Kentucky rejected around [2,000 absentee ballots](#) because they did not include the inner sleeve. In states, such as Georgia, where the inner envelope is there just to protect the confidentiality of the ballot, “naked ballots” were [typically not rejected](#) during the primaries.

In New Jersey, each absentee ballot package [contains](#) an outer envelope, an inner envelope that requires a signature, a page with general information, and the ballot itself. Although each county designs its specific ballot, all absentee ballot packages use an inner envelope that requires a signature. Because the inner envelope is needed for signature verification, a ballot submitted without this inner envelope results in ballot rejection. During the 2020 primary, out of about 40,000 absentee ballots that were rejected, about 6,000 ballots (about 15%) [were rejected](#) for omitting signature certifications.

Absentee ballots had other instructions, too, concerning the external return envelope. In order to ensure that each absentee ballot came from a verifiable registered voter, ballot materials usually instructed voters to put their signature on a specific line of the return envelope. In some states, this process also required the voter to have a witness and/or notary sign the return envelope on another specific line, attesting to the fact that the identified voter did complete the absentee ballot. And some states required voters to include a copy of their driver’s license or other government-issued identification.

The most common reasons for rejection were lateness and issues regarding signatures. A [report by the Michigan](#) secretary of state said that, of the 10,694 absentee ballots rejected during the primary, 6,405 were rejected for arriving after the deadline and 1,438 did not have the required voter signature. Among the other reasons for rejection were 31 instances of voters having failed to put their ballots in their return envelopes, 787 instances of the voter's signature not matching the signature election officials had on file, and 846 voters' ballots were rejected because the voter died before election day. In [Georgia's 2020 primary](#), less than 1% of return ballots were rejected, but 27% of rejected ballots were not counted because of signature issues. And approximately [70% of the 23,000 votes](#) rejected in the Wisconsin [presidential primary held in August](#) were scrapped due to signature issues.

In [New York](#), particularly New York City, a skyrocketing number of COVID-19 cases less than two months before the June 23 primary, triggered an unprecedented demand for absentee ballots, so much that [printing firms](#) could not keep up with the demand for ballots. Then, there were complaints that ballots were arriving without return envelopes. One in five absentee ballots cast by New York City voters was rejected, many because they arrived too late or arrived without a postmark.

In many states with August primaries and runoff elections, voters who signed up for absentee ballots reported never receiving a ballot or receiving a ballot too late to mail it back by the deadline. In some cases, the missing or delayed ballots were attributed to delays and service changes at the U.S. Postal Service. An internal audit by the USPS of "Election and Political Mail" during primaries and special elections between April and June of 2020 in seven postal service areas across the country found that about 1.6 million pieces of election mail were undelivered. The USPS report said that represented about eight percent of 20.2 million pieces of election mail processed during that time.

The [Postal Service](#) said the problems were often related to ballot design. Many ballot return envelopes had no barcode tracking capability. For others, the size of the ballot envelope made processing by postal machines difficult. The requirement by many states that ballot envelopes be postmarked slowed down the service of absentee ballots, leaving "insufficient time for the Postal Service to process and deliver" the election mail.

Delivery problems had serious consequences in some states. In Michigan, nearly 6,500 ballots were [thrown out](#) from the March 10 primary because they were not received until after election day. In Ohio, two weeks after the state's April 28 primary, two postal workers delivered more than 300 absentee ballots found sitting in a postal warehouse. According to an [investigation by ProPublica](#), an independent, non-profit investigative news agency, "voters and election officials have been confronting the new reality of the Postal Service: delivery times slowed by years of

budget cuts and plant closures.” The investigation found “significant delays and mistakes in delivering ballots in Indiana, New Jersey, Maryland, Ohio, Wisconsin, Pennsylvania and Washington, D.C.” during the primaries.

Connecticut, which had never before conducted an election with significant use of mail voting, experienced [significant delays](#) (including disruption of mail service) due to power outages caused by tropical storm Isaiiah and by an administrative error that led to 20,000 ballots being mailed late or not at all. (These delays prompted Governor Ned Lamont to take [executive action](#) guaranteeing—for the August primary only—that the state would count all ballots postmarked by election day and received within two days.)

D. Legal Uncertainty

For most first-time absentee voters, the 2020 primary was the first time they navigated the ballot return process. But even long-time users of absentee ballots had to keep track of changes in many procedural requirements prompted during the coronavirus pandemic. For the March primary, Missouri law required all absentee voters to have their signature on the return envelope notarized; but, by June, the state legislature had passed [SB 631](#) to exempt coronavirus-vulnerable populations from that requirement for the state’s [August primary](#). The governor also issued an [executive order](#) enabling voters subject to the notary requirement to satisfy that requirement through audio-video technologies, rather than appearing in person before a notary.

In the [Wisconsin primary](#), a federal district court [required](#) election officials to waive the witness signature requirement for voters who live alone if the voters included a note explaining why they were unable to obtain a witness signature. Just two days later, however, the U.S. Court of Appeals for the Seventh Circuit [stayed](#) that portion of the district court’s order. The effect of the stay was not effectively communicated to all voters, and Madison election [officials, for example, were forced to throw out at least 142 absentee ballots](#) in which voters had included a note, believing it would excuse them from the witness signature requirement.

Although the spread of coronavirus did not drastically alter Michigan’s March 10 presidential primary, it propelled the state to significantly alter its election system immediately following the March election. Officials put emergency [policies](#) in place specifically to handle the May 5 municipal elections and introduced additional proposals for the August primary and November general election. While some localities resolved to carry out municipal elections as scheduled, about half of jurisdictions with May 5 elections [postponed them to August](#).

E. Drive thrus, drop boxes, and drop offs

As states grappled with the rise in mail-balloting, they considered alternatives to the U.S. Postal Service for receipt of absentee ballots. Vote-By-Mail states, such as Oregon, have successfully employed alternatives to the U.S. Mail for many elections, and in some states a minority of “mail” ballots are actually sent through the mail. However, the topic of ballot “drop boxes” proved to be a controversial one stretching through the primary season into the general election and afterward.

During the 2016 general election, nearly [one in six voters](#) nationwide cast their ballot using drop boxes, which had become an increasingly popular option for voters during the 2020 primaries. While some states have successfully used ballot drop boxes for years, the coronavirus pandemic expanded the practice throughout the United States, particularly as election officials began expressing concern about the U.S. Postal Service’s capacity to reliably deliver absentee ballots on time. Although some states, such as Tennessee, still prohibited the use of ballot drop boxes, citing risk of voter fraud, at least 34 states used ballot drop boxes in 2020.

Some states piloted or expanded programs of setting up official election “[drop boxes](#).” Unlike U.S. Postal Service mailboxes, these county-administered ballot drop off boxes are serviced directly by election officials, who count every ballot deposited. Drop boxes come in a variety of forms. Some are staffed, others are not. Some are placed indoors, whereas others are outdoor boxes that are locked, anchored, tamper-proof, and often monitored by [24-hour video surveillance](#).

Other states set up drive-thru options, permitting voters to hand deliver their absentee ballots outside polling places. In Minnesota, election officials piloted a “[drive-thru](#)” drop box model in its August 11 primary that enabled voters to deposit their absentee ballots into a secure receptacle without getting out of their cars. Many voters who didn’t want to entrust their absentee ballots to drop boxes also had the option of dropping off their ballots with election officials at in-person voting locations. In Wisconsin, election officials reported that many voters came to [hand deliver](#) their ballots at early voting locations the week leading up to the election.

F. Delays and Disputes Over Ballot Counting

The now-infamous disputes over ballot-counting in the 2020 general election were previewed in the primary elections. The high rate of absentee balloting caused delays and disputes in states without a long tradition of absentee balloting. In [Wisconsin](#), the Elections Commission met days after the April 7 primary to discuss how to count absentee ballots whose postmarks were missing, illegible, or did not include a date. This issue resulted in [political gridlock](#)—Democrats on the commission wanted a method of counting that would have included more absentee ballots without date stamps, while Republicans wanted a method that would have counted fewer. The Elections Commission [ultimately decided very little](#) and left it to each municipality to determine whether ballots were postmarked timely.

New York's high rate of absentee voting resulted in a counting delay, with two races [left undecided](#) for six weeks. These delays—in the 12th and 15th Congressional Districts—were due in large part to the fact that mail ballots take longer to process and that more than 10 times the number of voters used absentee ballots in these primaries than in past elections. Since each mail ballot must be opened and verified, the counting process can be cumbersome and lengthy. Furthermore, some officials described a [lack of sufficient BOE staff](#) to process the ballots.

Due to a settlement in a lawsuit, *LaRose v. Simon*, Minnesota voters were guaranteed that their ballots would be counted as long as they were postmarked by election day and received by election officials within two days of the election—a change that resulted in [8,400 ballots](#) being received and tabulated the Wednesday and Thursday after election day.

IV. Voting in-person in the 2020 primaries

Although mail voting increased substantially in the primaries held after the initial pandemic surge, a substantial number of voters still voted in person. Election officials needed to find ways to ensure sufficient, adequately staffed polling places that allowed for voting while maintaining social distance. For many states this required an increase in the use of voting centers and non-traditional polling places, as well as expansion of opportunities for in-person early voting.

A. Increased use of early voting

Each state sets its own rules concerning how many days it will provide for early voting and how many days before election day it will occur and will stop. According to the [National Conference](#)

[of State Legislatures](#), 43 states and the District of Columbia provided an early voting option going into the 2020 primaries. (The states making no provision for early voting in the 2020 primaries were Connecticut, Delaware, Mississippi, Missouri, New Hampshire, and South Carolina.) Kentucky was one of those no early voting states going into the primaries but, on April 24, Governor Andy Beshear signed an [executive order](#) permitting what he called “in-person absentee voting” to begin two weeks ahead of the state’s delayed primary.

In Arizona, the state’s most populous county, [Maricopa County](#), had 80 early voting centers available by August 1, and 20 additional centers opened by August 2, ahead of the state’s [August 4 primary](#). In [Coconino County](#), voters could participate in emergency early voting if they completed a form stating that they had an emergency and needed to vote early. Importantly, voters did not have to disclose the specifics of the emergency or prove that they had health-related vulnerabilities.

Many voters who did not want to entrust their absentee ballots to the postal service or drop boxes also had the option of dropping off their ballots with election officials at in-person early voting locations. In Wisconsin, election officials reported that many voters came to [hand deliver](#) their ballots at early voting locations the week leading up to the election.

B. Ensuring a Sufficient Number of Polling Places

The pandemic required states reconsider each aspect of the in-person voting experience. They needed to make sure polling places could ensure social distancing, that poll workers were adequately trained, and that voters could cast their ballots in ways that limited the potential for contagion. They also needed to plan for an uncertain number of in-person voters given the late and significant rise in absentee balloting.

In [South Carolina](#), [hundreds](#) of established polling sites were [consolidated or relocated](#). Although election boards stated they would [notify](#) impacted voters, many voters were unaware of the changes until election day. For voters who did not have access to cars and who relied on public transit or relatives for rides, the polling place changes were particularly difficult to overcome and disproportionately affected Black voters and voters with low incomes. For example, in Richland County, six out of the ten precincts that experienced the [greatest increase in distance](#) between the original precinct location and the new voting location had majority Black voters.

[Nevada](#) provided for only limited in-person polling sites, recommending it be used only for voters with disabilities who needed help casting their ballots and voters who registered online

after the May 21 registration deadline to receive a mail ballot for the June 9 primary. [In 15 of Nevada's 17 counties](#), only one in-person voting location was available. Clark County, home to 74 percent of the state's population, offered 3 locations, down from 172 in the 2018 primary and 265 in the 2016 primary. Nye County offered only [two locations](#).

[Texas](#) had steadily reduced the number of in-person voting places in the state, eliminating 750 between 2012 and 2020. Of those, 542 served 50 counties with the largest growth in Black and Latinx residents. Only [34](#) were in the 50 counties with the *smallest* growth in Black and Latinx residents. The cuts in some counties (such as [Harris County](#) and [Travis County](#)) resulted in lines that forced primary voters in 2020 to wait as long as three to six hours to cast ballots. At Texas Southern University, the city's historically black college, voters were still in line at 1 a.m., [six hours after polls closed](#), on the March 3 primary. The Texas Civil Rights Project [explained on social media](#) that this was a predictable trend across Harris County elections. The county clerk released [a statement](#) acknowledging the lack of sufficient polling locations and its impact on marginalized communities, stating, "It is clear that the history of marginalized communities being left behind in the voting process has led to polling deserts in areas of Harris County."

Many places that normally served as polling places in [Georgia](#) were [closed](#) due to the coronavirus pandemic. [These locations](#) included senior centers, schools, churches, and municipal buildings. Fulton County, the state's most populous county, lost [more than 30](#) of its typical 198 polling locations for primary voting. As election day drew closer, the number of closed polling places continued to rise, ultimately resulting in [more than 10 percent](#) of Georgia's polling places closing. Some local officials noted having no other alternative given their current financial and operational situations. However, in Fulton County, election officials partnered with the Atlanta Hawks of the National Basketball Association to [transform Atlanta's State Farm Arena](#) into the state's largest-ever polling place. The arena opened for early voting on July 20 for the state's primary runoff on August 11.

For its March 17 Democratic [presidential primary](#), Arizona's largest county, Maricopa County, cut more than [one third](#) of its usual number of polling locations (about 80 locations), [leaving it with only 151 voting locations](#). However, the remaining polling places were converted into "vote centers" where any county voter could vote, regardless of the location of their original voting place. The voting centers also served as drop off locations for absentee ballots. Maricopa County additionally had to relocate five polling places away from senior living facilities.

C. Ensuring Safe Polling Places

During the primary election period the CDC, for the first time, issued [guidance](#) concerning operation of polling places during the pandemic. This guidance covered everything from protecting the health of poll workers to sanitizing voting machines to physical distance of voting booths. States issued their own guidance in this vein while also experimenting with other means of voting with social distancing.

Pennsylvania's Department of State, on April 28, released [updated guidance](#) for staffing and managing polling places for its [rescheduled primary](#) on June 2. The guidance included recommendations for:

- Remote training for poll workers, including online Q&A sessions and pre-recorded videos
- Provision of Personal Protective Equipment (PPE), such as gloves and masks, for poll workers
- Physically marking out spaces six-feet apart to guide voters standing in line to maintain a safe distance
- Posting poll workers as “greeters” at polling sites to alert voters to the need to follow social-distancing protocols
- Making hand sanitizer available to poll workers and voters, on entry and exit, from polling places
- Maintaining separate check-in and polling areas at voting centers where several precincts were “consolidated” to share the same polling place.

In early May, Pennsylvania released further guidance, requiring a [minimum of five poll workers](#) at each polling place regardless of how many precincts it serves. In Pennsylvania, Philadelphia election officials teamed up with a nonpartisan group to sponsor a “[Voteswagon](#)” van to drive around in various communities in Philadelphia to gather absentee ballots.

[In Wisconsin and other states](#), some jurisdictions enabled “curbside voting,” where [poll workers wearing protective face shields](#) accepted ballots from voters who drove up in their cars. Some Milwaukee polling places [offered curbside early voting](#), while the City of Burlington [used a drive-through polling place system](#) in lieu of all in-person voting. Madison offered curbside voting for those who could not enter polling places due to illness or disability.

Arizona's Native American community also took helpful measures to support in-person voting. The executive director of the Navajo Department of Health issued an [emergency order](#) (EO No. 2020-009) declaring voting an essential activity. That exempted voters of the Navajo Nation

from curfews and stay-at-home orders while they pursued the right to vote. In light of the pandemic-related closures of government buildings traditionally used for in-person voting, Navajo leaders developed creative new voting venues. In Coconino County, for example, leaders [set up outdoor voting](#), and the secretary of state's office sent mobile-hand washing stations. Other Native voters on reservations had limited opportunities for early voting, however. The Pascua Yaqui Tribe in southern Arizona [has not had an early voting site since 2018](#), when election officials in the Pima County Recorder office canceled the site without consulting with tribal leaders. Canceling the site forced many tribal members to travel up to two hours round-trip on public transportation to vote early.

D. Ensuring Sufficient Numbers of Poll Workers

The challenge of recruiting adequate numbers of poll workers during the pandemic became clear during the primary elections. When Wisconsin faced a shortage of 7,000 poll workers statewide for its primary, Governor Tony Evers took the unprecedented action of mobilizing 2,400 members of the Wisconsin National Guard to serve as poll workers in 71 out of 72 Wisconsin counties. Even so, Milwaukee election officials had to slash the number of voting places for the April 7 primary from 186 to five. Arizona's poll worker deficit was alleviated when the governor issued an executive order allowing state employees to take civic leave on election day to serve as poll workers. And Michigan's secretary of state's office partnered with the Detroit Pistons professional basketball team to launch a program encouraging Pistons employees to volunteer as poll workers in the August primary. These and other accommodations are discussed further in our separate report discussing [poll worker recruitment](#).

V. Conclusion

For the 2020 primaries, run-offs, and special elections leading up to the November general election, the coronavirus pandemic required state and local election officials in most states to re-configure the existing infrastructure for voting. They had to greatly expand the capacity for voters to use absentee ballots—mail and drop off—and they had to reconstruct in-person polling places to ensure voters could exercise their rights without endangering their health. Officials had to accomplish all this in a year when voter turnout was unusually high and when the public's understanding of the coronavirus disease and prevention was only just beginning. Many, if not most, of the adaptations made by election officials during these primaries were carried over to the general elections. These adaptations made it possible for the nation to

prepare for a general election with record-setting turnout despite the most significant public health crisis in a century.

Appendix A: List of 2020 Primary Reports

This report draws extensively from research which first appeared in coverage of the primaries by the Stanford-MIT Healthy Elections Project. Our researchers wrote over 30 of memos analyzing state primary elections, published on our site through the summer and fall:

August Primaries

[“Rehearsal for November: An Analysis of Seventeen August State Elections,”](#) Bree Baccaglini, Inesha Premaratne, Megan Selbach-Allen, Sawyer Skye Lucas-Griffin, Annika Khouri, Alex Stout, Amanda Zerbe (August 26, 2020)

Arizona

[“Arizona’s 2020 Elections in the Wake of COVID,”](#) Mike Norton, Zahavah Levine, Sophia Danielpour, Rebecca Smalbach, and Joven Hundal (August 4, 2020)

[“Arizona’s Election Readiness after the August 4 Primary,”](#) Zahavah Levine, Ali Bloomgarden, Joven Hundal and Sophia Danielpour (September 25, 2020)

California

[“The 2020 California Special Elections,”](#) Jacob McCall, Justin Abbey, Alex Finan, and Anna Milstein (July 8, 2020)

Florida

[“Florida Election Analysis,”](#) Diana Cao (June 24, 2020)

[“Florida Elections in the Wake of COVID-19,”](#) Mikaela Pyatt, Annie Warnke, Emily Handsel, Jose Gandara (July 22, 2020)

[“Florida ‘General Election Readiness’ Memo,”](#) Lane Corrigan, Chasity Hale, Emily Handsel, Mikaela Pyatt (September 28, 2020)

Georgia

[“The June 2020 Georgia Primary Election,”](#) Aryn Frazier, Mikayla Harris, Valerie Rincon, and Nicolas Sligh (July 28, 2020)

[“Georgia Primary Election Analysis,”](#) Kevin DeLuca (September 15, 2020)

Iowa

[“The 2020 Iowa Primary,”](#) Tait Anderson, Andrew Freiwald, Michael Jacobs, Jenny Liu, Kimberly Valladares (August 3, 2020)

Kentucky

[“Kentucky Election Policies and Readiness,”](#) Miye D’Oench, Axel Hufford, Kai Kato, Lusha Jetley, and Anastasiia Malenko (July 10, 2020)

[“Kentucky Election Analysis,”](#) Diana Cao, John Curiel (September 10, 2020)

Maine

[“Maine Election Analysis,”](#) Jesse T. Clark (September 3, 2020)

Michigan

[“Michigan and the Road to November,”](#) Lauren Libby, Elizabeth Jongeward, Sara Watson, Evan Kanji, Tess Stewart, Serena Cervantes and Maira Martinez (September 18, 2020)

Minnesota

[“The 2020 Minnesota Primary,”](#) Michael Jacobs, Spencer McManus, Yegina Whang, Carlos Martinez (August 6, 2020)

Nevada

[“The 2020 Nevada Primary,”](#) Ken Kuwayti, Thomas Hopkins, Sean Kang, Max Levy (July 10, 2020)

New Hampshire

[“New Hampshire’s 2020 Elections in the Wake of COVID-19,”](#) Miye D’Oench, Axel Hufford, Lusha Jetley, and Anastasiia Malenko (June 26, 2020)

New Mexico

[“The 2020 New Mexico Primary,”](#) Michael Jacobs, Spencer McManus, Susana Herrera, Melody Wong (July 17, 2020)

New York

[“New York’s Primary Election: Challenges in the Lead-Up to November,”](#) Georgia Rosenberg and Campbell Jenkins (August 23, 2020)

North Carolina

[“North Carolina Election Analysis,”](#) Blair Read (July 19, 2020)

[“North Carolina’s 2020 Election Preparations,”](#) William Janover, Kyra Jasper, Campbell Jenkins, Christopher Middleton, Megha Parwani, Sandy Pecht, Georgia Rosenberg, Indy Sobol (August 27, 2020)

Ohio

[“The 2020 Ohio Primary,”](#) Jennifer Friedmann, Mohit Mookim, Michelle Ly, Cristopher Maximos, VinhHuy Le (June 25, 2020)

[“Ohio’s 2020 Presidential Primary,”](#) Pia Deshpande (July 27, 2020)

Pennsylvania

[“The 2020 Pennsylvania Primary Election,”](#) Jerry Yan, Nicole Collins, Bill Wermuth, Jeffrey Rodriguez, Mateo Massey, Sarah Maung, Sreya Guha (June 25, 2020)

[“Pennsylvania Election Readiness,”](#) Jacob McCall and Jules Ross (August 17, 2020)

[“Pennsylvania Election Analysis,”](#) Diana Cao, Angelo Dagonel, Pia Deshpande (August 20, 2020)

South Carolina

[“The 2020 South Carolina Primary,”](#) Colette Mayer, Aaron Bray, Theresa Tan, Tiffany Allen, and Tom Abate (July 20, 2020)

Texas

[“Texas 2020 Elections: Preparations and Considerations,”](#) Kenneth Kuwayti, Sarah Stothart, Michelle Larg, Hanna Balcha and Zachary Quinlan (July 10, 2020)

[“Texas Primary Election Analysis,”](#) Kevin DeLuca and Blair Read (September 14, 2020)

Wisconsin

[“Wisconsin’s 2020 Primary in the Wake of COVID-19,”](#) Grace Scullion, Peter Prindville, Lexi Rubow, Bea Phi, Jef Rodriguez, Joaquin Garcia, Alison Cohen (June 30, 2020)

[“Wisconsin Election Analysis,”](#) John Curiel and Angelo Dagonel (August 6, 2020)

[“Wisconsin’s August 11 Partisan Primary Election,”](#) Bronte Kass, Bea Phi, Joaquin Garcia, and Daphne Thompson (September 16, 2020)

CHAPTER 2

2020 ELECTION STATE PROFILES



CHAPTER 2: 2020 ELECTION STATE PROFILES

INTRODUCTION

The reports in this chapter analyze performance of eight key battleground states in adapting their election infrastructure to the challenges presented by the pandemic. Each state report covers topics such as state results and turnout relative to 2016; the blend of early voting, in-person, and mail voting within the state; mail voting accessibility, rules, litigation, and return options; in-person voting execution, rule changes, safety, poll worker recruitment, and innovations; and post-election challenges related to counting, misinformation, or litigation. The selected states are presented in order of final vote margins in the presidential contest, with the closest races falling at the end of the chapter. The battleground states analyzed in this chapter include: Florida, Michigan, Nevada, North Carolina, Pennsylvania, Wisconsin, Arizona, and Georgia. Following the analysis of Georgia's general election administration is a brief analysis of the January 2021 Georgia U.S. Senate runoff elections. A summary of each report follows.

Florida 2020: Election Administration in the Coronavirus Pandemic

Overall, the 2020 general election went smoothly in Florida and administrators successfully overcame the hurdles the pandemic erected. Canvassing boards counted absentee ballots earlier than in previous years, ensuring that election results were promptly available on election night. Both absentee voting and in-person voting went well, with comparatively low absentee ballot rejection rates, few lines at polling places (except at the start of early voting), sufficient poll workers, and high compliance with mask-wearing requirements for in-person voting. The state experienced challenges, as well, including a last-minute crash of the voter registration website, confusion surrounding a state law that permits former felons to vote after paying court fines and fees, ambiguity regarding the interpretation of rules pertaining to absentee ballot drop boxes, instances of voter intimidation and polling place disturbances, and misinformation regarding voting processes.

Michigan 2020: Election Administration in the Coronavirus Pandemic

Election officials maintain that the administration of the November 2020 general election in Michigan was “the smoothest it has ever been.” The state reached record levels in overall and absentee turnout, rejected record low rates of absentee ballots, and counted most of its ballots earlier than expected. Moreover, fears of voter intimidation, grounded in Michigan's recent history of right-wing militia violence, did not materialize. In the [words](#) of Secretary of State Jocelyn Benson, “polling locations were islands of calm.” Despite these successes, controversy about the fairness of the election abounded. Even before the election, partisans warned of pervasive

mail ballot fraud. These charges gained greater ammunition after Election Day, as President Donald Trump's Election Night lead faded with the counting of absentee ballots (a phenomenon known as the "red mirage" followed by a "blue shift"). Despite ten failed lawsuits and days of politicized legislative hearings, though, no reliable evidence of substantial fraud emerged. Nevertheless, the post-election environment spawned conspiracy theories that persisted well past the certification of the vote. As a result, despite the well-run election, confidence in the election system, especially among Michigan Republicans, eroded significantly.

Nevada 2020: Election Administration in the Coronavirus Pandemic

As early as March 2020, Nevada officials decided to conduct their June primary election mostly by mail. The state sent mail-in ballots to all registered voters, while also maintaining in-person voting options. By August, the Nevada Legislature passed Assembly Bill 4, which provided for special election procedures as long as a state of emergency was in effect. Although always seen as competitive, Nevada was not expected to be the state that could determine the presidential election. As results around the country trickled in with unexpected or uncertain results in Arizona and Georgia, the outcome of the election in Nevada became very important to the final result. After the election, multiple lawsuits challenged the availability of universal vote-by-mail, alleged a lack of "meaningful observation," and cast doubt on the reliability of the Agilis signature verification system. The Nevada Supreme Court unanimously certified the state's presidential election results for Democrat Joe Biden, but misinformation as to the voting process spread long after the certification.

North Carolina 2020: Election Administration in the Coronavirus Pandemic

This memorandum briefly summarizes the 2020 general election in North Carolina. North Carolina saw a significant increase in voters choosing to vote by mail in the 2020 election and saw increased voter turnout overall. The state's rules regarding the notice-and-cure process for mail voting and the mail ballot receipt deadline were the subject of numerous lawsuits in both state and federal court. Despite litigation-driven changes to these rules during the voting period, the state saw an increase in the number of mail ballots counted and a decrease in the percentage of ballots rejected. This section details what steps the state took to ensure that North Carolina conducted an accessible and safe election amidst the coronavirus pandemic.

Pennsylvania 2020: Election Administration in the Coronavirus Pandemic

Pennsylvania was one of the pivotal states that determined the outcome of the 2020 presidential race. It also served as a microcosm for widespread controversies concerning how election officials, political parties, and the courts would interact (and sometimes clash) in the process leading to certification. Although Pennsylvania's 2020 election was far from perfect, overall the state's election administration should serve as an encouraging example of a difficult task accomplished with competence and leadership.

Wisconsin 2020: Election Administration in the Coronavirus Pandemic

Wisconsin managed its administration of the November 2020 general election effectively despite a surging pandemic. After a presidential primary that made national headlines because of its dysfunction, Wisconsin invested millions of dollars to ensure safe and accessible voting in November. The state reported no major issues during the November election. Nonetheless, the Wisconsin Elections Commission (WEC) and cities across the state faced a deluge of lawsuits and accusations of fraud, as the Trump campaign and its allies attempted to discredit the administration of the election. However, despite the close margin of victory in the state, the courts easily resolved these suits and the election results, showing Democrat Joe Biden the winner, were promptly certified.

Arizona 2020: Election Administration in the Coronavirus Pandemic

Arizona was the most competitive state in the 2020 presidential election. Joseph Biden beat Donald Trump in the state by only 10,457 votes. As a result, the state's administration of the election came under great scrutiny and produced considerable litigation. This chapter explores how Arizona prepared for, administered, and certified the 2020 general election in the wake of the coronavirus pandemic. The state has a long history of mail voting and was able to expand and modify existing voting infrastructure to ensure a smooth and safe election. Lawsuits in the months leading up to the general election challenged deadlines for voter registration, for receipt of mail-in ballots, and for fixing ballots with missing signatures. Because of the narrow margin of victory, many aspects of Arizona's election administration were challenged in court. None of these lawsuits challenging the count succeeded, however. In the end, Republican and Democratic election officials in Arizona vouched for the security and accuracy of the election, and the courts validated their assessments. As this volume went to press, however, Arizona was conducting a controversial and unprecedented audit of the ballots in Maricopa County, which further stoked unjustified fears of fraud and a lack of confidence in the election outcome.

Georgia 2020: Election Administration in the Coronavirus Pandemic

Georgia's state and local election officials administered a successful election in November 2020, with record turnout despite the coronavirus pandemic. The state already had experience with no-excuse absentee voting and an extended window of early in-person voting, although like many states, it experienced a record level of mail-balloting in 2020. Georgia also launched several adaptations, including drop boxes, ballot pre-processing, advanced ballot tracking, and a new absentee ballot request portal. After November 3, Georgia officials also oversaw a statewide hand audit, a machine-based recount, and prepared for the January 5 senate runoff races.

Georgia 2021: Election Administration in the Senate Runoff Elections

During the 2020 general election, Georgia held two U.S. Senate elections: a regularly scheduled Senate race between incumbent Republican Senator David Perdue and several challengers, including Democratic candidate Jon Ossoff; and a special election between incumbent Republican Senator Kelly Loeffler (who had been [appointed](#) by Georgia governor Brian Kemp following the 2019 vacancy left by the [resignation](#) of Senator Johnny Isakson) and several challengers, including Reverend Raphael Warnock. In November, no candidate in either Senate race reached a required 50% threshold to secure a victory, requiring both races to be resolved by runoff elections held January 5, 2021. Because Republicans held on to a 50-48 split in the U.S. Senate after November, the runoffs would also determine which party held control of the Senate. Like the general election, the runoff elections experienced high turnout with few problems and winners were declared shortly after Election Day.

Florida 2020: Election Administration in the Coronavirus Pandemic

March 10, 2021

Author: Amanda Zerbe

Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“Florida Elections in the Wake of COVID-19,”](#) Mikaela Pyatt, Annie Warnke, Emily Handsel, Jose Gandara (July 22, 2020)
- [“Florida General Election Readiness Memo,”](#) Lane Corrigan, Chasity Hale, Emily Handsel, Mikaela Pyatt (September 28, 2020)
- [“Florida: 2020 Election Policies & Practices,”](#) Christopher Meyer (November 2, 2020).
- [“Signature Verification and Witness Requirements in the 2020 General Election,”](#) Ali Bloomgarden, Arushi Gupta, Garrett Jensen, Zahavah Levine, Chris Middleton, Kyra Sikora (October 28, 2020)
- [“Defining Voter Intimidation: Six Battleground States,”](#) Mathew Simkovits, Amanda Zerbe, Adriana Stephan, Krithika Iyer, Tom Westphal (October 8, 2020)
- [“Poll Worker Recruitment,”](#) Adam Smith, Christopher Wan, Jae Yoon, Aaron Bray, Colette Mayer, Jacob McCall (October 26, 2020)
- [“Mask Rules for In-Person Voting,”](#) Ann Banchoff, Lane Corrigan, Evie Freeman, Mikaela Pyatt, Brooke Bumpers, Craig Smith, Tom Beimers, Kathleen Peterson, Christopher Schott, Olivia Molodanof, Stephanie Biggs, Sheree Kanner, Helen Trilling, James Deal, Mahmud Brifkani, Boyd Jackson (October 25, 2020)

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I. Introduction

In many ways, Florida's general election was a success story and offered a model for other states. Bolstered by Governor Ron DeSantis' executive order, that permitted election officials to begin counting absentee ballots as soon as their voting machines were ready, county election supervisors were able to provide results promptly after polls closed. A 2019 legislative extension of Florida's ballot curing deadline and broad media coverage of the ballot cure process contributed to low overall rejection rates for absentee ballots. And the prevalence of early voting contributed to a generally manageable in-person election process on Election Day.

However, the state also saw instances of voter intimidation and disturbances at polling places during the election. Election officials combatted misinformation while simultaneously adapting to last-minute changes in state guidance around ballot drop boxes. Mask policies led to confusion and disruption in at least one county. And a last-minute website glitch likely prevented a significant number of individuals from registering to vote. Thus, while Florida's general election was relatively smooth, there were isolated issues.

II. Key Election Statistics

In the 2020 presidential preference primary election in Florida, turnout was [30.2%](#) of registered voters, a significant drop from [46.2%](#) in the 2016 presidential preference primary election. Floridians cast a total of 2,342,751 votes-by-mail in the 2020 presidential preference primary (78% of the total votes), and a total of 558,430 early votes were cast (19% of the total votes).

Out of the [more than 11 million votes](#) cast in Florida in the November 2020 presidential contest, incumbent President Donald Trump [won](#) Florida by 371,686 votes, beating former Vice President Joe Biden by 3.3%. Results for other Florida contests are available [here](#). Turnout was [77.2%](#) of registered voters, an increase from [74.5%](#) turnout for the 2016 general election. A total of 4,855,677 votes were cast by mail (44%) and [4,332,221](#) early votes in person were cast (39% of the total votes). [77,400 voters](#) voted in other races but did not cast a vote in the presidential contest (either by choosing no candidate for president, choosing more than one candidate for president, or writing in the name of someone who was not a valid write-in candidate).

III. Background

A. Electoral Structure and Early Rule Changes

Rather than being run by a single centralized agency, Florida's elections are [largely operated](#) at the county level by county election supervisors, informed by guidance from the secretary of state. Secretary of State Lauren M. Lee and Governor Ron DeSantis are Florida's most senior officers in election administration, but there is also a Florida Supervisors of Election (FSE), a "professional membership organization representing the Supervisors of Elections (SOEs) of Florida's 67 counties." Hillsborough County Supervisor of Elections [Craig Latimer took over as FSE president](#) on May 11, 2020.

County SOEs are the primary election administrators for each [jurisdiction](#). Each county has its own [website](#), where Floridians can "register to vote, request an absentee ballot, check important dates for local elections, and [find] more details on voting." Each of Florida's 67 counties has a county [canvassing board](#) that is generally composed of three members: the county SOE, a county court judge who acts as the chair, and the chair of the board of county commissioners. Canvassing boards have important duties, such as [determining whether to count or reject vote-by-mail \(VBM\) ballots](#) (e.g., signature mismatch) and [certifying election results](#).

As a result of a [2019 preliminary injunction](#) and subsequent rule change by the Florida Division of Elections, the 2020 election cycle was the first for which all Florida counties had to [produce balloting materials in Spanish](#). Many counties had to use a second ballot card in the general election to accommodate both languages. Although most counties opted for bilingual ballots, a handful chose to use unilingual ballots in November. [The litigation responsible for the rule change](#) was settled in early 2021.

B. Absentee Ballots

Except on Election Day, no excuse is needed to use a [vote-by-mail ballot](#) in Florida. Although Florida describes its system as "vote-by-mail," the only mail option provided by state law is absentee balloting, so voters must apply for a mail ballot before election officials can send it to them. The [law](#) requires election officials to send ballots to all domestic voters who request mail ballots for the presidential primary, state primary, and general elections during a specified timeframe before the relevant election. For domestic voters, SOEs [send](#) the ballots during the seven-day window between 40 and 33 days before an election. However, voters can still request

a vote-by-mail ballot up to [10 days before the election](#), and SOEs must mail such ballots to voters [no later than eight days](#) before the election.

A VBM ballot must be received by the SOE's office no later than [7 p.m. on Election Day](#). However, VBM ballots from overseas voters that are postmarked or dated by Election Day can be counted if they are received no later than [10 days after the election](#). Per state law, officials can start processing absentee ballots 22 days before Election Day ([Fla. Stat. §101.68\(2\)\(a\)](#)).

Florida voters must sign their absentee ballots. A county supervisor of elections is [required](#) to send a cure affidavit ([Form DS-DE 139](#)) by first-class mail to any voter who returns a VBM ballot certificate that does not include the voter's signature or whose signature does not match the signature on file for that voter. The supervisor is also required to notify the voter of the signature deficiency by email, text message, or telephone, direct the voter to the cure affidavit, and provide instructions on the supervisor's website ([Fla. Stat. §101.68\(4\)\(a\)\(1-3\)](#)). Starting on the day before the election, the supervisor is not required to notify the voter of a signature deficiency by first-class mail but must provide notice by email, text message, or telephone call ([Fla. Stat. §101.68\(4\)\(a\)](#)).

Enacted in 2019, a new law extended Florida's deadline for voters to cure mismatched or missing signatures from the prior deadline of 5 p.m. the day before the election ([Fla. Stat. §101.68\(4\)\(a\)](#)) to 5 p.m. on the second day after Election Day ([Fla. Stat. §101.68\(3\)\(b\)](#)). Additionally, in 2019, the state began providing a signature verification and matching training program to supervisors of election and county canvassing board members ([Fla. Stat. § 97.012\(17\)](#)). Also, in 2019, a [change](#) in Florida law requested that voters [list their email and mobile phone numbers](#) on their absentee ballot envelopes for use by election officials for cure purposes. This change, while voluntary, raised [security concerns](#) for some voters.

Florida law also allows for the establishment of secure drop boxes to return absentee ballots. The law states that these "secure boxes" "shall be placed at the main office of the supervisor, at each branch office of the supervisor, and at each early voting site." [Fla. Stat. §101.69\(2\)](#). These boxes "may" also be placed at other early voting sites, as long as the site is "staffed during the county's early voting hours by an employee of the supervisor's office or a sworn law enforcement officer." [Fla. Stat. §101.69\(2\)](#). Last-minute disagreement concerning the proper interpretation of this rule, between the general counsels for the Florida Department of State and Florida Supervisors of Elections Association, [created confusion](#) in the days leading up to the general election.

C. Early Voting

The statewide in-person early [voting period](#) in Florida began on October 24 and ended on October 31. However, a county's supervisor of elections [had the authority](#) to extend the early voting period to the second day before the election (November 1), as well as 15 days before the election (October 19) if the supervisor saw fit. [Several counties](#) opted to begin early voting on the first legal date. Many counties [opted](#) to extend the early voting period through November 1: Bay, Bradford, Brower, Charlotte, Duval, Gadsden, Gulf, Hillsborough, Leon, Manatee, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, St. Lucie, Suwannee, Taylor, and Volusia.

D. Voter Intimidation

Florida state statutes provide a detailed list of actions that can be categorized as felony voter intimidation. Under [FL §104.0615](#), it is a felony for any person to directly or indirectly use or threaten to use force, violence, or intimidation to induce someone else to:

- Vote or refrain from voting altogether or for a specific candidate or measure;
- Register to vote;
- Become a poll worker or poll watcher; or
- Challenge a person's right to vote.

Additionally, Florida has a number of laws that may tangentially cover intimidating conduct at the polls. These include laws [banning photography](#) (apart from a voter taking a picture of their own ballot) and [banning electioneering](#) within 150 feet of polling locations. Election supervisors and clerks are tasked with [enforcing order](#) at polling locations and may take any "reasonable steps" necessary to ensure that order, including having law enforcement remove any disruptive or unruly people.

In recent years, incidents of voter intimidation in Florida have repeatedly been identified. During early voting for the presidential election in 2016, the Lawyers' Committee for Civil Rights Under Law claimed it [received reports](#) from Miami-Dade County, Jacksonville, and Hollywood about aggressive behavior causing voters to leave the polls without voting. During the 2018 midterms, [racist robocalls](#) were directed at voters in an attempt to dissuade them from supporting Black gubernatorial candidate Andrew Gillum. These calls used derogatory and offensive language to [disparage](#) Gillum and his policies. The calls were ultimately tied to a white supremacy group in Iowa. Further, in February 2019, robocalls falsely claiming to be from the Palm Beach County Supervisor of Elections Office warned voters about the penalties of

[vote-by-mail fraud](#). While the county election supervisor reported the incidents to the state attorney general, [citing](#) their potential to “frighten and intimidate voters,” it is unclear if any tangible outcomes resulted from the investigation. This pattern of voter intimidation in Florida continued in 2020, with voters and election officials reporting harassment and threats at various polling locations (described in additional detail below).

E. Measures to Adapt to COVID-19

To address the impact of the coronavirus pandemic on election administration in Florida, Governor DeSantis—under pressure from local election officials—issued an [executive order](#) on June 17, which:

- Allowed county canvassing boards to begin canvassing absentee ballots earlier than 22 days before the election.
- Encouraged state employees to become poll workers by allowing them administrative leave for training and working as poll workers.
- Directed the Division of Emergency Management to work with local officials and SOEs to provide personal protective equipment (PPE), hand sanitizer, and cleaning products to facilitate safe in-person voting.
- Encouraged each superintendent of schools to close K-12 schools on August 18 and November 3 so that the school buildings could be used as polling locations.
- Encouraged SOEs to provide timely notice to the public regarding changes in polling locations or procedures.

This executive order allowed Florida to begin counting its absentee ballots immediately in both the August primary and general election, [unlike](#) many other battleground states.

F. Florida’s Performance During the Primaries

For the most part, there was a [sense among local elections officials](#) that Florida’s “[primary elections went smoothly](#),” as [no major election administration issues](#) arose. Florida’s presidential primary was held March 17, roughly 2 weeks after the first coronavirus cases were reported in Florida but before DeSantis issued an executive order restricting non-essential activities on April 1. Florida’s August 18 primary election (for U.S. House seats) saw record-high primary turnout and absentee ballots. More than 28% of Florida voters cast ballots in the August 18 primary, making it the highest state turnout in 18 years and beating the 2016 primary turnout by almost one million votes. The more than 2.3 million absentee ballots submitted represented 60% of all votes cast in the primary.

There were relatively few reports of shortages of poll workers in the August primaries. However, the South Florida Sun Sentinel [wrote](#) that, according to Palm Beach County's Supervisor of Elections Wendy Link, "about 100 Palm Beach County poll workers canceled . . . because they showed symptoms of COVID-19 or flu-like illnesses." Similarly, weeks before the August primary, WINK News reported that [Lee County](#) in southwest Florida was "down about a thousand poll workers," forcing the county to reduce the number of polling locations from 125 to 96.

There was also some confusion around polling places, particularly in Broward County. According to [news reports](#), unpublicized polling place closures and location changes created [confusion](#), with "voters bouncing from location to location and seeking drop boxes for their vote-by-mail ballots, only to find their voting precinct had been combined with another, closed due to COVID-19, or was simply an early voting site that was never meant to be open on Election Day at all."

IV. Florida's General Election Administration

A. Pre-Election Issues

Two significant events occurred just prior to the start of early voting for the general election in Florida. First, Florida's voter registration website crashed on the final day of registration, leading to difficulty registering for some voters and prompting some litigation. Second, a last-minute push by the state to remove felons from voter rolls in the wake of litigation created confusion and controversy in the state.

Registration

Florida voters may register up to 29 days before the election, making October 5 the deadline for registration for the November 3, 2020, general election. But on the last day of voter registration, the state's registration website [crashed](#) as it began receiving more than a million hits an hour. State officials subsequently [extended](#) the deadline to 7 p.m. on October 6, but a federal judge [denied a request](#) from voting rights groups for an injunction to extend the deadline further. In his decision, Judge Mark E. Walker [noted](#) that "a significant number of voters were barred from registering even with the extension" but that there were no exceptional circumstances to justify granting the injunction.

Amendment 4

In 2018, Florida voters passed [Amendment 4](#), which allowed former felons to register to vote as long as they had completed “all terms of [their] sentence.” Shortly thereafter, the Florida legislature passed a law including payment of court fines and fees within the definition of “terms of sentence.” The Eleventh Circuit U.S. Court of Appeals [upheld](#) the Florida law in September 2020. However, the state had no centralized process for letting former felons know how much they owed or [for tracking whether felons had paid their fines or fees](#). In October 2020, a group that pushed for Amendment 4 [reported](#) that approximately 87,000 ex-felons had registered to vote in the 2020 election and an estimated 37,000 successfully voted early.

In Florida, local election supervisors add and remove voters from the rolls, but the state reviews records to determine whether a registered voter is eligible. According to Politico, on October 13, the director of Florida’s Division of Elections [distributed](#) an announcement to Florida’s 67 local election supervisors, alerting them that they would “begin to see” files on registered voters “whose potential ineligibility is based on not having satisfied the legal financial obligations of their sentence.” (In other words, Florida’s elections director alerted local officials that they would soon need to review files of voters possibly ineligible to vote due to failure to pay required fees.) However, the process of removing a voter from the rolls takes [at least](#) 30 days—since a voter [has 30 days to respond](#) upon written notice of potential ineligibility. The process [can take up to two months](#), leading election supervisors to [comment](#) that this directive from the state came with insufficient lead time to remove ineligible voters from voter rolls before the election.

As of December 2020, fewer [than 100](#) files of formerly incarcerated individuals who appeared to be ineligible because they had not paid fines or fees had been sent by the Florida Department of State to local election officials for further review. The files sent for review represented a small proportion of the thousands of formerly incarcerated individuals who had registered to vote for the November 2020 election. The lack of a centralized tracking system for fines and fees complicated the process, and removing ineligible people from voter rolls was [ongoing](#) at the time of the 2020 election. Thus, some potentially ineligible formerly incarcerated individuals [could have voted](#) in November without knowing they were ineligible. Such individuals are [at risk](#) of felony charges if they voted while ineligible and [could be at risk](#) of being removed from the voter rolls in future years. An [analysis](#) of state records by the Tampa Bay Times, Miami Herald, and ProPublica suggested that fewer than 8% of Florida’s felons had registered to vote as of October 2020, a much lower rate than in other states with similar laws to restore felons’ voting rights.

B. Absentee Voting

In general, absentee voting went smoothly in Florida during the 2020 general election. Rejection rates fell in comparison to previous years, as did the number of mail-in ballots received after the deadline, despite issues with the U.S. Postal Service in the days leading up to the election. Though drop boxes were widely used by voters, last-minute changes in state policy led to confusion. Disagreement over what kind of monitoring of ballot drop boxes was required by state law was not fully resolved during the 2020 election cycle.

The proportion of absentee ballots to all ballots cast by Florida voters increased from 2016 to 2020. In the 2020 general election, [4,855,677 ballots](#) were “vote by mail”—43.6% of [11,144,855 total votes](#). By contrast, in the 2016 general election, 2,732,075 votes [were cast absentee](#)—a mere 28.5% of a total of [9,580,489 votes](#) cast. In other words, Florida’s election infrastructure in 2020 had to accommodate nearly double the number of vote-by-mail ballots it processed in 2016.

Despite the increased use of vote-by-mail ballots, rejection rates in Florida decreased in the general election. The New York Times [reported](#) that, as of November 2, 2020—three days before the deadline to “cure” ballots that had been rejected by state officials ([Fla. Stat. §101.68\(3\)\(b\)](#))—the state had rejected 14,072 ballots (0.3%), a decrease from 2018, when approximately 32,000 ballots were rejected (1.3%). The Times stated that two-thirds of the rejections were due to a missing signature. (As another point of comparison, about [18,000 absentee ballots were rejected](#) during the 2020 presidential primary election.) A subsequent article [published](#) by ABC Action News reported slightly different findings, based on election data provided by 62 of Florida’s 67 election supervisors. While this article stated that at least 14,000 votes had been rejected, it estimated that only about half of these ballots were rejected due to signature issues. Then, in late November, a political scientist who studies state elections [estimated](#) that only about 12,000 votes had been rejected (including only ballots with signature issues or other technical issues in this number, not late ballots or undeliverable ones). A political scientist at the University of Florida [estimated](#) at the end of December 2020 that fewer than 9,000 ballots had been rejected. As of November 27, 2020, counties were [still reporting](#) their final numbers, so rejection rates could only be estimated.

One election expert at the University of Florida [attributed](#) the decreased rejection rate to the increased rate of voters “curing” their ballots. Seminole County Elections Supervisor Chris Anderson suggested the rate might be falling because of a [2019 law that](#) (1) allowed voters to include their phone number and email on their absentee envelopes so that elections officials could readily contact them; and (2) extended the deadline for ballot curing until the Thursday

following Election Day. In addition, widespread public information campaigns emphasizing the notice and cure process [likely contributed](#) to low rejection rates.

Historically, studies have [shown](#) that absentee ballots cast by minority voters are disproportionately likely to be rejected in Florida. This appears to have remained the case in 2020: [In Broward, Palm Beach, and Miami-Dade counties](#), Black voters' ballots were rejected at twice the rate of white voters' ballots, and Hispanic voters' ballots were rejected at even higher rates.

Litigation

In the months leading up to the general election, a number of lawsuits related to absentee ballots were brought in Florida:

- In [1199 SEIU United Healthcare Workers East v. DeJoy](#), filed in October, a large local union of healthcare workers sued U.S. Postmaster General Louis DeJoy, alleging that his policy changes at the U.S. Postal Service were unlawful and inconsistent with federal statutes. On November 2, U.S. District Court Judge Robert Scola Jr. [granted](#) the plaintiff union's request for updates, certifying that all ballots at specific mail facilities had been processed in a timely manner. The judge also ordered the U.S. Postal Service to use whatever means necessary to ensure that ballots arrived to election officials in time to be counted.
- In [Grimes v. Florida Department of State](#), three Florida voters asked a state court to send mail-in ballots to every registered voter in the state for both the August primary and the November general elections. The case was ultimately dismissed with prejudice by the court.
- In [Nielsen v. DeSantis](#), plaintiffs alleged that Florida's failure to provide prepaid postage for its ballot return envelopes disenfranchised citizens who were elderly, had low incomes or disabilities, and student voters, because these persons may be at higher risk for developing COVID-19 (the disease caused by coronavirus) or unable to afford postage. The suit also alleged that individuals with disabilities did not have access to vote-by-mail ballots that accommodated their disabilities and that voters with low incomes were unable to obtain vote-by-mail paper applications due to lack of access to the internet and printers. The case ultimately [settled](#), with the state required to pilot new technology to help voters with disabilities vote in five Florida counties and to implement some education requirements to make voters and election officials aware of their voting options.

While *Grimes* and *1199 SEIU United Healthcare Workers* ultimately had little impact on absentee voting policies in the 2020 election, *Nielsen* resulted in the [Accessible Vote-By-Mail Pilot Project](#). The project, which rolled out in Orange, Miami-Dade, Pinellas, Nassau, and Volusia counties, provided an absentee voting option to voters who were blind, had visual impairments, or had mobility issues. The option employed a secure online portal, also used by the military, to [send](#) a digital ballot to voters requesting an absentee ballot. The digital ballot allowed voters with disabilities to privately mark their ballots on their computers by magnifying the text for themselves, by having it read aloud to them, or by navigating it through voice command. When finished, the voter could send the ballot back to the elections office using a standard vote-by-mail envelope. The terms of the settlement reached in *Nielsen* will [require](#) all counties across Florida to offer the digital absentee ballot to voters with disabilities before 2022.

Mailing Ballots

Some election mail in Florida was delayed due to postal issues. On October 30, agents with the U.S. Postal Service's Office of the Inspector General [discovered](#) 42 absentee ballots that had not yet been delivered to their voters and six filled-out absentee ballots sitting in a [backlogged](#) post office in south Miami-Dade County for more than a week. The backlog had first been [reported](#) over a week earlier, on Wednesday, October 21. Residents of the area complained that problems with mail delivery, including ballot delivery, had been [occurring](#) for months. Investigators subsequently [did a sweep of](#) other post offices in the county for any election mail that had not yet been delivered. And many supervisors of elections started [going](#) to the postal distribution centers to pick up ballots, rather than waiting for the Postal Service to deliver them.

Such incidents, and broader [problems](#) with the postal service over the summer, prompted concern that delays in postal service delivery would lead to ballots arriving to election officials after Florida's 7 p.m. Election Day deadline. Florida postal delivery times were [slower](#) than the national average. (As early as October 27, Florida Secretary of State Laurel Lee [recommended](#) on Twitter that voters drop off their ballots rather than mailing them.)

Despite the concerns over postal delays, in general, fewer mail-in ballots arrived late than in previous years. As of November 16, [only 647 ballots](#) in Miami-Dade County had arrived after the deadline. In the August primary, more than seven times that number of ballots arrived in Miami-Dade after the deadline (a total of 4,691), even though 250,000 more mail-in ballots were cast in the general election than were cast in the August primary. In Florida's fourth-largest county, Hillsborough, [only 383 ballots](#) were received after November 3, compared to 2,450 ballots arriving late in the August primary. Duval County similarly [identified](#) only 280 late ballots in November, approximately half of the nearly 600 late ballots in the 2016 general election.

Ballot Drop Boxes

Ballot drop boxes were used widely and extensively in Florida's general election. As of October 16, an estimated [50 out of Florida's 67 precincts](#) planned to use ballot drop boxes for the general election. In the first days of early voting, [tens of thousands](#) of Florida voters dropped off their ballots at the drop boxes. In Miami-Dade County, 27,765 ballots [were dropped off](#) by the end of the first day of early voting—more ballots than were dropped off in the entire August primary.

Late guidance from the state regarding drop boxes created some confusion among election officials. On October 14, the Florida Department of State's general counsel emailed Florida's supervisors of elections [with updated guidance](#) on how ballot drop boxes were to be maintained and staffed. According to the general counsel's interpretation of state law, which [requires](#) ballot drop boxes to be "secure," ballot drop boxes had to be [staffed](#) by either an election official or a law enforcement officer at all times they were being used. In his view, while some 24-hour drop boxes were permissible—if staffed—they were [allowed only at certain locations](#). Otherwise, drop boxes were [required to be available for early voting hours only](#). The memo also [stated](#) that drop boxes could not be placed at polling sites on Election Day.

The guidance was given [only days](#) before the start of early voting, after two million people had already voted by mail. However, because the guidance was not legally binding on supervisors, the supervisors could opt to disregard it—and supervisors in both Pinellas and Bradford counties did just that. The general counsel of the Florida Supervisors of Elections Association openly disagreed with the state, [telling his clients](#) that state law did not require in-person monitoring of drop boxes. (Some counties had [planned](#) to monitor drop boxes using security cameras).

But some counties adjusted their plans to follow the Department of State's recommendation. Alachua County quickly [found security](#) personnel to guard drop boxes. After the Brevard County supervisor of elections learned of the state's guidance, and heard of incidents in other states where drop boxes had been set on fire or damaged, she [decided](#) to post security guards around the clock near the four drop boxes located at places other than early voting sites. (While the guards [were](#) armed for the first day they were posted, the following day they were instructed to be unarmed, to avoid potential voter intimidation.)

Otherwise, there were few apparent issues with ballot drop boxes. Some South Florida voters were confused about when the drop boxes would first become available and [attempted](#) to drop off ballots at the boxes before early voting began. One ballot was left in a library depository by

mistake. In response, the Palm Beach County election supervisor [posted signs](#) at early voting sites, notifying voters that drop boxes were not available until the beginning of early voting.

Voting rights groups also [reported](#) concerns that there was considerable variation in the appearance of the drop boxes in Florida. After the election, some of these groups suggested that the system could be improved by a standardized statewide design.

Palm Beach County used CARES Act funding to [lease vans](#) clearly marked with the official election supervisor's insignia where voters could submit their absentee ballots. The vans were [parked](#) at 17 out of 18 early voting sites in the county and an additional eight sites throughout the county.

Logistical Issues

Some voters in Polk County [reported](#) that the return envelopes they received for mailing back their absentee ballots were already sealed—likely due to the humid climate. Voters in Seminole County had the [same problem](#). Replacement envelopes [were available](#) for these voters upon request.

C. In-Person Voting

In general, in-person voting went smoothly in Florida, with sufficient poll workers to meet staffing needs and precautions in place to prevent the spread of the coronavirus. The main issues around in-person voting in the state included voter intimidation, polling place disruption, and some confusion over mask policies. While [lines were long](#) at some locations on the first days of early voting, there appeared to have been enough polling locations across the state to accommodate these voters.

[6,289,178 ballots](#) out of [11,144,855 total](#) ballots¹ were cast in person in Florida in the 2020 general election, comprising approximately 56.4 percent of the votes. By comparison, in 2016, a total of 6,848,414 votes [were cast](#) in person out of a total of [9,580,489 votes](#) (or approximately 72 percent of total votes).² Thus, while the number of votes cast in the 2020 election was considerably greater than the number cast in 2016 (11.1 million versus 9.6 million) and the proportion of votes cast in person decreased in (from 72% in 2016 to 56% in 2020), the absolute number of votes cast in person in 2020 was similar to the in person votes cast in 2016.

¹ This was calculated by subtracting the total mail-in ballots from the total ballots cast.

² This was calculated by subtracting the total mail-in ballots from the total ballots cast.

Poll Workers

In the March presidential primaries, when the pandemic had just begun to emerge in the United States, many poll workers [dropped out](#) at the last minute. In Florida's August primary election, some counties [faced](#) poll worker shortages. But in the general election, the state [seemed to have secured sufficient poll workers](#). Partly in response to the early shortages, Governor DeSantis [offered](#) state employees two days of administrative leave to serve as poll workers and encouraged county governments to do the same for local officials. Power the Polls, a nationwide initiative organized in 2020 to solve poll worker shortages because of the pandemic, recruited potential poll workers in collaboration with their state partners, [America Votes](#) and [Florida Voices](#). Just over 60,000 people in Florida signed up to be poll workers through the Power the Polls website, 8,789 of which were in Broward County.

In Florida, counties are in charge of [recruiting](#) poll workers and setting their pay and training requirements. To secure enough poll workers, Palm Beach County [offered](#) potential poll workers a supplemental financial incentive, in addition to regular pay. Sumter County also [had](#) an "adopt-a-precinct" program, to encourage local clubs and organizations to organize their members to serve as poll workers in return for a contribution to support their fundraising goals.

Martin County [built](#) a "Work the Polls" video that various colleges displayed on their websites and distributed to their students. The county also asked various college professors to help recruit students. One such professor, Robert Farley, a history professor at Indian River State College, recruited 23 of his students to work the polls. The program coordinators in Martin County also sent emails and text messages to all eligible students, held voter registration drives on school campuses, and visited classrooms to present information and answer questions about working the polls.

By September, Florida counties [reported](#) that they expected to have enough workers for the general election. In Hillsborough County, the county supervisor had [double](#) the number of poll workers needed.

In Orange, Lake, Osceola, and Seminole counties, poll workers were [trained](#) to deal with unrest at the polls, supplementing the annual poll worker training already mandated by the state. Some prospective poll workers ultimately [decided](#) not to work the polls, feeling inadequately protected from violence and coronavirus exposure since, in many locations, voters were not required to wear a mask.

Election Safety and COVID-19

At the time of the election, there was no statewide mandate to wear a mask in Florida, but several county and city governments established mask requirements through local ordinances. On October 7, 2020, [NPR](#) reported that Governor DeSantis declared that local officials could issue mask requirements but that they lacked authority to enforce them with fines or other penalties. Numerous supervisors of elections in Florida counties [stated](#) prior to the election that they would not require voters to wear masks when voting. Supervisors of elections for Broward, Duval, Hillsborough, Lee, Orange, Pinellas, and Polk Counties said they would allow persons without a mask to vote. Officials in Miami-Dade County, by contrast, stated that the county would [require](#) voters who refused to wear a mask to fill out a ballot in a dedicated area outside the polling place.

In Broward County, multiple mask policies led to some confusion about whether unmasked individuals would be allowed to vote. The county's [Emergency Order 20-27](#), issued on September 30, 2020, required facial coverings when people left their homes and could not be socially distant from others, and it did not include an expressed exception for voting. Nevertheless, county election Supervisor Pete Antonacci [stated](#) that people would not be turned away from polling places, if they did not wear a mask. Following pushback from concerned county commissioners, Antonacci [issued](#) a “trespass affidavit.” The affidavit [authorized](#) police agencies to remove people from polling sites if they violated coronavirus safety restrictions—including the county mask order—without first contacting the property owner or legal occupant of the space (which would normally be required).

Confusion ensued on the first day of early voting, when four unmasked voters [were asked](#) by poll workers to leave; after the voters refused to do so, poll workers called police. The responding officers initially [explained](#) to the voters that they needed to leave the site. Then, the Broward Supervisor of Elections’ office sent a message, stating that unmasked voters could vote, and the four individuals [were allowed](#) to vote. But confusion [lingered](#) over the mask requirement, with some law enforcement agencies stating that voters would be allowed to vote without masks, while the Broward Supervisor of Elections’ office stated that masks were required in order to vote. According to an elections spokesperson, the four individuals who refused to wear masks on the first day of early voting were the [only](#) people out of 364,000 early voters in Broward County to refuse to wear masks when poll workers requested that they do so.

Some early voters experienced [long lines](#) during the first two days of early voting, with voters in some precincts waiting up to three hours. Turnout broke records for the first day of early voting in [Hillsborough, Pinellas](#), and [Miami-Dade](#) counties. Turnout in Broward County on the first day

of early voting was [higher](#) than election officials expected, given the vote-by-mail ballots already cast, and lines were occasionally over an hour long. In Escambia County, voters [waited](#) approximately two hours on the first day of voting at one early voting location. And in Leon County, while some lines moved quickly, one voter [reported](#) having to wait two hours. According to responses to the [Survey of the Performance of American Elections](#), Florida wait times averaged 18.7 minutes across the early voting period and 16.5 minutes on Election Day—both figures were slightly below the national average and up from 2016 wait times in Florida.

Florida counties adopted several approaches to manage and reduce long lines of citizens waiting to cast their votes. Several Florida counties listed wait times for various early voting locations on their websites. The Osceola County Supervisor of Elections [created](#) a website page where voters could view the distance from their location to each early voting location and the approximate wait time at each voting site. When a line began to form, election workers handed voters arriving at the location a slip of paper with the time listed on it. When the voters reached the front of the line, they handed the slip of paper to the poll workers who entered it into a computer and updated the wait time. Wait times for all early voting sites in [Miami-Dade County](#) and [Broward County](#) were also posted online. In early October, Palm Beach County [announced](#) that it would invest in technology that would enable voters to check in while in line, shortening wait times.

Florida election officials took a number of other precautions to prevent the spread of the coronavirus. [Officials in Miami-Dade](#) provided poll workers with face shields, masks, and disposable gloves; required voters to use hand sanitizer as they entered and exited the voting location; and, provided access to bathrooms for hand-washing. [Palm Beach County](#) used laminated secrecy sleeves to facilitate cleaning, made gloves and masks available to voters, and gave voters single-use pens to cast their votes. Brevard County went further, [using](#) disposable items for each voter, including pens, styluses, and privacy sleeves, rather than reusing the same items for multiple voters. And St. Petersburg, in Pinellas County, [offered](#) a drive-through ballot drop-off option during the early voting period to voters who did not feel comfortable exiting their cars.

When an election worker in Brevard County tested positive for the coronavirus at the end of October, an early voting site had to be [shut down temporarily](#), but the county took steps to inform voters of alternate options. Poll workers spent the entire day outside the facility, handing out fliers about alternate voting locations, and the secretary of elections [directed](#) voters to the three closest early voting sites, all of which were less than 10 miles away. Voters interviewed about the closure [stated](#) that they intended to vote despite having to go elsewhere. Election officials also [stated](#) that they did not believe the public had been exposed, crediting the

county's coronavirus safety protocols— including half-inch ballistic glass present at this particular location—with preventing further infections.

Florida election officials received substantial funding to support adapting their election infrastructure to the pandemic. In the spring, Florida was [allocated](#) \$20,253,853 in federal funding through the Coronavirus Aid, Relief, and Economic Security ([CARES](#)) Act. In accepting the funds, Governor DeSantis [wrote](#) that the state would work with local election officials to allocate funds among localities. But the release of these funds was delayed until just weeks before Florida's August primary, forcing some supervisors to spend money allocated for other expenses on coronavirus precautions and adaptations and then submit reimbursement requests.

Much of Florida's available election funding remained unspent by late October. On October 29, the Tallahassee Democrat [reported](#) that more than \$10 million of the Florida Division of Elections' 2020-2021 budget had not yet been spent.³ The unspent budget included nearly \$6 million in CARES Act funding. According to the [Tallahassee Democrat](#), while 47 counties received \$14.3 million in CARES Act funding, 19 counties did not obtain the \$5.9 million available to them. These counties included Charlotte, Duval, Palm Beach, and Volusia. While some of these counties could have applied for reimbursement after the election, as of January 2021, there did not appear to be any public information regarding whether they had done so. One election expert also [suggested](#) that some of the Division of Elections' 2020-2021 budget might have been kept in reserve for post-election problems and challenges (like audits). Nonetheless, advocates and experts [expressed concern](#) following the general election that not all of the available budget was used to protect voters.

Intimidation and Disturbances

Voter intimidation and polling place disturbances caused isolated problems across the state. Though no single entity tracks all of the complaints of voter intimidation in Florida, [dozens](#) of these incidents were reported during early voting alone.

Disturbances and incidents of intimidation included the following:

- On October 21, [two armed security guards](#) stood with people campaigning for candidates during early voting in downtown St. Petersburg at the Supervisor of Elections' office. The guards were later [identified](#) as off-duty security guards who joined

³ The Florida secretary of state's spokesperson [confirmed](#) that some of this unspent money will be saved for future years.

Trump supporters after they finished work. According to the county sheriff, the guards [were](#) licensed to carry weapons and stood outside of the 150-foot no-electioneering zone. While the county sheriff and mayor disagreed about whether their conduct constituted voter intimidation, the incident prompted the sheriff to post deputies to all of the early voting sites in Pinellas County and use undercover personnel to monitor some polling places. In making his decision, the sheriff noted that the presence of deputies could lead to voter discomfort as well, but stated that he was trying to balance competing concerns.

- In Leon County, a man [approached](#) two voters waiting to vote and, after striking up a conversation, told them, “If Biden is elected, there will be bloodshed.”
- A Miami police officer was accused on Twitter of voter intimidation when he [voted](#) while wearing a Trump mask and his police uniform. The officer was subsequently [disciplined](#) for violating his department’s policy, and a state attorney [said](#) that she intended to look into the case. No charges appeared to have been filed by the state against the officer in the months after the incident.
- A Palm Beach County poll worker [stated](#) that volunteers at the site where he worked were “threatened, harassed, taunted, harangued and even physically assaulted” by Trump supporters. The worker [said](#) that the supporters used their cars to block access to the polling place, interfered with traffic, blasted train horns from their trucks, chanted a racial slur at a Black precinct supervisor and attacked the supervisor with an umbrella,⁴ poked a poll worker repeatedly in the chest, and coughed at and spit on poll workers while not wearing masks. The man also [said](#) that the sheriff’s office was called “at least a dozen times” throughout the voting period, but one sergeant eventually told him not to call them again, saying that enforcement officials would not return if called. The assistant site supervisor said that 30 or 40 voters who had waited in line for an hour [left](#) when a caravan of Trump supporters yelling through bullhorns arrived. When asked by the news outlet The Hill for comment, the Palm Beach County Supervisor of Elections [said](#) that the majority of campaign supporters followed the rules, but when incidents did occur, staff reported them quickly and law enforcement responded promptly to defuse the situations. She also said she had sent a reminder to candidates and political parties that intimidation and harassment would not be tolerated. [No arrests](#) were made in the county.
- In Jacksonville, Duval County, a voter [stated](#) when he told Biden campaigners he was not voting for Biden, they verbally attacked him. He said that he left without voting and returned at a later point to cast his ballot. (The campaigners denied that the incident occurred.)

⁴ The supervisor confirmed this incident in a separate [article](#).

- On October 22, a man allegedly [yelled](#) racial slurs about voters at an early voting site near Fort Lauderdale. Officers arrested the man, who they believed might have suffered from a mental disability.

Many voters in Florida also experienced online harassment. Emails [believed to have been sent by Iranian hackers](#) were sent to numerous Florida voters. The sender, posing as the far-right group the Proud Boys, [claimed](#) to have the recipient's information and directed them to vote a particular way. For example, one such email—with the subject line "Vote for Trump or else!"—[read](#):

You are currently registered as a Democrat and we know this because we have gained access into the entire voting infrastructure . . .[y]ou will vote for Trump on Election Day or we will come after you. Change your party affiliation to Republican to let us know you received our message and will comply. We will know which candidate you voted for. I would take this seriously if I were you.

Duval County's chief elections assistant [said](#) that the emails constituted voter intimidation. The FBI subsequently launched an [investigation](#) in cooperation with state and local law enforcement.

Florida took precautions to guard against voter intimidation before and during voting at both the state and county level. The secretary of state's office hosted a [training session](#) with supervisors in October to discuss potential worst-case scenarios and inform supervisors about who to contact in case of disturbances. In Leon County, [security](#) stood by at polling sites in case of intimidation. The City of Miami, after receiving emails and messages from concerned individuals, [canceled](#) vacation and days off for sworn officers (a category of law enforcement officer) and deployed plainclothes detectives near early voting locations. Alachua County [increased](#) patrols around polling stations until Election Day and engaged in greater security planning than in previous years.

Election officials simultaneously contended with a broad range of misinformation about the Florida election, spread by social media. For example, election officials had to debunk a [rumor](#) that people are allowed to take pictures of voters casting ballots (they are not). Other individuals wrongly [believed](#) that 50,000 lawyers traveled to Florida from other states to observe the process. In Florida, only registered voters in a county [can](#) serve as poll watchers there. One viral Facebook post by someone purporting to have been trained as a Florida poll worker wrongly [stated](#) that poll workers might write on ballots, thereby invalidating them. However, the post contained inaccuracies which suggested the person had never been trained as a poll worker, and several election officials confirmed that poll workers in their counties were

trained not to mark ballots and [do not do so](#). In addition, Spanish-language [misinformation](#) about the presidential candidates was widespread leading up to and even after the election.

A few unanticipated technical and logistical problems also occurred. For example, [misprinted](#) paper ballots led to hundreds of ballots being rejected in up to 50 different precincts in Lee County on Election Day. The ballots [were counted](#) shortly after Election Day at the main offices, where election officials could program machines to ignore a small black mark that led to the ballots' rejection. In Lake County, a computer glitch led to voters in seven precincts being [inaccurately told](#) that they were not registered to vote there. Provisional ballots were [issued](#) to voters who could not return after the problem was resolved. And early voting centers in Escambia, Okaloosa, and Santa Rosa counties had to [shorten](#) their normal hours on October 28 and October 29 due to the expected arrival of Hurricane Zeta, leading to eight fewer hours of early voting than would normally be offered over that two-day period.

D. Post-Election Developments

Unlike many other states, Florida law allowed election officials to begin counting absentee ballots prior to Election Day—indeed, an [executive order](#) allowed county canvassers to begin counting absentee ballots as soon as their tabulation machines were tested. (At least one county also brought in [additional help](#) just to count absentee ballots). Accordingly, unlike many other swing states, Florida counties were able to report most results [within minutes](#) of poll closure on Election Day, avoiding the uncertainty and unrest that occurred in many other swing states. The speed with which the state was able to report results on election night has caused many (including its own [Governor DeSantis](#)) to hold up Florida as a [model](#) for other states to follow.

Florida did not need to conduct a statewide [recount](#) in 2020, reducing the uncertainty around results. In Florida, recounts are [triggered](#) when the winner prevails by a margin equal to or less than 0.5% of total votes cast (unless the defeated candidate requests that a recount not be made); a candidate [cannot](#) request a recount. President Trump's margin of victory [exceeded](#) this amount. In addition, no post-election litigation appears to have been filed regarding Florida's election process and procedures.

However, at least one conspiracy theory circulated on Election Night regarding why Florida had not yet been called by any major television networks before 11 p.m. Eastern Time (at which point Fox News [called](#) the state for President Trump, before any other major networks). U.S. Senator Marco Rubio (R-Fla.) [suggested](#) (without providing evidence) that the major networks delayed calling Florida for President Trump in order to deny him an early swing state

announcement. Rubio's claim insinuated that the media were aiming to suppress votes by Trump supporters in other swing states, such as Arizona and Nevada, where voting was still open. Trump campaign advisor Jason Miller later repeated the claim.

V. Conclusion

In general, Florida's elections went relatively smoothly. When asked about the election, President of the Florida Supervisors of Elections Association, Craig Latimer of Hillsborough County, [noted](#) that he had predicted the 2020 election would go well in Florida. He [said](#) that "Florida was in a perfect position to be a shining star on election night," and he shared his hope that, instead of asking about comparisons to the 2000 election, reporters would hold election officials "to the standard set in 2020."

Several policies and strategies contributed to Florida's relative success.⁵ Coronavirus safety precautions were taken, alternate voting sites were readily available, and early voting [contributed](#) to shorter lines on Election Day.

Extensive communication regarding the mail-in ballot deadline and proactive engagement with postal distribution centers (including election officials physically going to these centers to retrieve election mail) appear to have contributed to relatively few ballots missing Florida's ballot receipt deadline. An extended ballot curing period contributed to low rejection rates of absentee ballots, even as the number of absentee ballots that election officials had to process increased. This law will apply in future elections, hopefully ensuring that rejection rates remain low overall. However, ballot rejections in Florida disproportionately impacted minority voters in 2020, just as in previous years.

Similarly, by allowing county officials to begin tabulating absentee ballots almost immediately, Governor DeSantis' executive order augmented existing Florida law that sets it apart from other states by allowing officials to begin counting early. The significance of this change was evident on election night, when Florida was able to report results extremely quickly and avoid unrest and uncertainty. Even if this executive order lapses in the future, Florida law would still allow election officials to begin counting absentee ballots relatively quickly (22 days before the election).

⁵ Experts also credit some other factors with Florida's largely smooth election. For instance, since 2000, Florida [has updated its technology and adopted standardized rules](#) about what types of machines could be used. (After experimenting with touchscreens, the state now uses a paper ballot system easily tabulated by machines.)

Several of the challenges which emerged in 2020 could persist in future election cycles. Voter intimidation and polling place disturbances did arise in the 2020 general election. While officials increased security and the presence of law enforcement in response, they also noted that this approach may make some voters less comfortable. Poll worker training in dealing with intimidation seems to have been insufficient to address the disturbances that poll workers reportedly faced. Election supervisors and the state may continue to have differing views of the appropriate way to secure election drop boxes. While disagreement among election officials concerning ballot drop boxes did not lead to litigation in the 2020 election, the level of drop box supervision Florida law requires remains ambiguous. Amendment 4 may also lead to issues in the future, given the state's lack of infrastructure for managing voter registration by ex-felons and the state's legal obligation to remove from voter rolls ex-felons who owe fines and fees.

Michigan 2020: Election Administration in the Coronavirus Pandemic

March 10, 2021

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I. Introduction

Despite the coronavirus pandemic, the challenge of counting mail ballots in a short time frame, and fears of potential violence at the polls, Michigan's election officials, by most measures, conducted a successful 2020 general election. Both overall voter turnout and the number of mail votes reached historic highs for the state. Michigan had a head start in addressing concerns surrounding the coronavirus pandemic, as it had expanded mail voting access to all registered voters in a 2018 ballot initiative that eliminated the need for voters to provide an "excuse" to vote by mail. As a result, state voters entered the 2020 election season with full and easy access to mail voting, newly enshrined in the state constitution.

Additionally, two new sets of rules in 2020 reduced the rejection of mail-in ballots for signature reasons. In early 2020, Michigan Secretary of State Jocelyn Benson issued new signature verification [guidance](#) and, in October, the Michigan legislature passed [Senate Bill 0757](#) into law. The new law required election officials to notify voters who submitted defective ballots and provide them with an opportunity to cure those defects. Consequently, even with the massive increase in voter turnout and mail voting, the rejection rate of mail-in ballots was lower in November 2020 than it was in both the 2016 general election and the 2018 midterm election, according to [U.S. Election Administration and Voter Surveys \(EAVS\)](#). Further, despite fears of voter intimidation and election-related violence—fears that arose from pre-election incidents involving violent [right-wing militias](#) and a state court order [overruling](#) a ban on guns in polling locations—there was not a single report of intimidation or violence at Michigan polling places on Election Day. And despite Secretary Benson's prediction that it would take [several days](#) for the state to report election results, votes were counted quickly enough that the press was able to [call the state](#) for Joe Biden at 6 p.m. Wednesday night, the day after Election Day.

Although the election was well-executed, a cloud of conspiracy theories and unsubstantiated claims of voter fraud and electoral misconduct hung over the election. This misinformation [sowed doubt](#) among some voters about the legitimacy of the results. Claims of election fraud gained traction as the political phenomenon dubbed a "red mirage" played out—a phenomenon in which incumbent Republican President Donald J. Trump appeared to be winning by a significant margin on election night because in-person votes were tabulated and reported before mail-in votes. That "red" margin evaporated as election officials began tabulating mail-in votes, which were cast predominantly by Democrats. Election fraud conspiracy theories began to circulate on election night and were buoyed by the many post-election lawsuits which parroted these theories, as well as by state legislative hearings that dragged on until December 2. These lawsuits and hearings cast sufficient doubt that Detroit's Wayne County election board [initially refused](#) to certify the election results, and many [thought](#)

the State Board of County Canvassers would do the same. Despite these bumps in the road, all lawsuits alleging election fraud failed and the statewide election results were certified on November 23.

II. Election Results and Turnout

Although Michigan has been traditionally [known](#) as part of the so-called “blue wall,” a set of reliably Democratic leaning midwestern states, the state flipped in 2016 and voted for Republican President Donald Trump. In November 2020, however, the state returned to blue for the presidential race and elected Democrat Joe Biden. Biden [beat](#) Trump by 2.8 percentage points, or 154,188 total votes.¹ Turnout reached record highs, with over 5.5 million votes [cast](#), representing [68%](#) of registered voters. This was up from the 2016 general election in which nearly 4.9 million votes were [cast](#), representing 65% of registered voters. Of the 5.5 million votes cast in November 2020, almost [3.3 million](#) were early or mail ballots, representing nearly 60% of all votes cast and 94% of all mail ballots requested. This was a [154% increase](#) from the number of mail-in and early votes cast in 2016.

Michigan held two primaries. The presidential primary was held March 10, just one day before the World Health Organization declared the coronavirus outbreak to be a global pandemic. In that primary, 2.3 million Michiganders voted, of whom [almost 900,000](#) (or 39%) voted by mail, up from about [485,000](#) (or 21%) in 2016.

In the August 2020 primary, more than 2.5 million Michiganders [voted](#), of whom 1.6 million—almost two-thirds—[voted](#) by mail. Despite the [absence](#) of statewide competitive elections, such as for president, this was a record turnout for an August primary and a [79% increase](#) from the total number of votes cast in the August primary in 2016 (in which [1.4 million](#) votes were cast). The 1.6 million mail ballots cast in the August 2020 primary also surpassed Michigan's [prior record](#) of 1.3 million mail ballots cast in a single election, which was set in the 2016 presidential election.

III. Background

Partisan division between Michigan’s executive and legislative branches made it difficult for the state government to reach bipartisan consensus on how to address election challenges before

¹ The results of other contests are detailed [here](#).

the November general election. Democrats controlled the executive branch and Republicans controlled the legislature. The two repeatedly [clashed](#) over election reforms, as well as the [scope](#) of the governor's executive power to address election issues in the pandemic. Additionally, Michigan's most populous county, Wayne County, was experiencing a deep [racial divide](#). The county, which includes the state's most populous city, Detroit, was [78% African American](#), while surrounding areas were [55% white and 39% African American](#). Detroit has been [called](#) "a boogeyman" for Republicans, who often frame their political appeals to voters as the suburbs versus Detroit or as the west side of the state (which is [79% white and 14% African American](#)) versus Detroit. This division, combined with Wayne County's tendency to release its vote count last, [created suspicions](#) among some in the state about the fairness of its elections even before Election Day. In a [survey](#) conducted the September before the general election, 38% of voters rated their confidence level that the election would be conducted fairly at or below five, on a scale of 1 to 10. The state has also had a [history](#) of [right-wing militia](#) violence, but in 2020, it culminated in a [conspiracy](#) to kidnap Governor Gretchen Whitmer in October and overthrow the Michigan government. The FBI foiled the plot.

In the August primary, a record [1.6 million](#) Michigan voters cast a mail ballot, representing 64% of the just over [2.5 million](#) ballots cast. That was up from the March presidential primary, when [38%](#) votes were cast vote-by-mail ballots, and up from the 2016 general election, when [26%](#) voted by mail. This surge supported expectations that record-breaking numbers of voters would likely vote by mail in November—expectations that arose from a combination of concerns about the coronavirus pandemic and a 2018 [state constitutional amendment](#) that had implemented no-excuse absentee voting in the state.

In preparation for the expected increase in mail voting, Secretary of State Benson and Michigan town clerks renewed [calls](#) for an extension of the time period prior to Election Day that election officials would be permitted to process mail ballots—an extension they had [sought](#) since August 2019. Michigan state law at that time prohibited election officials from processing or counting mail ballots prior to 7 a.m. on Election Day and also [required](#) poll workers, who often start work at 6 a.m., to stay until all ballots were counted. Election officials [feared](#) that, because of the surge in mail ballots anticipated for November, it could take many days after Election Day to process and count the mail votes. The processing and counting of mail ballots in Michigan is a time-consuming process, [requiring](#) election workers to open the ballot envelope, remove the ballot from its secrecy sleeve, put the sleeve in a box, inspect the ballot for any errors, back-fold the creases, make sure the ballot number on the stub matches the number on the envelope, put the ballots in stacks of 10, and then feed them into tabulation machines.

The Michigan legislature, controlled by the Republican Party, took small steps to ease the challenge of counting mail ballots quickly after Election Day. In October, the legislature passed a

new law, [Senate Bill 757](#), that allowed election officials in jurisdictions with at least 25,000 people to process (but not count) mail ballots for 10 hours the day before Election Day, just a day earlier than previously allowed. “Processing” ballots [entailed](#) removing them from their outer envelopes and verifying the signatures but not removing the ballots from their inner envelopes (sleeves). Additionally, the bill [allowed](#) for absentee ballot counters to work in shifts to address the potential fatigue of election workers who might otherwise be counting for days with no sleep.

Secretary Benson [called](#) the law a “step in the right direction” but [noted](#) “it does not go far enough.” Some other states, such as Florida, Arizona and California, [allowed](#) for the processing of mail ballots weeks prior to Election Day. Other Michigan [bills](#) sought to extend the pre-processing period up to seven extra days before Election Day, or even to allow early counting. But these were [not passed](#) by Republican leadership, who said early counting would create a “dangerous precedent” and increase the possibility of voter fraud and count leaks. Secretary Benson [predicted](#) that the state would not be able to tabulate all the votes until the [Friday](#) after the election.

Michigan relied on both public and private funding to conduct its election. The state received [\\$11.2 million in federal funding from the Help America Vote Act \(HAVA\)](#), through the Coronavirus Aid, Relief, and Economic Security (CARES Act). The new federal funding was approved to ensure the health and safety of voters and election workers during the coronavirus pandemic. The state used the funds to work with local jurisdictions to hold the August and November federal elections [by mail to the greatest extent possible](#). Additionally, Michigan contributed a 20% matching grant to the federal funds, enabling the state and localities to spend \$2 million to purchase equipment for counting absentee ballots.

The nonpartisan [Center for Tech and Civic Life](#) issued [grants](#) to 500 cities, counties, and townships in Michigan to help fund election administration costs associated with adapting to the pandemic, including new ballot drop boxes, envelopes, postage, and vote tabulators. [Detroit](#) received \$7.2 million; [Ann Arbor](#) received \$417,000; [Flint](#) received \$475,625; [Pontiac](#) received \$405,564; and [Muskegon](#) received \$433,580. The funding was part of a national effort by the non-profit group to supplement local election funds with private funds to help election officials address challenges of adapting elections to the pandemic, challenges which in many cases were exacerbated by funding shortfalls. The grants were designed to [enable](#) local election officials to provide safe and secure voting conditions during the pandemic. Most of the funds were [used](#) to purchase personal protective equipment for voters and election workers, to recruit and train additional staff, to provide improved security, to establish in-person polling places, to process mail-in ballots, and to ensure emergency preparedness.

IV. Mail-In Voting

By most measures, mail voting in Michigan was a rousing success. Record numbers of Michigan voters cast mail ballots (including through early voting) in the November general election. The [3.3 million](#) mail ballots cast constituted 94% of all mail ballots requested and about 60% of all votes cast. This was a 154% increase in the number of mail ballots over the 1.3 million mail ballots [cast in 2016](#). And earlier in 2020, 64% of the [2.5 million voters](#) cast mail ballots in the August primary, significantly higher than the [26%](#) of voters who cast a mail ballot in 2016. Despite this surge in mail and early voting, there were no reports of supply or ballot shortages, ballot rejections rates were relatively low, and ballots were counted faster than expected.

A. Mail-in Voting Laws and Policies

The infrastructure and election rules adopted before the November election prepared the state well for managing the surge of mail and early voting during the autumn resurgence of the pandemic in the state. Several key changes and policies helped the state handle the explosion in the number of mail ballots requested and cast in the November general election.

The first and likely most significant factor was the successful passage of a [November 2018 ballot](#) measure, Proposal 3. The ballot measure [enshrined](#) in the state constitution the right of all registered voters to request a mail ballot without having to provide a reason. Prior to the ballot measure, voters were [permitted](#) to vote by mail only if they were 60 years old or older, unable to vote without someone's help, in jail awaiting trial, a poll worker working at a different precinct than their own on Election Day, were planning to be out of town, or unable to vote on Election Day because of a religious obligation. Proposal 3 also created a constitutional right for voters to register to vote by mail up to [15 days](#) prior to the election, compared with the prior 30-day pre-election deadline. In practice, registered voters in 2020 could request to have an absentee ballot mailed to them until the [Friday before the election](#). Because this expanded access to mail balloting was already established, Michigan was largely able to avoid lawsuits seen in so many other states that sought to expand eligibility to mail voting during the pandemic.

Proposal 3 also made it substantially easier for Michigan voters to register to vote generally. It provided for [automatic voter registration](#) when eligible residents sought a driver's license or state ID card. It moved the general voter registration deadline from 30 days before Election Day to just 14 days before, so voters with state-issued identification could register through October 19 in 2020, including via [online](#) registration. And it allowed for voter registration at the voter's town clerk office even after October 19, including [same-day voter registration](#) all the way

through 8 p.m. on Election Day. The increase in overall turnout in November 2020, facilitated by these changes, also contributed to the increased turnout in mail voting.

Mail voting was also made easier by Secretary Benson who, in May 2020, [sent](#) absentee ballot applications to all registered voters in the state. She used [funding](#) provided by the federal government through the CARES Act and stated that her goal was to prevent the spread of the coronavirus, ensuring “no Michigander has to choose between their health and their right to vote.” The move was [controversial](#). Two Republican candidates for the state House filed a lawsuit, alleging the secretary of state did not have the authority to distribute absentee ballot applications. President Trump also [criticized](#) the policy. However, a Michigan state court [held](#) that the secretary had “clear and broad” authority to conduct such policies. The state appeals court [went](#) even further, calling Secretary Benson’s authority to mail absentee ballot applications to voters part of her “inherent authority.”

Finally, there were fewer potential barriers to casting a mail ballot in Michigan, compared with some other states. For example, Michigan [did not require](#) a witness signature or a copy of an ID with mail ballots. Voters could also [submit](#) mail ballots in a number of ways, including by voting early in person, or by mail, directly to the town clerk’s office, or to that clerk’s [drop box](#). Clerk drop boxes were most often located outside their offices but, in some larger counties, such as [Wayne County](#), there were many drop box locations. Perhaps because of the largely decentralized nature of Michigan’s election procedures, the state did not experience significant controversy over the location of drop boxes, such as was seen [in Texas](#).

Collectively, these changes and policies made it easier for Michigan residents to register to vote and to vote by mail in November 2020, minimizing the risk of exposure to the coronavirus and contributing to the record-levels of mail voting in the state in 2020.

B. Signature Verification and Rejection Rates of Mail-in Ballots

Mail ballots can be rejected for a variety of reasons that are less likely to be an issue when voting in person (such as forgetting to sign a ballot envelope, having a signature that does not match the one on file with election officials, and having the ballot arrive late). Some election watchers [worried](#) that the rejection rate of mail ballots could decide the outcome of the Michigan general election. Secretary Benson [predicted](#) that the number of rejected ballots in November could be double the number rejected in the August primary ([10,694](#) votes)—which would mean more than 20,000 rejected ballots. In 2016, Trump had [won](#) Michigan by a margin of only 10,704 votes.

As it turns out, rejection rates in November 2020 were record-breakingly low in Michigan. Of the 3.3 million mail-in ballots cast, 0.46% (or 15,302 votes) were [rejected](#) in the 2020 general election. By comparison, [0.49%](#) had been rejected in the 2016 general election, [0.7%](#) were rejected in the August 2020 primary, and [0.6%](#) were rejected in the 2018 midterms. In absolute terms, however, due to the increase in mail voting, about 2.5 times as many ballots were rejected in November 2020 as compared with the approximately [6,000](#) rejected in November 2016. Of the 15,302 ballots [rejected](#) in November 2020, the five most common reasons for rejected ballots were: the voter moved to a different jurisdiction after voting absentee but before Election Day (4,090); the voter died before Election Day (3,469); the mail ballot arrived late (3,328); the mail ballot envelope was missing the voter's signature (1,852); and, the voter's signature did not match the signature on file with election officials (1,400).

Two factors likely contributed to the lower rejection rate for mail ballots in November 2020. First, [in response](#) to a federal lawsuit filed in late 2019, Secretary Benson issued new signature verification [guidance](#) in April 2020, for the primary, and reissued the guidance in October 2020, for the general election. The new guidance created a uniform statewide standard that made it harder for election officials to reject mail ballots for signature matching issues. In [Priorities USA v. Benson](#), plaintiffs alleged, among other things, that Michigan (1) lacked any statewide uniform standards for reviewing signatures, resulting in counties using diverging criteria to verify signatures, and (2) election officials lacked sufficient training and skills to reliably compare signatures. Secretary Benson's [new guidance](#) for signature verification addressed these allegations. This guidance instructed election officials statewide to presume that the intended voter signed their ballot unless there were "multiple, significant, and obvious differences" between signatures. It further [specified](#) that "[s]light dissimilarities [in a voter's signature] should be resolved in favor of the voter whenever possible" and that the presence of "any redeeming qualities," such as "distinctive flourishes" and "more matching features than non-matching features," should render the signature valid. Additionally, Secretary Benson agreed to [include the new signature verification](#) standards in formal [training](#) provided by the Michigan Board of Elections for newly elected or appointed election officials. During the coronavirus pandemic, training was remotely conducted using the virtual Elections eLearning platform. Despite the new guidance, the rejection rate actually *increased* in the August 2020 primary—some political observers have suggested there may not have been enough time for the new guidelines to have been fully disseminated and implemented by that time.

Secretary Benson's 2020 signature verification guidance has not endured. After the 2020 election, a court of claims [ruled](#) on March 9, 2021, that the signature verification guidance issued on October 6, 2020, was invalid. The court said the guidance constituted a "rule" as defined by the Administrative Procedures Act (APA) but that the secretary of state had issued it without following the formal rule-making procedures required by the APA.

A second policy that may have contributed to a lower overall rejection rate in the 2020 general election was a new “notice and cure” bill ([Senate Bill 0757](#)) signed by Governor Whitmer into law on October 7, 2020. The new law required that election officials, “as soon as practicable, but in no event later than 48 hours after determining the signatures do not agree sufficiently or that the signature is missing, or by 8 p.m. on the day before Election Day, whichever occurs first, notify the elector of the rejection by mail, telephone, or electronic mail.” Once a voter was notified, the new law permitted the voter to “cure” any signature defects any time before the close of the polls on Election Day. If a voter’s ballot envelope was missing a signature, the voter was permitted to sign the unsigned ballot envelope in person at the clerk’s office until the polls closed. If the ballot was rejected for signature mismatch, there was no official “cure” process specified in law, but the voter could submit a written request to spoil their original ballot and receive a replacement. Voters could [request and receive](#) a new ballot by mail until 5 p.m. on October 30, 2020, and in person at the clerk’s office until 4 p.m. on November 2, 2020.

While no direct data is publicly available on the success of the notice and cure period, the fact that over 77,000 ballots were [spoiled](#) and only 15,302 were rejected, provided some preliminary evidence in favor of the law’s effectiveness. Ballots could be spoiled for a number of [reasons](#), including printing errors, a voter deciding to change their vote, an absentee voter being notified of a signature defect on the ballot envelope and wanting to cure the error, or a voter who has not yet received their absentee ballot going to the clerk’s office to ask for a new one in person. While these categories do not perfectly overlap, the high spolioation rate and comparatively low rejection rate may indicate that the notice and cure period had some effect in lowering the overall number of ballots ultimately rejected for missing or mismatched signatures.

C. Late Ballots and Related Litigation

The high number of ballots rejected for late arrival in the August 2020 primary—[6,405 or about 60% of all rejected ballots](#)—combined with concerns that operational changes at the United States Postal Service (USPS) would [slow mail](#) delivery, generated substantial focus on the receipt deadline for mail ballots for the November general election. Michigan state law required that completed mail ballots be *received* by election officials by Election Day, not just *postmarked* by Election Day, in order to be counted. In light of the high volume of expected mail ballots, voting rights advocates feared a large number of mail ballots in November would be rejected for lateness.

In two unsuccessful lawsuits, plaintiffs tried to obtain an extension to the Election Day receipt deadline. First, in [League of Women Voters of Michigan v. Benson](#), plaintiffs unsuccessfully

petitioned a three-judge panel of the [Michigan Court of Appeals](#) (which has original jurisdiction under [state law](#)) to order the secretary of state to accept ballots *postmarked* by Election Day, asserting that the Election Day receipt deadline violates the state's constitutional right to vote by absentee ballot without stating a reason. The appeals court [disagreed](#), and the Michigan Supreme Court [denied](#) plaintiffs leave to appeal. Then, in [Michigan Alliance for Retired Americans v. Benson](#), plaintiffs initially succeeded when, on September 18, a Michigan state court [granted](#) their request to enjoin enforcement of Michigan's Election Day ballot receipt deadline. The court held that, "as applied to plaintiffs under the facts and evidence presented...the ballot receipt deadline violates plaintiffs' constitutional rights" under Article II, Section 4 of the Michigan Constitution. It ruled that an "absent voter ballot that is postmarked by no later than November 2, 2020, and received within 14 days after the election, is eligible to be counted."

On October 16, however, well after mail voting materials and instructions had been [printed and mailed](#) to voters, a different three-judge panel of the state appeals court [reversed](#) that ruling, holding that, under *League of Women Voters of Michigan v. Benson*, it was constitutional to require ballots to be received by the close of polls on Election Day in order to be counted. This late reversal required election officials and voting rights advocates to scramble to publicize the new rules, so voters would not rely on earlier-published voter information indicating the later deadline.

In the end, operational slowdowns of the USPS prior to the election did not result in as many late-arriving ballots as some had feared and expected. But the USPS changes and delays did prompt at least three lawsuits involving Michigan. Over the summer, the Michigan attorney general joined other states in a federal [lawsuit](#) against the USPS, alleging that the operational changes violated the Postal Reorganization Act and the U.S. Constitution. The weekend before Election Day, a federal court [ordered](#) the USPS to accelerate election mail delivery in Detroit and in Lakeland, Wisconsin. And finally, on Election Day itself, in response to data [showing](#) that the USPS was in possession of 300,000 ballots nationwide that had been scanned into the USPS's processing system but not delivered to their elections office destinations, a number of nonprofits, including Vote Forward, [filed](#) a lawsuit seeking an injunction that would require USPS inspectors to scour facilities across the country, including Detroit facilities, for undelivered ballots. The court [granted](#) the injunction for various USPS facilities in Detroit. But the USPS [failed to comply with the judge's order](#) and said that compliance would have interrupted Election Day processes and was not feasible given the small number of inspectors at each facility.

While some were alarmed at the USPS's failure to comply, in the end, only [3,328 ballots](#) were ultimately rejected statewide in Michigan for arriving late—about half the number ([6,405 ballots](#)) rejected for lateness in the August 2020 primary. Perhaps the publicity around the USPS

mail delays and the educational campaigns conducted by the secretary of state's office, its voter education partners and more than 100 nonprofit organizations, discussed below, successfully encouraged voters to either mail their ballots early or drop them off in person or at ballot drop boxes.

D. Accessibility of Mail-In Ballots

In response to a lawsuit, [*Powell v. Benson*](#), Michigan [entered](#) into a consent decree to implement a Remote Accessible Vote-By-Mail (RAVBM) system to enable voters with disabilities that make it hard or impossible to read or use printed ballots (such as perceptual, physical, or visual disabilities) to vote absentee in the November general election. This system [allowed](#) such voters to be sent electronic ballots. The consent decree also provided for training of town clerks to familiarize them with the RAVBM system and required Secretary Benson's office to provide plaintiffs with a report on the effectiveness of the program within 90 days of Election Day.

V. In-Person Voting

Despite the coronavirus pandemic, approximately 2.24 million Michigan voters cast their ballots in person, representing more than 40% of all votes. This percentage was down from [74%](#) who voted in person in the 2016 presidential election. The state faced the challenge of administering in-person voting during the pandemic, a challenge particularly daunting in light of Michigan's highly decentralized election system. Elections in Michigan were administered by 83 county clerks, 280 city clerks, and 1,240 township clerks, making it the [most decentralized elections system in the nation](#), according to Michigan's secretary of state.

Despite the challenges, reports indicated that in-person voting in the general election went [smoothly](#), by most measures. In contrast to the August primary, during which multiple polling locations in Detroit and Flint [opened late](#) when some poll workers failed to show up, likely for fear of exposure to the coronavirus, there were no reports of problems and delays due to poll worker shortages in November. Additionally, there were no reports of shortages of sanitizer or other cleaning materials. And to the surprise of many, there were no reports of voter intimidation at the polls on Election Day. About [24,000](#) citizens in the state registered to vote and then voted on Election Day. On November 4, [Secretary Benson delivered an address](#) in which she characterized in-person voting as "exceptionally smooth" and said "polling locations were islands of calm." State election officials seemed to agree that Election Day was "the [smoothest](#) it had ever been."

There were reports of [long lines](#) in a few counties on Election Day. One polling place in Detroit was reported to have had a [line](#) of about 70 people before its doors were opened. In Williamstown, voters [reported](#) waiting two hours at the end of the day. Some Dearborn residents reported waiting in [line](#) for two hours. And in Paw Paw Township, there was still a [line](#) outside the polling place at 10 p.m. These instances appear to be exceptions.

In general, the high percentage of mail-in and early voting via absentee ballot this year helped to [spread](#) out the voting and reduce crowds at polling places on Election Day, as [planned](#). Voters could vote [early in-person](#) at their local clerk's office starting on September 24, 2020. This was the state's [first general election](#) in which voters could vote early with an absentee ballot without needing an excuse.

Many other factors, resulting from the planning and hard work of local election officials and poll workers, contributed to the safe and successful execution of in-person voting on Election Day. Important factors included successful poll worker recruitment initiatives, adequate safety precautions at the polls, private election funding, and private-public partnerships. In response to the August primary's poll worker shortages, state and local election officials, as well as civic organizations, mobilized to recruit and train poll workers for the general election. Secretary Benson [rolled out](#) Democracy MVP, a poll worker recruitment program, aimed at recruiting young people in particular, as they were less likely to develop complications from exposure to the coronavirus. Over 30,000 poll workers [signed up](#) through this program. Outside groups, such as [Power the Polls](#), in partnership with the League of Conservation Voters, recruited tens of thousands of potential poll workers through coalitions with businesses, social media platforms, and local stakeholders. Detroit alone trained and hired almost [10,000](#) poll workers, aided in part by the \$7.2 million in grants from the [Center for Tech and Civic Life](#) that enabled the city to [increase](#) poll worker pay from \$175 per day to \$500 per day. Secretary Benson lined up a small army of 1,500 poll workers in reserve to be [ready](#) if any issues were to arise on Election Day, but no poll worker shortages were reported.

Secretary Benson rolled out a comprehensive online training [program](#) for poll workers to supplement decentralized training provided by town clerks. This [instruction](#) covered a range of topics, from COVID-19 safety to assisting voters and the rules governing the conduct of official poll challengers. Poll worker training was particularly important for November, in light of the high number of first-time poll workers who lacked experience handling various voting complexities.

In an effort to keep polling places safe during the pandemic, voters who had COVID-19 symptoms but had not voted by Election Day were allowed to obtain "[emergency absentee ballots](#)" in order to avoid exposing others. Additionally, on Election Day, persons with physical disabilities not otherwise accommodated and those experiencing COVID-19 symptoms were

[permitted to vote curbside](#) (i.e., from their cars). Poll workers in Detroit were [required](#) to submit a negative coronavirus test before reporting to work.

Masks at polling places were “strongly encouraged” but not required. Governor Whitmer signed an [executive order](#) on July 17, 2020, that mandated the wearing of masks in indoor public spaces generally but exempted individuals “at a polling place for purposes of voting in an election.” The governor [reportedly](#) exempted voting from the mask requirement because of the “constitutional questions” involved in barring a qualified resident from casting a ballot. The executive order did, however, “strongly encourage” voters to wear masks while voting. Moreover, on October 2, 2020, the Michigan Supreme Court [ruled](#) that Governor Whitmer did not have authority to issue pandemic-related executive orders that were in effect past April 30, 2020—the date past which the Michigan legislature denied extending emergency and disaster declarations.

Despite the lack of a mask requirement, there were no reports of Michigan voters refusing to wear masks at the polls on Election Day. There was an incident during the vote-counting process, in which two poll challengers [refused to wear masks](#) properly at Detroit’s TCF Center during the absentee vote counting process. They were ejected from the building. For the November 2020 general election, pursuant to an October 9, 2020, Emergency Order of Michigan Department of Health and Human Services, all election challengers and poll watchers were [required](#) to wear a face covering over their nose and mouth when in a polling location.

Local election officials took measures to address pandemic-related health risks for in-person voters and poll workers at polling locations. Safety precautions [included](#) using stickers six feet apart to enforce social distancing, making hand sanitizer available at entrances, providing masks to voters who had none, sanitizing pens and surfaces after each use, requiring poll workers to wear masks, and, in some jurisdictions, placing plastic barriers between poll workers and voters. Poll workers in Detroit were required to be [tested](#) before working and were encouraged to stay home if they had any symptoms of illness.

All the health precautions do not seem to have slowed in-person voting significantly on Election Day. In-person voting was conducted efficiently, with only a couple of counties experiencing lines in which some voters had to [wait an hour or two](#) to vote. In Detroit, new poll workers were [paired](#) with experienced poll workers on Election Day to help ensure efficiency.

The city also set up [23](#) satellite voting centers, many in [large rec centers](#) not being used during the pandemic, that allowed for additional space, for both Election Day and for early voting seven days a week. During early voting or on Election Day, voters could drop off their ballots at any of these voting centers or any of the [30](#) drop boxes Detroit placed around the city.

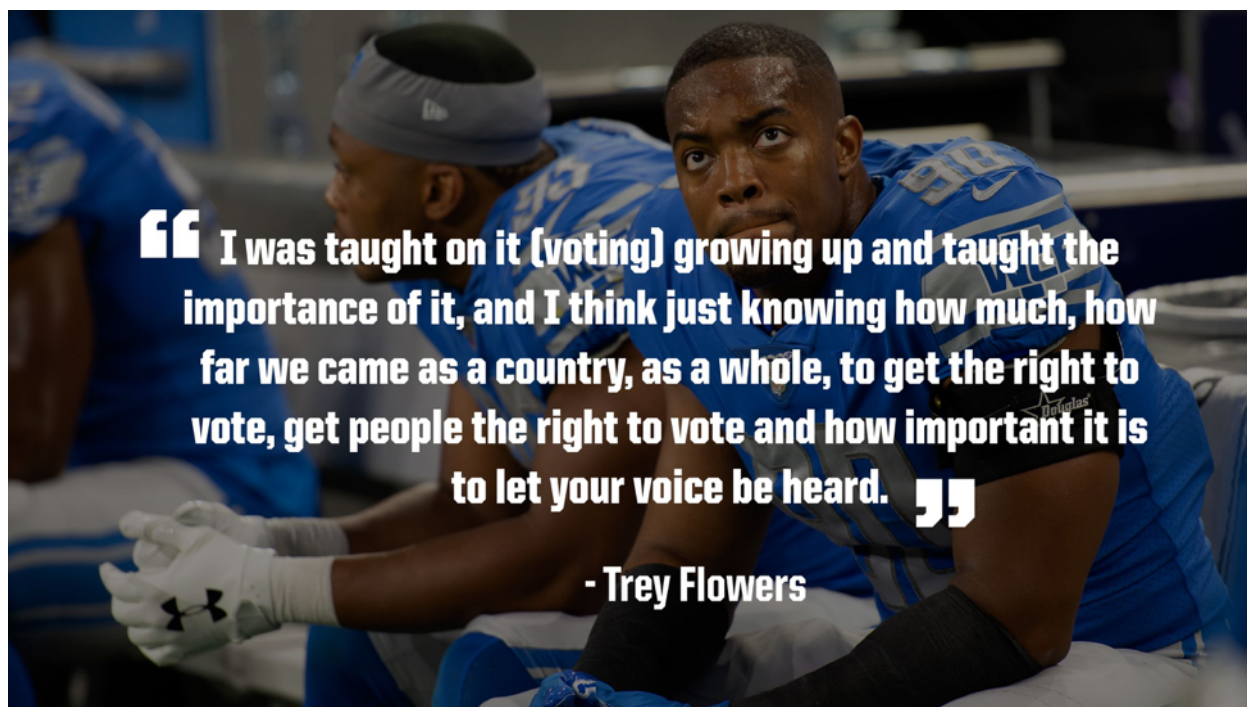
Michigan's decentralized election system itself may have contributed to the efficiency of in-person voting in the 2020 general election, as the system allowed town clerks to tailor the location and procedures of polling places to the unique needs of their own counties.

Additionally, voter education initiatives conducted both by the secretary of state's office and various nonprofits helped to educate voters and turn out the vote. For example, Secretary Benson rolled out a collegiate and a high school "Voting Challenge." The [collegiate](#) challenge gave three categories of awards to four-year and two-year educational institutions based on the turnout and registration rates of their students. Schools that participated in the high school challenge similarly [received](#) awards and recognition on the secretary of state's website. Due to these initiatives, as well as [increased political engagement](#) among youth, turnout of voters aged 18 to 29-years-old significantly increased. Data indicated that [9.4%](#) of all early votes in the November general election were cast by voters younger than 29, as compared to only 2.5% in 2016.

Michigan nonprofits ran voter education and get-out-the-vote programs. Detroit Bus Company, a private charter bus service, [transported](#) voters to the polls using a fleet of 50 cars. A group called Defend the Black Vote [held](#) tele-town halls and sent over one million texts with a focus on increasing turnout among Black men between the ages of 18 and 35. Michigan's ACLU [partnered](#) with a coalition of about 100 groups called [MichiganVoting.org](#) and spent \$4.5 million on an "Election Protection Plan" that included voter education, poll worker recruitment, and engagement with 1,500 city clerks. The Trump campaign [opened](#) a Black Voices for Trump field office on Detroit's west side, and the Biden campaign [partnered](#) with community groups in Detroit, such as the Michigan Black Caucus, Fannie Lou Hamer Political Action Committee, and East Side Community Slate, in an effort to reach people who did not vote in 2016. All these programs, especially those targeted at groups with historically low turnout, likely helped to educate voters and contribute to the record turnout Michigan saw in the November general election.

Even Michigan's sports teams got involved in voter education and the facilitation of in-person voting. The National Basketball Association's Detroit Pistons [worked](#) with Secretary Benson on joint voter outreach and education programs and the use on Election Day of its Henry Ford Detroit Pistons Performance Center as a satellite voting center, where voters could register and vote on site. The secretary [voted](#) in that Center herself. Additionally, the program [encouraged and provided paid time off](#) to Piston employees to volunteer as poll workers in the August and November elections. It is reported that the program was deemed so effective that the partnership is likely to [continue](#) in future elections.

Secretary Benson also [partnered](#) with the National Football League's Detroit Lions to use Ford Field on [election night](#) as a location to which election workers delivered ballots and equipment after precincts closed. The Field hosted eight of the city's 12 receiving boards (independent boards established to ensure the secure transmission of election results and ballots cast in person at election precincts). This [initiative](#) also paid Lions' staff to serve as Election Day poll workers and featured the team in a series of public service announcements (PSAs). The PSAs covered a [wide range of topics](#), including how to apply to vote by mail and how to properly fill out and return ballots. Prominent athletes and coaches provided individual testimonies of why voting [mattered](#) to them:



Source: [Detroit Lions](#)

VI. Intimidation and Disinformation

In the period leading up to the election, some stakeholders [worried](#) about the possibility of intimidation or violence against voters, both at the polls and at home. Anti-government militia groups in Michigan repeatedly [carried guns](#) in public spaces and threatened violence. For example, in April, these groups [brought](#) semi-automatic weapons into the Michigan State House to protest the state's stay-at-home orders around the pandemic. And in October, the FBI thwarted a [plot](#) by a Michigan right-wing militia group to kidnap Governor Whitmer and overthrow the Michigan government. Partisan division in the state grew even more intense as

the election drew near, fueled by President Trump's claims that Democrats were planning to "steal" the election and [calls](#) for his supporters "to go into the polls and watch very carefully."

Michigan [law](#) makes it a felony to "influence, deter, or interrupt" a voter in the process of voting by means of "bribery, menace, or other corrupt means." The law itself does not further specify what behavior is prohibited. The secretary of state's [official guidance](#) for poll watchers and election challengers for the November general election also did not specifically define the concept. The guidance outlined the *permitted* conduct of poll watchers and challengers. But other than to prohibit direct threats or violence by poll watchers and election challengers at polling locations, the guidance did not delineate what conduct might constitute voter intimidation. It also did not outline unacceptable intimidation by persons other than poll challengers.

In an effort to thwart the potential for violence and intimidation at the polls, Secretary Benson issued a directive in mid-October, [banning](#) the open carrying of guns in or within 100 feet of polling places, clerk's offices, and other locations where absentee ballots are counted. But a Michigan Court of Claims judge [blocked](#) the directive on the grounds that the secretary [failed to comply](#) with the procedural requirements of the state's Administrative Procedure Act ([MCL §24.243](#)) when adopting the rule.

Despite the atmosphere of fear stoked by these events and others, there were [no documented cases](#) of voter intimidation at polling locations. During the post-election counting process, two poll challengers—one wearing a Halloween mask meant to be frightening and the other refusing to wear her face mask properly to cover her nose and mouth—were escorted out of the TCF center after using racist language.

Across the state, however, many voters were [targeted](#) with robocalls and robotexts, spreading disinformation. One such text urged voters to "stay home and stay safe" instead of voting on Election Day. Another series of robocalls, which specifically [targeted](#) voters in the city of Flint, instructed potential voters to wait until the day after the election to vote in order to avoid long lines. State officials quickly [responded](#) to correct the misinformation in these calls. In addition to opening an investigation, they [reiterated](#) the need for in-person voters to cast their ballots on November 3. Because the robocalls were sent nationwide, the FBI also [opened investigations](#), but no culprit was immediately found. According to the [Washington Post](#), the country's top telecom carriers believed the calls were foreign in origin.

A different series of [robocalls](#) sought to deter mail voting and falsely claimed that personal information submitted in applications for mail ballots could be used to execute outstanding arrest warrants and to collect unpaid debts. These robocalls, which began around August 26,

[reached](#) at least 12,000 voters in urban areas, including predominantly Black Detroit. The effort was [traced](#) to two out-of-state Republican political operatives, a conservative social media personality and a conservative lobbyist. Both had previously [attempted](#) to smear rivals of President Trump through fabricated sexual assault allegations. Governor Whitmer [spoke out](#) and warned that voter intimidation “will not be tolerated.” And Michigan Attorney General Dana Nessel [swiftly and publicly prosecuted](#) both of the alleged perpetrators for the crime.

On Election Day, Michigan Attorney General Nessel warned local voters about a text that inaccurately told voters that, due to a “typographical error,” people who were intending to vote for Joe Biden must, instead, select President Trump, and vice versa. The text attributed the information to the “Federal Berue [sic] of Investigation.” While disinformation abounded, there were no news reports of violence or intimidation at the polls on Election Day.

VII. Post-Election Day

Election officials, including Michigan’s secretary of state, did not [expect](#) to have a full enough accounting of the state vote to enable the press to call the presidential race in Michigan until the Friday after the general election. But the tabulation of votes went more quickly than expected and, though vote counts in some counties were still unreported, the Associated Press [called](#) the election for Joe Biden on Wednesday, November 4, at 6 p.m. The extra day to pre-process absentee ballots and the ability for vote counters to work in shifts, both approved in the new [October law](#), helped to speed up the count.

While the tabulation process was largely smooth, there were a few minor hiccups. These included a computer [glitch](#) in Oakland County and a human [failure](#) to update software in Antrim County, both of which impacted initial vote counts but were quickly discovered and fixed. Michigan’s State Board of County Canvassers [certified](#) the state’s election results in all 83 of its counties on November 23.

No statewide recount was required under state law because Biden’s margin over Trump exceeded 2,000 votes. Under Michigan state law, only elections with a margin of fewer than 2,000 votes [trigger](#) an automatic recount. Michigan law, [§168.879](#), also allowed the Trump campaign to petition for a recount within 48 hours of certification. To do so, he would have had to sign and swear that he had “a good-faith belief that but for fraud or mistake, [he] would have had a reasonable chance of winning the election.” Although the Trump campaign requested recounts in other states, such as Georgia and Wisconsin, it did not make such a request in Michigan. Perhaps this was because the margin by which President Trump lost in Michigan

([154,188 votes](#)) was substantially wider than it was in Georgia and Wisconsin. Or perhaps it was related to Trump's [meeting](#) with Michigan Republican lawmakers on November 21, two days before the state certified the election. At that meeting, lawmakers reportedly told Trump that they had "not yet been made aware of any information that would change the outcome of the election in Michigan."

But the Trump campaign pursued other legal avenues in an effort to change Michigan election results. Republican poll challengers, the Trump campaign, and its allies filed [at least 10 lawsuits](#) after Election Day, seeking to delay or halt the tabulation of the votes or the certification of the election.² Additionally, some Republican poll challengers and elected officials, and President Trump [himself](#), made numerous claims of voter fraud, improper election conduct, and rigged elections. The Republican-controlled Michigan legislature held days of hearings, allowing witnesses to [testify](#) that voter fraud occurred, with little rebuttal. During the hearings, President Trump continued to [claim](#): "We won Michigan by a lot!"

As a result of the repeated public claims of voter fraud—in Michigan and other states—three in four Republicans surveyed between November 12 and November 16 reported that they [lacked confidence](#) that the November election was conducted fairly. Claims of fraud and a "steal" of the election sparked significant anger and led to [threats of violence](#) against many state election officials, including [Michigan's secretary of state](#). While Michigan's election infrastructure and administration proved to be robust, repeated baseless claims of fraud, misinformation, and conspiracy theories muddled the waters and undermined the perceived legitimacy of the election in the minds of many voters.

A. Post-Election Litigation

In the days and weeks immediately following the election, [at least 10 lawsuits](#) challenging the election results or election procedures were filed in Michigan state and federal courts. None was successful.

The first three lawsuits, filed in state courts between November 2 and November 4, alleged election irregularities and outright fraud and generally sought to halt the count of absentee ballots until more Republican election challengers and poll observers were allowed to watch the tabulation of votes. Michigan law allowed each party to have only one appointed election challenger at a time observe the conduct of the "absent voter counting board," which tallied absentee votes on Election Day. If a challenger believed an absentee ballot was submitted by a

² For more information on Michigan's laws governing counting the vote, including the tabulation, certification, and reporting of vote count numbers, see Section VII (B) of [Michigan: 2020 Election Policies & Practices](#).

person unqualified to vote in the precinct, the challenger could challenge that ballot. ([Election Officials' Manual](#)).

In [Polasek v. Benson](#), plaintiffs challenged Oakland County's rule that only one challenger per party was permitted to observe the absent voter counting board. The judge ruled that the defendants did not have the power under Michigan law to allow plaintiffs the up-to-10 challengers they requested. In [Donald J. Trump for President v. Benson](#), the Trump reelection campaign asked the court to halt Michigan's ballot count until Secretary Benson allowed its election inspector to be present at the absentee ballot boards and until its challengers could review video surveillance footage of ballot drop boxes (which they alleged would show a car passenger dropping off more ballots than there were people in the car). The judge dismissed the case, [stating](#) that "the essence of the count is completed" and the "relief request is completely unavailable" because local election officials, not the secretary of state, managed election inspectors. The appeals court [upheld the dismissal](#) holding that, once the state certifies the vote, as Michigan had by the time of the appeal, Michigan law required fraud claims first be addressed through the request of a recount, and no such recount has been requested here. The Michigan Supreme Court denied review. In [Stoddard v. City Election Commission](#), plaintiffs alleged that vote counting centers in Detroit did not have one inspector from each political party present and asked the court to halt the counting of absentee ballots in Detroit until observers from both parties were present. The judge denied the motion, noting that plaintiffs failed to state a cause of action, based their allegations on "mere speculation" rather than evidence, and had alternative remedies available, such as a recount.

Four lawsuits filed between November 9 and November 16, in both state and federal courts, alleged fraud as the basis for requesting injunctions to halt certification of Michigan's election results. One was denied and three were voluntarily dismissed by the plaintiffs within a few days of filing. In [Constantino v. Detroit](#), several Wayne County voters alleged a laundry list of electoral misconduct by Detroit election officials and requested an audit, an order to stop the counting of votes, and an injunction to halt certification of the vote. The state circuit court denied all requests, finding that the affidavits supplied by plaintiffs were "rife" with generalization, speculation, hearsay, and a lack of evidentiary basis. In [Donald J. Trump for President, Inc. v. Benson](#), the Trump campaign alleged in a federal district court that Wayne County and Secretary Benson violated the Michigan Election Code by purportedly not permitting challengers to observe the conduct of the election and the processing of ballots and by pre-dating ballots that were not eligible to be counted. Plaintiffs voluntarily [dismissed](#) the case eight days later. In [Bally v. Whitmer](#), plaintiffs alleged in federal district court that a certified poll watcher was excluded from observing canvassing and made claims of fraud, citing the complaints in *Constantino v. Detroit* and *Donald J. Trump for President Inc. v. Benson*. Plaintiffs voluntarily [dismissed](#) the case within five days. In [Johnson v. Benson](#), plaintiffs alleged that the secretary of state's mailing to

voters of absentee applications resulted in Democratic Party inspectors filling out "thousands" of ballots in violation of state law. Plaintiff requested an injunction barring election certification and voluntarily [dismissed](#) the case three days later.

After the election results were certified, two lawsuits were filed that asked the courts to de-certify the election results or to re-certify the results in favor of Trump. In [Johnson v. Benson](#), filed November 26 directly in the Michigan Supreme Court, members of Black Voices for Trump alleged that state officials failed to allow meaningful poll observation, that they instructed election workers to count invalid ballots, and that they unlawfully permitted counties to accept private grants from Facebook founder and billionaire Mark Zuckerberg to help fund election expenses. The case was [dismissed](#) by the Michigan Supreme Court for lack of jurisdiction and because the injunction request was moot. In [King v. Whitmer](#), filed in federal district court, six Michigan voters alleged that Republican poll observers were denied access and that election workers forged and altered ballots and counted defective ballots. They alleged violations of both state law and the Elections and Electors Clauses of the U.S. Constitution. The federal district court [dismissed](#) the case on a variety of grounds, including the *Pullman* abstention, state sovereign immunity, and mootness. Plaintiffs [filed](#) a petition for a writ of certiorari with the U.S. Supreme Court which, on February 22, the high court [denied](#).

Finally, in [Leaf v. Whitmer](#), filed December 6, plaintiffs claimed that the Michigan Board of Elections routine order to delete certain election records was intended to destroy evidence of voter fraud. The lawsuit was [thrown out](#) on various procedural grounds, including a failure to submit a proper complaint and a failure to comply with basic notice requirements.

For a more detailed summary of each of the Michigan lawsuits filed post-Election Day see the Stanford-MIT Healthy Elections Project report [Post-Election Litigation Analysis and Summaries](#).

B. Conspiracy Theories

Conspiracy theories swirled in Michigan on and after Election Day, [causing](#) what some called "political chaos." Some of these claims were either fueled or amplified by the post-Election Day litigation described above. Some were fueled by Michigan's "[red mirage](#)," the false impression that Trump was winning the election because he was ahead on election night. This resulted from the fact that Republicans (the so-called "red" votes) were more likely to vote in person on Election Day, and in-person votes were [counted first](#). In the days after Election Day, election officials began counting mail ballots, and those were cast predominantly by Democrats. The initial Republican lead slowly evaporated and eventually shifted to Biden, by bigger and bigger margins. Trump himself had contributed to this phenomenon by repeatedly criticizing the use of mail voting throughout the election season, contributing to the partisan differences in voting

methods. Nonetheless, he seized on the phenomenon to bolster his [claims](#) that, “We won Michigan by a lot!” and that the Democrats stole the election through voter fraud.

Most of the conspiracy theories were easily and quickly [debunked](#). For example, claims of ballot stuffing in Flint relied on a video which [turned out](#) to be of a Russian polling place. Claims that a “mysterious wagon” filled with Democratic ballots was sneaked into Detroit’s TCF Center were [discredited](#) when the wagon turned out to contain a reporter’s camera equipment. Two conspiracy theories in particular, however, gained considerable traction.

The first widespread conspiracy theory contended that computer glitches in Antrim and Oakland counties swung the vote counts in those counties for Biden pursuant to [a plot](#) between the Democratic Party and Dominion Voting Systems, a company which manufactures voting machines. While computer glitches did occur in both Antrim and Oakland counties, both were [quickly identified and rectified](#), and the source of each glitch was readily ascertained. In Antrim County, which [did use](#) Dominion voting machines, the glitch was [caused by](#) a failure to update the voting machine software. Though the tabulation of votes in each county precinct was correct, as [verified](#) by a hand count, the glitch caused the individual precinct vote tallies to be added together incorrectly, so the unofficial vote total for the county was off by a few thousand votes until the error was quickly discovered and fixed. In Oakland, a software glitch [caused](#) some votes to be counted twice. However, the issue was [fixed](#) within a day of being identified. Moreover, Oakland’s voting machines were not made by Dominion, so its glitch could not be attributed to Dominion.

The second prevalent conspiracy theory professed that Republican election challengers were unfairly barred from observing absentee ballot processing and counting in Detroit in Wayne County. This [claim](#) was parroted in several of the election lawsuits and [amplified](#) by Trump himself on Twitter. Some election challengers were prevented from entering Detroit’s TCF center, but this was because the number of challengers already there observing the process had [reached the limit](#) allowed under state law. In fact, over 100 Republican challengers were [allowed](#) to observe the ballot processing and counting in the TCF center.

C. Legislative Hearings

Conspiracy theories, misinformation, and disinformation were also [amplified](#) in Michigan state legislative hearings held on December 1 and 2. Just eight days after certification of the state vote, the Michigan legislature held [hearings](#) to allow witnesses to testify to alleged voter fraud, largely focused on vote counting at the TCF Center in Detroit. The hearings were unorthodox by most legislative hearing standards. Neither the witnesses nor President Trump’s personal

attorney, Rudy Giuliani, were required to [testify](#) under oath. No cross examination of the witnesses was [allowed](#), so the witness claims went largely unchallenged. One lawmaker [faced](#) death threats after questioning witnesses. The hearings gave a [largely uncontested microphone](#) to many of the same claims of voter fraud that did not hold up in lawsuit after lawsuit. In fact, many of the affidavits submitted in advance of the hearings [were](#) the very same affidavits that courts had concluded were not credible. For example, witnesses [claimed](#) that voter turnout in some districts was over 100% of registered voters, that late ballots were “back-dated” by election officials so they could be counted, and that thousands of ballots were counted twice. This testimony was [dramatic and colorful](#) and, because it was also televised to a wide audience, some clips from the broadcast went [viral](#).

Ultimately, the hearings were widely viewed as presenting [little definitive evidence](#) of fraud, and the Michigan legislature did not take any action based on them. However, the nationwide audience reached with television and viral video clips likely contributed to the [mistrust](#) many Republicans harbored that the November election was not conducted fairly.

VIII. Conclusion

Michigan election officials and poll workers conducted a safe, secure, and accessible general election in November 2020, amid the coronavirus pandemic. A record number of Michiganders voted. The state’s adoption of no-excuse mail voting enabled a record number of Michiganders to vote by mail ballot, and the state well accommodated the surge in demand. For those who decided to vote in person, polling places were adequately staffed and took numerous precautions to protect voter health. Michigan’s election infrastructure faced only minor hiccups: a couple of long voter lines, two quickly rectified voting machine glitches on Election Day, and a series of robocalls and robotexts that spread false information, largely corrected by state officials. In the words of Secretary of State Benson, the election went “[incredibly smoothly](#).” Even the counting of ballots, which was expected to take up to three days after Election Day, was sufficiently far along by 6 p.m. the day after Election Day for the press to call the election (though there were still votes to be reported).

Unfortunately, the flood of post-election lawsuits filed in Michigan and the related conspiracy theories, amplified in the state legislative hearings, helped [undermine](#) the confidence of some voters that the election was conducted fairly. Buoyed by the “red mirage” of President Trump’s potential victory on election night, the lawsuits perpetuated and lent credibility to conspiracy theories of voter fraud and created anger [directed](#) at election officials. The courts quickly dismissed all of the post-election lawsuits brought before them. Nonetheless, it is likely to take

time and a concerted, collaborative effort from both parties in Michigan’s legislature to combat the rampant misinformation disseminated about the election. Secretary Benson notes on the [official secretary of state website](#) that “[l]eaders can work together, across the aisle, to heal the damage that has been done, by unequivocally stating the truth to their colleagues and constituents—that the 2020 election was secure and fair, and the results are an accurate reflection of the will of the voters.” Given Michigan’s highly partisan landscape, it is unclear whether and when any such collaboration will occur or whether the Republican-controlled legislature will take steps to restore confidence in the state’s electoral system.

Nevada 2020: Election Administration in the Coronavirus Pandemic

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Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“Mail Voting Litigation During the Coronavirus Pandemic,”](#) Connor Clerkin, Lane Corrigan, Zahavah Levine, Aviel Menter, Christopher Meyer, Alexander Perry, Theodora Raymond-Sidel (October 29, 2020).
- [“Behind the Scenes of Mail Voting: The Rules and Procedures for Signature Verification in the 2020 General Election,”](#) Ali Bloomgarden, Arushi Gupta, Garrett Jensen, Zahavah Levine, Chris Middleton, Kyra Sikora (October 28, 2020).
- [“The 2020 Nevada Primary,”](#) Ken Kuwayti, Thomas Hopkins, Sean Kang, Max Levy (July 10, 2020).
- [“Post-Election Litigation in Battleground States,”](#) Zahavah Levine and Jacob Kovacs-Goodman (updated December 14, 2020)
- [“Recounts and Challenges in Battleground States,”](#) Haley Schwab, Bree Baccaglini, Matthew Simkovits, Mikaela Pyatt, Amanda Zerbe, Axel Hufford, Evie Freeman, Christopher Middleton, Christopher Wan, Ali Bloomgarden, and Garrett Jensen (November 13, 2020)

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I. Lay of the Land

A. General Election Results

In the presidential contest, Joseph R. Biden won Nevada by [33,596](#) votes or 2.39%. Voters cast [1,425,026](#) total votes in the 2020 general election (78.22% of the state's total active voters). This turnout was an increase from the 2016 total of [1,125,429](#) votes (76.83% of total active voters). In June, [491,654](#) votes were cast in the 2020 Nevada primary election (30.34% of total active voters), compared to [240,213](#) total votes cast (18.54% of total active voters) in the 2016 primary election.

During the 2020 general election, mail voting was the most popular method of voting, accounting for [48.46%](#) of overall turnout. Early in-person voting accounted for [40.59%](#) of ballots, while [10.95%](#) of Nevadans voted on election day in person.

B. Pre-COVID-19 Election Rules

Nevada's existing election laws proved to be very useful to ensuring voter access during the health crisis. For example, Nevada election laws already allowed no-excuse vote-by-mail and same-day voter registration. But, under Nevada law before the coronavirus pandemic, voters were required to [register](#) for an absentee ballot in order to vote by mail.

Statute	Law
NRS 293.560 NRS 293.5847	<i>Voter Registration Deadline:</i> 28 days prior to Election Day (Mail-in Registration). Same-day registration is permitted during early voting and on Election Day.
NRS 293.309	<i>Qualifying for Mail-In / Absentee Ballot:</i> No excuse needed.
NRS 293.313(1)	<i>Absentee Application Deadline:</i> 14 days prior to Election Day.
NRS 293.317(1) NRS 293.333(2)	<i>Absentee Ballot Submission By Mail Deadline:</i> Postmarked by Election Day and received not more than seven days after Election Day.
NRS 293.353	<i>Method for Returning Ballots:</i> By mail using a postage-prepaid envelope or by dropping it off in person at a designated county location (per Nevada law, early voting sites and Election Day Vote Centers cannot accept a voted mail/absentee ballot). Only the voter, or, at the request of the voter, a family member, can

		deliver an absentee ballot.
NRS	293.325	<i>Mail-in Verification:</i> The county clerk checks the voter's signature on the return envelope against all signatures of the voter available in the records of the county clerk. If there is a reasonable question of fact as to whether the signature on the absentee ballot matches the signature of the voter, the county clerk shall contact the voter and ask him or her to confirm the signature. [Superseded by AB4]

C. Learning From the Primary

In response to the public health implications of the pandemic, on March 24, Nevada Secretary of State Barbara Cegavske [announced](#) that all active registered voters would be automatically sent a mail-in ballot for the June primary, with the goal being to conduct an “all-mail election” for the primary. In [Clark County](#), all inactive¹ and active voters were automatically sent mail-in ballots for the primary. Early adoption of vote-by-mail was particularly beneficial because it acted as a trial run for the November general election, allowing officials sufficient time before November to resolve any hiccups that occurred during the June primary.

The vast majority of Nevada voters did vote by mail during the June primary. [483,788](#) (98.4%) of the total [491,654](#) voters in the primary cast their ballots by mail. Issues from the June primary election included: (1) over 10,000 of the 483,788 mail ballots were rejected due to defects; and (2) decreased access to in-person voting caused long waits at in-person polling places.

Only [1.6%](#) of votes in the 2020 primary were cast in person, but those 7,866 in-person voters experienced long waiting times at the polls because so few polling places were available. In the primary election, [15 of Nevada's 17 counties](#) had only one location for in-person polling and mail-ballot drop off; Nye County had two locations. Clark County, Nevada's most populous county, had [three](#) in-person polling locations, [seven](#) early drop-off locations, and [thirty](#) drop-off locations open on primary election day. For comparison, during the 2016 primary, Clark County had [265](#) polling locations. Additionally, election workers had to deal with voters that refused to comply with coronavirus safety precautions, requiring some polling locations to be [cleared out multiple times](#) to accommodate them.

¹ In response to confusion about Nevada's vote-by-mail process, a Nevada Deputy secretary of state [released a statement](#) on May 29, 2020: “An active registered voter in Nevada is a registered voter who has an address on file with the county election official that is current....An inactive registered voter in Nevada is a registered voter who has an address on file with the county election official that is not current....No registered voter in Nevada is ever changed from active status to inactive status solely on the basis of not voting in recent elections...a piece of election mail sent to the voter must have been returned as undeliverable and the voter must have failed to respond to a mailer asking the voter to confirm their voter registration information.”

Nevada successfully increased the availability of in-person voting in the 2020 general election compared to the primary election. During the general election, Clark County had [35 polling sites](#) instead of three open per day during the early voting period and over [100 Vote Centers](#) on Election Day. The Nevada Legislature had, in 2019, [authorized](#) same-day registration to vote in person during both early voting and on Election Day (with certain [identification](#)). Same-day voter registration requires voters to cast a [provisional ballot](#); the provisional ballots are [verified](#), then counted after the election. During the 2020 general election, [30,007](#) voters registered to vote in person during early voting and on Election Day using this process.

II. Pre-election pandemic adaptations

Nevada's existing laws, plus legislative action taken in August, allowed the state to avoid problems that made voting by mail more difficult in other states. Before the coronavirus pandemic, Nevada already had no-excuse vote-by-mail,² no witness or signature identification requirement to vote by mail, and same-day voter registration. In 2019, Nevada passed [legislation](#) that allowed to be counted 1) mail ballots that were postmarked by Election Day but arrived no later than [seven days](#) after the election, and 2) mail ballots with indeterminable postmarks that arrived no later than the three [days](#) after the election.³ By May 2020, Nevada authorized automatically sending registered voters mail ballots for the June primary election. After the primary, in August, the Nevada State Legislature passed [Assembly Bill 4](#) ("[AB 4](#)"), which created election procedures during an "affected election." An [affected election](#) occurs when the governor or legislature declares an emergency endangering public health or safety. If such a declaration is in effect on March 1, it designates the primary as an affected election; if it is in effect on July 1, the general election is an affected election. Unsurprisingly, because of the coronavirus pandemic, there was a [declared](#) state of emergency in effect in Nevada on July 1, thus marking the general election an affected election. AB 4 authorized state officials to send mail ballots to every registered voter and permitted collection and delivery of such ballots by third-parties.⁴ In response to the primary election, AB 4 [mandated](#) that there be enough in-person polling places to accommodate voters who wanted to vote in person. AB 4 also

² Nevada mailed all registered voters a ballot because of the ongoing pandemic but, under normal circumstances, no excuse is [required](#) to obtain a mail ballot pursuant to NRS §293.313.

³ This provision was also expressly adopted in AB 4.

⁴ Third-party ballot collection is a [permanent](#) change and will remain in effect for future elections. Third-party ballot collection was opposed by Secretary of State Barbara Cegavske, who [proposed](#) that any individual who wants to collect and deliver 10 or more completed ballots to report their intentions beforehand to the Secretary of State. That proposal was [denied](#).

clarified the signature-verification process to help officials determine whether to invalidate mail ballots. Prior to the enactment of AB 4, officials were able to [process](#)⁵ ballots upon receipt but could only begin *counting* mail ballots four days before the election. AB4 allowed election officials to start counting returned mail ballots [15 days](#) before the election. These rules made it simpler for voters to cast ballots and more efficient for officials to count ballots.

After the Nevada state legislature passed AB 4, authorizing state officials to send mail ballots to all registered voters and permitting third-party ballot collection, there were legal challenges from parties who argued that increased use of mail-voting could lead to fraud and voter dilution. In federal court, Plaintiff Donald J. Trump for President unsuccessfully [challenged](#) the enforcement of AB 4 on the grounds that the new rules would lead to voter fraud. The court dismissed the lawsuit for lack of standing. A Republican former state assembly member, Sharron Angle, and a vote monitoring group called Election Integrity Project filed a [case](#) in state court containing [similar claims](#) to those made in the Trump campaign's federal suit. State district court Judge Rob Bare issued an [order](#), denying their motion for a preliminary injunction to enjoin the implementation of AB 4 and determined that the plaintiffs' allegations of voter fraud were speculative and lacked any "concrete evidence." The Nevada Supreme Court [upheld](#) Judge Bare's decision.

During the primary, polling stations provided in-person voters with [paper ballots](#) in all counties, except Washoe County, in order to provide a pandemic-safe voting environment. However, before the general election, election officials had enough time to prepare for the safe usage of electronic voting machines. All counties instituted [touch screen voting machines](#) that were regularly sanitized. Voters also had a number of technologies available to them during the election: a free ballot-tracking service, [BallotTrax](#), was launched to help voters monitor the location of their mail-in ballots, and a crowd awareness app, [NowCrowd](#), was available to give voters an estimate of the wait time at their preferred polling location.

In September, Clark County commissioners [approved an amendment](#) that upgraded ballot scanners and related software for the 2020 election and beyond. The amendment was instrumental in modernizing the county's voting system. Failure to address issues with aging voting infrastructure [led to problems](#) and delays in other parts of the country.

Nevada significantly increased its general election turnout in 2020 as compared to 2016. In 2020, [1,425,026](#) total votes were cast in the general election, representing 78.22% of total active voters. In 2016, [1,125,429](#) total votes were cast, representing 76.83% of total active voters.

⁵ NRS § 293.325

Though the turnout rate was comparable between 2016 and 2020, there were 299,597 more ballots cast in the 2020 general election. Thus, almost 300,000 more Nevadans voted in 2020 than in the presidential contest four years prior, despite concerns surrounding the coronavirus pandemic.

III. Voting by Mail

In the general election, [690,548](#) votes were cast by mail (48.46% of total votes). This figure marked a monumental increase from the 2016 mail-vote total of [78,572](#) votes (6.98% of total votes cast), but a dramatic decrease from the vote-by-mail proportion in the 2020 primary election (98.4% of total votes).

AB 4 played a major role in implementing adaptations that helped Nevada conduct a smooth general election during the coronavirus pandemic. First, AB 4 [created](#) a provision permitting third-party ballot collection, allowing voters' family members or friends to drop off ballots on their behalf. This granted greater access to voting, especially for those living in remote communities. This provision was particularly empowering in areas of the state where it could take an hour or more to drive to the nearest polling location, enabling one person to make the trip for many others.

AB 4 also had important implications for signature verification of mail-in ballots. Before AB 4, a ballot could be rejected if at least two employees in the office of the county clerk "believe there is a reasonable question of fact as to whether the signature" on the ballot matched the signature "available in the records of the county clerk." AB 4 altered the rejection standard so that a signature could be challenged only if it "[differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the county clerk.](#)" In accordance with existing signature verification policies before AB 4, election officials notified the voter if their ballot was rejected for signature deficiencies and provided voters with opportunities to "cure" signature deficiencies both before Election Day and after Election Day until 5 p.m. on November 12.

During the Nevada primary election, the main reason for rejection of mail ballots was [missing signatures and signature mismatches](#). Historically, members of minority communities were more likely to have [their ballots rejected](#) for signature issues than white voters.

Just [0.58%](#) of all mail ballots returned in Nevada were rejected⁶ in the 2020 general election, a significantly smaller portion than in 2016 ([1.60%](#)) and 2018 ([2.05%](#)). Initially, [12,584](#) (1.82% of the [690,584](#) returned mail ballots) needed a signature cure. Of those, [9,697](#) (77.06% of mail ballots in need of cure) were [successfully cured](#) before November 10. This left only 2,887 (0.42% of mail ballots) of ballots rejected in the 2020 general election due to a signature defect. By contrast [12,366](#) (2.56% of the [483,788](#) returned mail-ballots) needed a signature cure in the primary election. Just [under half](#) of those ballots ended up being cured and counted. In total, [97.31%](#) of the ballots voters returned in the general election were returned correctly and did not need subsequent signature cures.

Furthermore, Nevada's extended ballot receipt deadline lessened the risk that ballots would be rejected because of U.S. Postal Service (USPS) delays. The USPS was already backed up because of the pandemic and widespread mail voting. Existing law allowed ballots that arrived up to seven days after Election Day to be counted, as long as they were postmarked by Election Day. To further alleviate some [concerns](#) surrounding vote-by-mail, state officials in September implemented [BallotTrax](#), a third-party tool used in Nevada and other states to track when ballots were mailed, when they were received by the county, and when they were counted.

IV. In-Person Voting

Despite the significant increase in vote-by-mail during the 2020 general election, over half of all votes in Nevada were cast in person. During the 2020 general election, [578,482](#) voters were cast in person in early voting (40.59% of total turnout), and 155,996 were cast on Election Day (10.95% of total turnout). However, these figures mark a sizable decline in overall in-person turnout compared to the 2016 general election, during which [702,387](#) (62.41% of total turnout) votes were cast during in-person early voting and 344,470 (30.61% of total turnout) votes were cast on Election Day.

After the primary elections in June, Nevada election officials indicated that the general election would not be conducted primarily as a [“large-scale mail-in”](#) election. While in-person voting was expected to (and did) decrease in the 2020 general election compared to the 2016, election officials operated a significantly higher number of polling locations compared to the June primary.

⁶ Mail ballots can be rejected for things such as wrong envelope, ballot missing, incorrect identifying marks, and missing or mismatched signatures.

Concerns over national poll worker shortages prompted Nevada election officials to take steps to recruit and retain workers to staff polling places for the general election. In order to attract poll workers, certain counties [increased the hourly pay](#). Clark County had an existing program that worked with [businesses and nonprofits](#) to recruit poll workers while raising money for the partner organizations. It also had a [high school student volunteer](#) poll worker program. National and state-based organizations, such as [Power the Polls](#) and [America Votes Nevada](#), worked with election officials to recruit and place poll workers. Clark County, home to around 74% of Nevada's population in 2020, received thousands of applications after publicizing its poll worker shortage, enabling the county to [operate all 125 Election Day polling locations and 35 early voting locations](#).

There were also concerns surrounding the locations of polling stations and ballot drop boxes, and the lack thereof. Native American leaders in Humboldt County [sent a letter](#) to the county clerk, asking for more ballot drop boxes and polling stations. The letter noted that the nearest drop box for the average Native American voter was 45 minutes away, compared to 18 minutes away for the average white voter. Likewise, representatives in the Pyramid Lake Paiute Tribe and Walker River Paiute Tribe had to [sue the state of Nevada, Washoe County and Mineral County](#) to get polling places instated on their reservations. Thus, while Native voters [faced obstacles to voting](#) on Election Day, voter advocacy and determination enabled more of them to cast ballots.

Aside from isolated incidents, generally, the wait times for in-person voting in the general election were significantly less than during the June primary. An app developed in Las Vegas called [NowCrowd](#) provided voters with hourly updates on wait times and line sizes at 31 polling locations in Clark County. Voters experienced [long lines during the first day of in-person early voting](#) in Clark County due to technical glitches but, by the third day, all glitches had been fixed and [lines were much shorter](#). Nevada did not expand in-person voting options to include new innovations like universal curbside voting, but it did implement pandemic safety protocols. [Polling locations](#) were set up to encourage social distancing, all high-touch surfaces were regularly sanitized, and plastic shields were erected between poll workers and voters. Voters were encouraged, but not required, to wear a mask, and some localities had alternate locations for voters refusing to wear masks.

There were a few isolated incidents of protests being staged at polling and counting locations. In Nevada County, a pro-Trump rally held in a parking lot [near a ballot drop box](#) made it difficult for voters to access the drop box. Post-Election Day [protestors descended on the Clark County Election Center](#), where election workers were counting ballots, demanding the count be

stopped. In response, the county [increased security and started tracking cars](#) entering and leaving the election center.

A. Obstacles in Conducting the Election

Despite changing laws and the state having [less funding than anticipated](#) for voter education, Nevada's election officials were able to take concrete steps to alleviate voter confusion. The Nevada secretary of state's office reported receiving more than [3,000 calls per week](#) from voters, a sharp increase from its typical call load. Much of the confusion centered around the handling of mail-in ballots. The [USPS had sent out cards to every residence](#), regardless of state law or policy, urging voters to request a ballot at least 15 days before the election. But this advice was largely inapplicable to Nevadans because the state automatically mailed a ballot to every registered voter. Additionally, [national media coverage](#) of USPS delays fueled voter fear that their ballots would not reach officials in time. But because of Nevada's extended deadline (November 10) for ballots to be received by election officials, the Nevada Deputy Secretary for Elections expressed confidence that USPS delays would not be an issue within the state. To increase voter awareness and respond to fears [over mail ballot counting](#), election officials focused on [local media](#) and social media engagement to disseminate accurate information. The state also released a ["fact vs. myth" voting information sheet](#), and advertised [BallotTrax](#), a tool to help voters track the status of their ballot.

There were other minor incidents that sparked voter confusion, but none that appeared to significantly alter the election. For example, in Washoe County, election officials [pushed back](#) the date when it would mail ballots to registered voters, because of issues with the county's printing vendor. Initially, mail-ballots were supposed to be sent to voters in Washoe County on September 23 or 24. However, Washoe County corrected that statement within 24 hours, and a spokesperson told reporters that ballots would not be shipped until October 3.

In addition, AB 4 permitted third-party ballot collection, but a handful of local organizations in Clark County [wrongly advertised](#) themselves as *official* ballot drop-off locations. [Official](#) ballot drop-off locations are staffed by election officials who scan the ballots as the voter turns them in to mark them as received. Third-party ballot collection, on the other hand, simply authorizes others to collect voters' ballots to deliver to an official entity. Turning in a ballot to a third-party collector does not guarantee that the ballot will be delivered to the state. To prevent confusion, Clark County Registrar Joe Gloria contacted the organizations to ensure they did not use the word "official" when collecting ballots. There was [no shortage](#) of mail-ballot drop-off locations in

Clark County, and ballots mailed to voters included a prepaid postage return envelope, further reducing any need to rely on third-party drop boxes.

B. Funding

For the June primary, state election officials received about [\\$5 million](#) through federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding. They primarily used the funds to print the millions of ballots sent to voters. Initially, the Nevada secretary of state indicated that the November election would return to normal operations, including predominant in-person voting. An all-mail general election would have required [\\$4 million to \\$5 million more](#) than the state had in available funds at the time, she said. However, in August, state legislators approved a bill to [mail ballots](#) to all registered voters. Nevada's two largest counties, Clark County and Washoe County, also received [grants](#) from the [Center for Tech and Civic Life](#), a group which supports modernizing election operations. The grants were intended to help states and counties operate polling stations safely, recruit poll workers, and distribute voter education material, among other things. The initial list of potential grant uses can be found [here](#). Additionally, in September, Nevada lawmakers approved [\\$52,000](#) for the Secretary of State office, which went partially towards hiring two temporary workers in the election office to handle the sharp increase in calls from voters.

V. Post-Election Day

A. The Vote Count

Nevada's general election vote count garnered national attention, as it was among the last of the battleground states to be called. Despite inspiring [memes ridiculing](#) the slow pace of Nevada's count procedure, the count was actually progressing [in accordance with state law](#) and at the expected pace. To ease the tension, Secretary of State Cegavske [issued a statement](#) on November 4 to clarify why the results had not yet been posted. Nevada law requires all ballots to be counted within nine days of Election Day. Officials had warned that it could take up to [ten days](#) to complete the count, emphasizing they prioritized accuracy over speed.

Nevada's count appeared to be delayed for multiple reasons. As explained above, mail ballots that were postmarked by November 3 but arrived through [November 10](#) were counted per state law. In addition, ballots with signature defects could be cured and counted through [November 12](#). With a slim margin between Trump and Biden, all outstanding ballots were

crucial in determining the ultimate winner of the state. Lastly, voters who registered in person during early voting or on Election Day had to cast provisional ballots, and their voter registration had to be verified before their votes could be counted.

By November 7, several national media outlets, such as the Associated Press and the New York Times, had independently [called](#) Nevada for Democrat Biden. On November 24, Nevada [certified](#) the results of the general election: President-Elect Biden won the state by a margin of [33,596](#) votes. Several Nevada Supreme Court justices [congratulated](#) Secretary of State Cegavske for running a smooth election with a 77.3% turnout rate.

B. Obstacles: Legal Challenges and Conspiracy Theories

Nevada Republicans and the Trump campaign began legally challenging Nevada's general election processing and counting procedures as early as [October 23](#). The last case was filed on November 17 to request a Nevada state district court certify the Nevada election results for President Trump. The most substantive challenges concerned the use of the Agilis brand automated signature-matching software and purported lack of ability to observe counting procedures. None of the cases resulted in the ordering of election officials to cease using the Agilis software. One case [ended](#) because of a stipulation in which Clark County [agreed](#) to expand access for poll observers. Despite that agreement, a subsequent lawsuit was filed [asking](#) for closer observation (among other things) which was ultimately [dismissed](#). For a more detailed summary of each of the Arizona cases filed post-Election Day, and the disposition of each, read our Post-Election Litigation Analysis and Summaries [here](#).

Law v. Whitmer terminated Trump supporters' chances at overturning the Nevada election. In the case, voters supporting Trump [sued](#) in Nevada's Carson City District Court (a state court district) to overturn the Nevada election entirely. As with prior cases, the *Law v. Whitmer* suit also claimed that use of the Agilis software used in Clark County allowed fraudulent ballots to be counted and should not have been relied upon to verify signatures. The plaintiffs asked the court to invalidate 130,000 votes because they had been verified by the Agilis system and not by a human. Other [claims](#) in the case included allegations that provisional ballots were not properly separated from other ballots and that the procedure for accepting provisional ballots "was rife with significant problems and irregularities;" that the State of Nevada conducted "voting drives" that gave various prizes, such as raffle tickets, to Native American communities to encourage them to vote; that the electronic voting machines used at in-person polling places were "inherently unreliable and susceptible to being electronically compromised" due to a "shocking" lack of security; that at least 15,000 mail-in ballots were sent to voters who also

voted in other states; and that there was a lack of meaningful and transparent observation of the counting process. The case was [dismissed](#) for failing to provide “credible and relevant evidence” to substantiate the claims. The Nevada Supreme Court [unanimously affirmed](#) the dismissal.

Many conspiracy theories that have been floated, questioning the legitimacy of the 2020 presidential election results have implicated Nevada, some of which made appearances in post-election litigation. For example, one [complaint](#) included allegations that 3,000 ineligible voters, some who were deceased, had cast ballots. Two law firms representing the Trump campaign [sent](#) a letter to U.S. Attorney General Bill Barr with the alleged list of the ineligible voters. Attorney General Barr later [declared](#) that the U.S. Department of Justice had not found evidence of widespread voter fraud that could change the outcome of the 2020 election.

Small discrepancies with a local race for a Clark County commission seat added fuel to the conspiracy fire. The local election appeared on the same ballot as the presidential race. President Trump later [tweeted](#) on November 16: “Big victory moments ago in the State of Nevada. The all Democrat County Commissioner race, on the same ballot as president, just thrown out because of large scale voter discrepancy. Clark County officials do not have confidence in their own election security. Major impact!” The [discrepancies](#) involved only 139 of the 153,000 ballots cast in the commissioner race, which ended with a 10-vote margin of victory, prompting a recount.⁷ Clark County Registrar Joe Gloria did [identify](#) six people who were recorded as voting twice, but it was unclear if that was due to a mistake or fraud. When Clark County finished its [five-day recount](#) of the over 150,000 ballots, the 10-vote margin of victory for Democrat Ross Miller [increased to 30](#) over Republican Stavros Anthony.

As recently as December 17, President Trump [tweeted](#): “Just released data shows many thousands of noncitizens voted in Nevada. They are totally ineligible to vote!” The tweet did not cite or link to the alleged data. There were numerous other conspiracies questioning the validity of the 2020 election in Nevada.⁸

⁷ The [last redo](#) leading to a special election happened in a 2018 Republican primary for the county commission where there was a four-vote margin.

⁸ See “The Clark County Commission just threw out an election that represents almost 1% of the total votes cast in Clark County because there were too many ‘discrepancies’ to be sure that the results in that election can be certain. 153K votes in this election.” @AdamLaxalt, (November 16, 2020). “Votes were changed overnight using USBs in Nevada, of course the fake news media doesn’t want to report on it because it proves voter fraud. We’ve got to audit this election now. Or none of our elections will ever count again.” @iheartmindy, (December 19, 2020). “Previous Nevada voter fraud testimony matches Antrim County’s forensic report perfectly; Now that we see what happened in Antrim County, Michigan, a previous witness statement in Nevada seems much more compelling,” JD Rucker, NOQ Report (December 19, 2020)

VI. Conclusion

Nevada ultimately ran a safe and accessible election in November. By taking swift action to send registered voters mail-ballots in March to prepare for their June primary, and subsequently increasing the availability of in-person voting for the general election, Nevada was able to manage a record-high turnout despite the coronavirus pandemic. Not only did Nevada increase its turnout, but it also managed to lower the rate of mail-ballot rejections from June to November. And despite external complaints of counting delays, election officials completed the count within the anticipated and legally mandated time frame. As Nevada Supreme Court Justice James Hardesty [said](#) to Secretary of State Cegavske and her office during the certification of the Election, “They’re to be congratulated for carrying out this extraordinary successful election.”

<https://noqreport.com/2020/12/19/previous-nevada-voter-fraud-testimony-matches-antrim-countys-forensic-report-perfectly/> (An immediate, rapid, comprehensive forensic audit must be performed on all Nevada voting machines. We need to see what was changed and by whom. This is one of the bombshells that’s being missed by most, even Trump supporters.).”

North Carolina 2020: Election Administration in the Coronavirus Pandemic

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Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“North Carolina: 2020 Election Policies & Practices,”](#) Christopher Middleton (November 02, 2020).
- [“North Carolina’s 2020 Election Preparations,”](#) William Janover, Kyra Jasper, Campbell Jenkins, Christopher Middleton, Megha Parwani, Sandy Pecht, Georgia Rosenberg, Indy Sobol (August 27, 2020).
- [“Mail Voting Litigation During the Coronavirus Pandemic,”](#) Connor Clerkin, Lane Corrigan, Zahavah Levine, Aviel Menter, Christopher Meyer, Alexander Perry, and Theodora Raymond-Sidel (October 29, 2020).
- [“Defining Voter Intimidation: Six Battleground States,”](#) Matthew Simkovits, Amanda Zerbe, Adriana Stephan, Krithika Iyer, Tom Westphal (October 8, 2020).

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I. Introduction

North Carolina made significant efforts to ensure that voting in the 2020 general election was safe and accessible for voters despite the challenges posed by the escalating coronavirus pandemic. These preparations included changing rules around how elections are administered, what resources were available to local election officials, and how voters could cast their votes. The state legislature passed legislation at the recommendation of the North Carolina State Board of Elections (NCSBE) that provided protective equipment, relaxed the witness requirement for mail voting, and changed the rules for who could serve as poll workers. For the first time in a North Carolina election, the state created a notice-and-cure process that allowed voters to cure deficiencies with their mail ballots. However, this process was immediately challenged through litigation and potentially confused voters, who were using vote-by-mail more than ever before. There were also incidents of voter intimidation in North Carolina in 2020 that received much media attention, but the NCSBE did an effective job of ensuring that such intimidation did not keep voters from the polls.

Despite significantly reducing the overall rate of rejection for mail votes (even during an election that experienced a significant increase in mail voting), Black voters remained significantly more likely to have their mail votes rejected than white voters. This historical trend in North Carolina did not end in 2020, even with the new notice-and-cure process. Despite these areas that have clear room for improvement in future elections, the 2020 general election in North Carolina operated smoothly. President Trump carried the state of North Carolina, which saw fewer challenges and post-election lawsuits than other battleground states.

II. Lay of the Land

In North Carolina's presidential contest, Republican incumbent President Donald Trump defeated Democratic former Vice President Joe Biden by [1.34% or 74,483 votes](#). The results for other federal 2020 elections are detailed on the NCSBE website [here](#). Voters cast a total of [5.54 million ballots](#), out of 7.36 million registered voters, equating to a 75% voter turnout rate. By comparison, in the 2016 general election, 4.77 million ballots were cast out of 6.92 million registered voters, or a 69% voter turnout rate. Despite concerns that the coronavirus pandemic would stifle voter turnout, North Carolina in the 2020 general election saw both an increase in the total number of ballots cast (by about 750,000) and an increase in its voter turnout rate (by 6%).

The 2020 general election also saw a [significant change](#) in how voters chose to cast their ballots: only [16% of ballots](#) were cast in person on Election Day in 2020 (compared to 33% in 2016), 18% of ballots cast were by mail (compared to 4% in 2016), and 65% of ballots were cast via “One-Stop Early Voting” (compared to 62% in 2016). Less than 1% of the ballots cast were provisional in both 2020 and 2016. In North Carolina, people who are not registered to vote may register at early voting sites and cast their ballot in the same place at the same time, which is how the registration locations earned the “One-Stop” moniker.

North Carolina saw a significant increase in early voting in the 2020 general election with [83% of the ballots cast](#) (either by mail or in person) during the early voting period. In comparison, only [66% of the ballots in the 2016](#) general election were cast during the early voting period. Voters in the three general elections prior to 2020 consistently preferred voting via One-Stop early voting and 5% or fewer chose to vote by mail. In response to the coronavirus pandemic in 2020, however, the percent of voters voting by mail jumped to 18 percent, while the percent of voters casting ballots in person on Election Day fell to less than half of the 2016 figure.

Table 1. *Voting Methods in North Carolina General Elections.*

	Absentee By-Mail	One-Stop Early Voting	Early Voting (Absentee By-Mail + One-Stop Early Voting)	Election Day In Person	Provisional & Transfer
2020 General Election	18%	65%	83%	16%	<1%
2016 General Election	4%	62%	66%	33%	<1%
2012 General Election	5%	56%	61%	38%	<1%
2008 General Election	5%	55.5%	60.5%	38.5%	<1%

Numbers reflect the percentage of total ballots cast. Source: [NCSBE Website](#) and [2020 Election Data](#)

III. Background

To fully understand the 2020 general election in North Carolina, it is necessary to review legal rule changes, litigation, new legislation, increases in funding, and other adaptations that were made during the election. This section provides a brief overview of these changes.

Two significant and related legal rules in North Carolina's 2020 general election affected mail-in ballots: One, the state implemented a notice-and-cure process that allowed voters to remedy deficiencies in their mail ballots and, two, the state extended the deadline for the receipt and cure of mail ballots. Although the notice-and-cure process for the general election was temporarily suspended due to litigation, it was eventually restored.

For North Carolina, voting for the presidential contest began via mail-in ballots on [September 4, 2020](#), making North Carolina the first state in the country to begin mail voting in the 2020 election. But by October 4, the state's new notice-and-cure process was suspended following a [temporary restraining order](#) issued by U.S. District Judge James C. Dever III on October 3. These rules were changed again on October 14, 2020, U.S. District Judge William L. Osteen Jr. issued an injunction. The October 14 injunction: 1) prevented the state from curing via affidavit absentee mail ballots with missing witness signatures; 2) allowed other affidavit cures to proceed; and 3) kept the extended ballot receipt deadline of November 12, 2020, if the envelope was postmarked by, or before, November 3. Litigation over these details spanned both state and federal court, changing the rules for mail-in ballots after mail-in voting was already underway. Following Judge Osteen's injunction, the NCSBE, on October 17, 2020, reissued [Numbered Memo 2020-19](#), which laid out the final notice-and-cure process, cure deadlines, and relevant laws in North Carolina.

In response to the October 14 injunction, the [Trump campaign](#) and the [North Carolina Republican leadership](#) each filed separate appeals to the U.S. Supreme Court, seeking an emergency injunction to enjoin implementation of the rule changes and expedite an appeal on both the ballot curing rules and the mail ballot receipt deadline. On October 28, 2020 the Supreme Court, in a [5-3](#) vote, denied both applications for injunctive relief and maintained the November 12 extended deadline. Additionally, in [Berger v. North Carolina State Board of Elections](#), the state Republican leadership applied for injunctive relief from the U.S. Supreme Court to stay, pending appeal, an order by the North Carolina Supreme Court that left in place an extension of the ballot receipt deadline. However, the U.S. Supreme Court also denied that application, on a 5-3 vote October 29, leaving the ballot receipt deadline in place. This also meant that the ballot cure deadline was maintained as November 12, because the cure deadline was determined by the mail ballot deadline.

The laws surrounding absentee ballot procedures were significantly changed in the months preceding the election. A bipartisan group of state lawmakers filed and passed [a bill](#) (HB 1169) to address the problems of holding an election during a pandemic. The bill was signed into law on June 12. Major provisions included: 1) reducing the witness requirement for absentee ballots from two witnesses to one; 2) requiring that only one precinct assistant needed be a resident of the precinct; 3) permitting individuals trained and authorized by the county board of elections to assist voters with requesting absentee ballots and to deliver completed request forms for absentee ballots to the county board of elections; 4) permitting absentee ballots to be delivered in person or by mail, email, or fax by either the voter, their relatives, their guardians, or “any individual working as part of a multi-partisan team trained and authorized by the county BOE;” 5) tasking the NCSBE to submit a report outlining how county-approved individuals could enter nursing homes, hospitals, and other areas under quarantine in order to help voters request, fill out, or return absentee ballots; 6) expanding the kinds of photo IDs that could be used; and 7) matching \$2.2 million in order to receive the \$11 million from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The CARES Act awarded North Carolina almost \$11 million for administration of the 2020 federal election. [HB 1169](#) allowed North Carolina to access these funds by contributing the required 20% matching funds. The NCSBE used the money for: 1) one-time-use pens and styluses for each voter and sanitization of reusable supplies; 2) hand sanitizer and masks for voters, poll workers, and election staff; 3) social distancing tools and protective devices such as face shields, stanchions, and plexiglass shields at check-in stations; 4) facility rental fees to assist counties in moving polling locations to sites large enough to accommodate social distancing, including former department stores or grocery stores, if available; and 5) facility cleaning fees before, during, and after the election.

More than 30 counties in North Carolina received funding from the private [Center for Tech and Civic Life](#) (CTCL) grant program that was established to help local communities adapt their elections to the challenges presented by the coronavirus pandemic. Mark Zuckerberg and Priscilla Chan initially [gave \\$250 million](#) to the nonprofit group to support local government efforts to expand voter access, provide temporary staffing support, expand equipment to process ballots and applications, and provide nonpartisan education to voters (the couple ultimately donated \$400 million total to the 2020 election effort). The Zuckerberg-Chan effort to fund the U.S. election was [announced](#) after President Trump signed a coronavirus relief bill this spring with \$400 million in additional funds for state election assistance—an amount which fell short of the \$4 billion sought by voting rights leaders and Congressional Democrats. Officials in North Carolina used the CTCL grants to help fund its pandemic-related prevention measures for the election.

The primary runoff that North Carolina held in June 2020 illustrated the importance of recruiting reliable poll workers that would show up on Election Day during a pandemic. Poll workers [were difficult to recruit](#) for the June Republican primary runoff election, and many who signed up failed to show up to work on the day of the primary. In light of these issues and the resulting shortages in some areas, the NCSBE made [four recommendations](#) to Governor Roy Cooper and the state legislature to increase the number of available poll workers for the general election. Two of those recommendations were adopted in some form to assist recruitment efforts. First, SB 217 did not increase the pay for poll workers from the state minimum wage of \$7.25 per hour, but it did ensure that unemployment benefits were not affected by working the polls. This provision may have been a crucial incentive for some poll workers, given the number of people depending on unemployment benefits during the pandemic. Additionally, the governor and state legislature fully adopted the NCSBE's recommendation to eliminate the requirement that a majority of poll workers reside in precinct, which gave local precincts flexibility and a greater pool of potential workers.

IV. Mail Voting

Mail voting in North Carolina was significantly more popular in the 2020 election—with more than four times more voters choosing it in 2020 than in 2016. However, there was litigation over the rules governing mail voting, and that litigation was ongoing throughout most of the early voting period. Additionally, a long-standing trend in which the mail-in ballots of Black voters were more likely to be rejected than the mail-in ballots of white voters continued in the 2020 election. Despite that fact, overall, the rejection rate for mail-in ballots in the state were significantly lower than in previous elections.

A. Mail Ballot Return and Rejection Rates

In the 2020 general election, vote-by-mail increased significantly in North Carolina. Just 4% of ballots were cast by mail in the 2016 general election but, in 2020, that figure grew to [18%](#). By October 7, the state had already received [double the number of mail-in ballots](#) than the total it counted in the entire 2016 presidential election. And, by the end of the 2020 election, there had been more than five times the number of mail-in ballots cast. As shown by *Table 1* above, vote by mail historically accounted for only around 5% of ballots cast in North Carolina but, because of the coronavirus pandemic, more voters decided to avoid public contact at the polls and cast their ballots by mail. This increase required the NCSBE to adapt its counting and processing systems for the higher vote-by-mail volume.

In 2020, [32.9% of North Carolina voters](#) who requested a mail-in ballot did not return their ballots. This percentage more than doubled from the [15.6% of North Carolina voters](#) who requested but did not return a vote-by-mail ballot in 2016. [State board and election experts](#) anticipated this lowered rate of return in 2020 largely because they believed some voters were using vote-by-mail as a back-up plan in case the pandemic prevented them from voting in person.

Of the 1,026,364 mail ballots [returned](#) in North Carolina in 2020, just 797 (0.08%) were rejected for lateness (down from 1,038, or 0.5% in 2016). In total, 1,011,740 mail ballots were returned in time for counting and were not spoiled by the voter. Of those, only 10,179 were rejected (1.0%), mostly for deficiencies with witness certification. By contrast, of the 195,402 returned mail ballots in 2016, 3,801 (1.9%) were rejected. Despite the overall number of mail-in ballots cast in 2020 increasing by almost five-fold from 2016, the overall rejection rate fell. Furthermore, ballots arriving after the election during the 9-day grace period increased only slightly, from 11,489 in 2016 to 16,313 in 2020.

Because of [a lawsuit](#) brought by the League of Women Voters of North Carolina, the state was required to establish for the first time a notice-and-cure process for its absentee ballots. During the final month before Election Day, there were numerous lawsuits in federal and state court concerning the new notice-and-cure process. The new process allowed some rejected ballots to be cured by affidavit, instead of requiring ballots to be reissued to voters. Ballots could also be cured via affidavit until the ballot receipt deadline of November 12 (provided the ballots were postmarked on or before Election Day). These various procedural changes likely contributed to the reduced rate of rejected ballots.

Despite the decreased mail-in ballot rejection rate, the historic higher rejection rate for Black voters continued in 2020. According to recent [analysis by ProPublica](#) of the 2018 election, Black voters' ballots were rejected at more than twice the rate as those sent in by white voters. And voters across all other minority groups in the 2018 election were nearly twice as likely to have their mail-in ballots rejected, compared with white voters. In the 2020 general election, mail ballots cast by Black voters were [more than three times as likely](#) to be rejected as those sent in by white voters. Despite an *overall* improvement in the rejection rate for mail-in ballots, the troubling racial disparity between rejection rates persisted in the 2020 election.

B. Changes in Rules

The rules for mail-in voting in North Carolina were adapted to accommodate increased mail-in voting during the coronavirus pandemic. [Since 2001](#), any North Carolina registered voter could request, receive, and vote using a mail-in ballot without needing a special circumstance. In 2020, voters had three options for returning their completed absentee ballots: 1) return by mail, 2) return in person to the county board of elections office, or 3) return their voted absentee ballot to any polling place during the early voting period from October 15-31. Voters were not allowed to drop off their ballots at polling places on Election Day, but voters who had requested absentee ballots could vote in person if they brought their absentee ballot to the polls to be spoiled. North Carolina voters were able to request their absentee ballots by completing a request form and providing one of the following: the number from their North Carolina driver license or identification card issued by the North Carolina Division of Motor Vehicles, or the last four digits of their Social Security number. The request form had to be signed by either the voter, the voter's near relative, or the voter's legal guardian and returned by mail, fax, or in person to the voter's county board of election office. Because of a highly publicized incidence of illegal ballot harvesting in a 2018 Congressional district race, the North Carolina legislature passed [Senate Bill 683](#), which restricted who could request and fill out absentee ballot applications. But because of the coronavirus pandemic in 2020, the legislature passed [House Bill 1169](#) to decrease the witness requirement for absentee ballots, from two witnesses to one.

North Carolina did not have a signature matching verification process in the 2020 election, but county board staff inspected envelopes to ensure they were signed by the voter and witness and that the witness' information was printed ([October 17 Memo](#)). NCSBE Director Karen Brinson Bell instructed county officials that, "[a]bsent clear evidence to the contrary . . . presume that the voter's signature is that of the voter, even if the signature is illegible" ([October 17 Memo](#)). According to Director Bell, the state would rely on the witness requirement to verify the voter's identity ([October 17 Memo](#)). The NCSBE did maintain a requirement that county board staff confirm that the voter signed the Voter Certificate in the correct place. It also required that the witness or assistant helping the voter had provided their name and address, signed on the correct line, and sealed the ballot envelope, and that the voter had not indicated on their ballot that the voter was requesting a replacement ballot ([October 17 Memo](#)). The NCSBE gave specific instructions guiding county board staff on what sort of missing information did not require a cure ([October 17 Memo](#)). As discussed above, there was a period where this process was suspended, but it was reinstated and then continued through November 12, 2020 per the [October 17 Memo](#) after being suspended due to the October 4 guidance from the NCSBE.

The final rules governing the absentee ballot notice-and-cure process, ballot receipt deadline, and which defects were eligible to be cured via affidavit were determined after numerous state and federal lawsuits. The deadline for receipt of a 2020 election mail-in ballot was extended to November 12, as long as the ballot return envelope was postmarked on or before November 3. The deadline for curing a defect on a mail-in ballot was statutorily defined as the same day as the ballot receipt deadline; for the 2020 general election, the cure deadline was November 12. In the month leading up to the election, North Carolina had three other sets of rules outlined in the NCSBE's memos, detailed in the [November 2, 2020 North Carolina Healthy Elections Project Memo](#).

C. Litigation

There were several lawsuits in North Carolina contesting the notice-and-cure process and ballot receipt deadline. In September, North Carolina's State Board of Elections extended the state's deadline for receipt of mail-in ballots from Election Day by six days to allow ballots received through November 12 and postmarked by Election Day to be counted. The extension was made pursuant to a consent decree in federal district court. Republicans appealed to the Fourth Circuit U.S. Court of Appeals, but the appeals court, in a [12-3 vote](#), denied an emergency stay of the district court's order. Republicans next appealed to the [U.S. Supreme Court, but the Supreme Court allowed](#) the deadline extension to stand (Justices Clarence Thomas, Samuel Alito, and Neil Gorsuch dissented.)

Republican opposition to a settlement relaxing the state witness requirement was more successful. After the NCSBE settled a [suit](#) brought by North Carolina Alliance for Retired Americans, it [issued new guidance](#) in September to make both witness and signature defects [broadly curable](#) via affidavit. The Trump campaign and Republican North Carolina General Assembly leaders objected to the settlement and the new guidance. As discussed above, the Trump campaign and state Republican leaders were unsuccessful on most of their claims. But a federal court issued an [injunction](#) on October 14, that [required state officials](#) to spoil ballots that lacked a witness' signature but provide the standard notice-and-cure opportunity via an affidavit for other ballot errors, such as an incomplete witness address, a witness or voter signature on the wrong line, or a missing voter signature. As mentioned directly above, most aspects of this decision were reversed. However, the order denying the further relaxation of the witness requirement was [left in place](#) by both an en banc ruling of the US Court of Appeals for the Fourth Circuit, and [a decision](#) of the U.S. Supreme Court.

Plaintiffs in North Carolina also challenged the state for failure to cover the costs of mailing completed mail-in ballots. In [Stringer v. North Carolina](#), the plaintiffs alleged two constitutional violations. First, they argued that requiring voters to pay for postage to apply for and cast their votes constituted a poll tax, in violation of the Fourteenth and Twenty-fourth amendments to the U.S. Constitution. Second, plaintiffs asserted that forcing voters to pay for stamps is an impermissible burden under the *Anderson-Burdick* test. As of March 2021, the lawsuit remains pending. Courts across the country have largely denied similar motions for preliminary injunctions on both the poll tax and *Anderson-Burdick* ballot postage claims, generally stating that paying for postage is not a poll tax and that burdens on voters do not outweigh state interests.

Plaintiffs in North Carolina also unsuccessfully challenged the state's witness requirements for absentee ballots. In [Chambers v. North Carolina](#), plaintiffs were in ill health and many lived alone and were strictly following social distancing guidelines. They were concerned that complying with the state's requirement would expose them to the coronavirus. On September 3, 2020, the court denied their motion (i) to prohibit enforcement of North Carolina's witness requirement for absentee ballots during the pandemic, (ii) to require the counting of ballots that are otherwise valid but fail the witness requirement, and (iii) to educate the public about the invalidation of the witness requirement. The court found that plaintiffs did not have a substantial likelihood of prevailing on the merits and that the equities did not weigh in their favor, as the state would have to a) replace or modify existing ballot envelopes and voter guides costing hundreds of thousands of dollars, b) delay the mailing of mail ballots for all voters, and c) these actions would likely create voter confusion.

There was no photo ID requirement to vote in the 2020 general election in North Carolina because of [Holmes v. Moore](#) in state court. Plaintiffs sued the speaker of the North Carolina House of Representatives, the president pro tempore of the North Carolina Senate, and others, challenging a 2018 law ([SB 824](#)) that required that in-person and absentee voters, with narrow exceptions, to present one of eight forms of photo identification. The complaint alleged violations of the North Carolina Constitution, saying the law intentionally discriminates and disparately impacts African-American and Native American voters. The complaint also alleged the law unduly burdens the fundamental right to vote; unjustifiably creates separate classes of voters who are treated differently, thus denying the Constitution's guarantee of equal protection; imposes a financial cost and a property requirement as a condition of voting, in violation of the Free Elections and Property Qualifications Clauses; and impedes voters' ability to engage in political expression and speech through voting, in violation of the right of assembly and petition and freedom of speech ([Brennan Center](#)). The lower court denied plaintiffs' [motion for preliminary injunction](#) and granted defendants' motions to dismiss as to all but one claim (discriminatory intent). However, the North Carolina Court of Appeals [reversed](#)

[and remanded](#), directing the lower court to grant the requested preliminary injunction ([Brennan Center](#)). This order left in place the state court blocking of the photo ID requirement.

Lastly, plaintiffs sued the NCSBE in federal court, saying the state's absentee voting system did not provide an accessible method for blind voters who wished to vote without an assistant. The system requires voters to complete a paper ballot using an ink marking device and physically return the voted ballot to the country board of elections. The [complaint](#) alleged violations of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. It said the absentee voting program denies individuals with disabilities an equal opportunity to access the benefits of the program, that it fails to provide reasonable modifications to avoid discrimination on the basis of disability, that it excludes individuals with disabilities from participation in the program, and that it discriminates on the basis of disability ([Brennan Center](#)). A federal district court judge [granted](#) the [motions](#) for [preliminary injunction](#) on September 24, 2020, ordering the NCSBE to make a Democracy Live portal accessible to blind voters available as quickly as possible to ensure voters who were blind could register and vote independently in the 2020 election.

D. Performance

Overall, new laws and rules changes ensured that North Carolina was prepared for the surge in vote-by-mail during the 2020 general election. North Carolina did not experience significant shortages in ballots or delays associated with printing, as some other states did. North Carolina also established an extended deadline and notice-and-cure process that may have contributed to the increase in mail-in ballots. These rule changes were also likely responsible for the decrease in the overall mail-in ballot rejection rate, despite the significant increase in mail voting.

The biggest vote-by-mail issue that North Carolina experienced was the rapid rule change litigation in the months immediately preceding the election. The rule changes were caused by litigation over the deadline and notice-and-cure process up until days before the election. Additionally, another rule change required that errors with witness information be fixed by spoiling the ballot and reissuing it, instead of curing the deficiency with an affidavit, as done with other errors. Witness errors remained [the most frequent reason for ballot rejection](#) in the 2020 general election.

V. In-Person Voting

Overall, in-person voting decreased in North Carolina during the 2020 general election. In the 2016 general election, [95% of the vote was cast in person](#), with 62% of votes cast during in-person early voting and the remaining 33% of votes cast in-person on Election Day. By contrast, in the 2020 general election just [81% of votes were cast in-person](#). The percentage of those votes cast early increased slightly to 65%, but the in-person Election Day vote shrank to just 16%. The decrease in in-person voting on Election Day was likely attributable to the coronavirus pandemic and the corresponding increase in mail voting discussed above. Despite having fewer people in person, the state and local officials took laudable steps to guarantee in-person voting safety.

A. Accommodations

North Carolina took effective steps to address increased wait times during early voting. Some voters had waits of an hour or more to cast ballots in various counties, including the largest county, Wake County. The long wait times were partially caused by coronavirus safety precautions, as noted by Wake County Elections Director Gary Sims. Sims [stated](#) that “[n]ormally, I’d be able to put three voting booths in the same amount of space that I’m currently putting one, so definitely that’s the biggest contribution to [the increased wait times].” To address this issue, North Carolina’s eight largest counties added [a combined 7,000 hours](#) of early voting compared to previous elections. This was accomplished primarily through existing One-Stop early voting sites increasing their hours rather than increasing the number of sites. Overall, the number of hours made available at One-Stop voting sites increased nearly [80%](#) between 2016 to 2020, for a total of [77,887 hours](#).

In addition to the modest increase in early voting sites, election officials added [additional locations](#) for in-person early voting. Wake County [developed](#) a tool to provide voters with access to estimated wait times at each of the county’s 20 early voting locations. Though there were still long wait times in many areas, voters seemed to understand and [appreciate](#) the need for the process.

The state also took precautions to protect election officials and voters from transmission of the coronavirus while voting in person in the 2020 general election. These included enforcing social distancing and erecting barriers between election workers and voters at check-in tables. Voters were encouraged, but not required, to wear masks at early voting sites. However, election observers were required to wear face masks and adhere to social distancing guidelines. Any

observer who did not adhere to the mask rules or social distancing requirements was required to leave.

North Carolina voters were not asked to submit to a temperature check before entering polling places; under state law, voters could not be turned away from voting or denied entry to the voting place if they had a fever or other symptoms of illness. If a voting site generally required all non-voters to wear masks and submit to temperature screenings prior to entering the building, or if a municipality enacted the same requirements for all municipal-owned buildings, the voting place within the affected building was sectioned off so that voters, who did not go through the safety checks, could not enter other areas of the building (See [Numbered Memo 2020-30](#)). The North Carolina Department of Health and Human Services issued the [Interim Guidance for Election Voting Locations](#) that provided additional instructions to election officials. The effort seemed to have been successful because a NCSBE news release [stated](#) that there had been zero clusters of coronavirus cases tied to voting sites in North Carolina as of November 24.

North Carolina made [curbside voting](#) available at every in-person voting center in the 2020 general election, for voters unable to enter the voting place without physical assistance, due to age or disability. The term “disability” was defined to include voters unable to enter the polling place due to age or physical or mental disability, such as agoraphobia; those with medical conditions that increased their risk of severe COVID-19 complications; those who could not wear a mask due to a medical or behavioral condition or disability; and those experiencing symptoms of coronavirus. (See [Numbered Memo 2020-20](#)). Curbside voting allowed voters to cast a ballot while in their vehicle, and some locations provided a walk-up area. Curbside voters were required to sign an affidavit affirming that they were unable to enter the voting place to cast their ballot. Additionally, any voter who qualified for assistance could ask for help at an early voting site ([N.C.G.S. § 163-166.8](#)). Those with medical exceptions were allowed to vote curbside, but they were not required to do so.

North Carolina made use of several arenas or large venues as voting sites to allow for greater social distancing practices. Several of the arenas used in the 2020 election were large stadiums in Mecklenburg County, the second-most populous county in the state. Officials in Mecklenburg County made use of the [Spectrum Center, Bojangles Coliseum, and Bank of America Stadium](#). The large facilities were adapted so that both voters and election officials could effectively navigate the arena during the voting process. Arenas and other large venues helped accommodate the expected high voter turnout, facilitated safe voting, and decreased wait times at other voting locations. The director of elections for Mecklenburg County, Michael Dickerson, stated that the sports arena partnerships were successful. Dickerson specifically [noted](#) that the

publicity that came from sports teams offering their facilities assisted early voting turnout and “cascaded all the way down.”

B. Poll Worker Recruitment

North Carolina took significant steps to recruit a sufficient number of poll workers for the 2020 election. Poll workers were [difficult to find](#) in the primary runoff in North Carolina. Many poll workers called in absent on the day of election for the primary, creating shortages in some areas. NCSBE made [four recommendations](#) to Governor Roy Cooper and the state legislature to increase the number of available poll workers for the general election. And [SB 217](#) ensured that unemployed benefits were not affected by working at the polls and eliminated a requirement that a majority of poll workers at a precinct reside in that precinct. [HB 1169](#) allowed poll workers to serve in precincts other than their own. North Carolina also launched its Democracy Heroes program, which recruited [nearly 60,000 poll workers](#). By October 8, 2020, North Carolina had signed up enough poll workers to form a “[reserve corps](#)” for the general election, according to NCSBE Director Karen Brinson Bell. Outside groups, such as [Power the Polls](#) in partnership with [Democracy North Carolina](#), recruited 30,526 potential poll workers in North Carolina (8,789 in Mecklenburg County alone) through coalitions with businesses, social media platforms, and local stakeholders.

However, North Carolina did not adopt all [four](#) of the NCSBE’s recommendations to recruit and retain poll workers. First, the legislature and governor chose not to expand the student poll worker program. The NCSBE recommendation would have allowed students to serve in the role of judge or chief judge at voting sites and would have lowered the age requirement to 16 instead of 17. Second, they chose not to make Election Day a holiday and did not provide paid leave for state and county employees to serve as poll workers for the day. State and county employees were on average at a lower risk of complications from COVID-19 than typical poll workers, who have been, on average, around 70 years old. Lastly, they chose not to increase poll worker compensation. North Carolina was ultimately able to recruit and retain a sufficient number of poll workers to avoid major problems in the 2020 general election.

C. Election Day Incidents

North Carolina saw several high-profile incidents of voter intimidation during the 2020 general election. First, there was [an incident](#) in Graham, North Carolina, where police officers pepper-sprayed men, women, and children attending a get-out-the-vote rally. The rally took place on the last day for North Carolina residents to sign up for same-day voter registration. Those hurt in the incident [filed a suit](#) against the officers for both excessive force and

deprivation of the “right to vote free from intimidation, harassment, threats, or other forms of coercion.” Additionally, an [armed supporter of President Trump](#) was arrested after he returned with an open-carry firearm to a polling place that he had been banned from due to his previous loitering with a firearm.

North Carolina state law [prohibits](#) intimidating any legally qualified voter. Any direct or [indirect](#) attempt at voter intimidation is a Class 2 misdemeanor. Though the statute does not provide an explicit definition of intimidation, the State Board of Elections [provided](#) examples of conduct that could unlawfully intimidate voters. Officials were already concerned about voter intimidation, following statements that President Trump made at a rally in [Winston-Salem](#). President Trump encouraged attendees there to “[b]e poll watchers when you go [to the polls]. Watch all the thieving and stealing and robbing they do.” Shortly after this rally, the North Carolina State Board of Elections [reminded](#) voters they must be authorized to be poll observers on Election Day and that voter intimidation is illegal.

Early voting in North Carolina also drew [complaints](#) about voter intimidation. There were [documented incidents](#) of electioneering within the 50-foot buffer zone (in which campaigning and political paraphernalia is prohibited). There were incidents in which voters were videotaped, and instances of abusive language and racial slurs were directed at people at polling places. One former Wake County Commissioner and an official Republican poll observer at the Wake Forest early voting site was [cited and charged](#) after being accused of pushing an election worker. In Guilford County, poll observers were [seen not wearing masks](#), which is required for observers. Despite the documented issues, local NAACP leaders [remained optimistic](#) that overall people would be able to safely access the polls. Despite the seriousness of the voter intimidation described above, voters in North Carolina turned out in record numbers in the 2020 general election.

VI. Post-Election Day

The vote count in North Carolina went smoothly in the 2020 general election. North Carolina [was the second to last state](#) to be called by the Associated Press, with only Georgia called later. The delay to call the race in North Carolina was mostly motivated by the number of outstanding mail ballots that could have potentially allowed Biden to overtake Trump’s lead. In the past three North Carolina general elections, the Democratic candidate had won the majority of support in early voting and then eventually lost when the Election Day vote was counted. With so many outstanding “early votes” left to count after Election Day this time around, it was possible that Biden could have overtaken Trump’s Election Day lead. Additionally, the U.S.

Supreme Court's order upheld the extended absentee ballot receipt deadline of November 12. This meant that ballots could be accepted until November 12, as long as the ballot return envelopes had been postmarked on or before Election Day.

Table 2. *Number of Early Votes and Share Won by Candidate in 2020, 2016, 2012 General Elections.*

2020	Trump		Biden	
Method	Votes	Share	Votes	Share
Early (Mail or In-person)	2,168,626	47.01%	2,385,332	51.71%
2016	Trump		Clinton	
	Votes	Share	Votes	Share
Early (Mail or in-person)	1,474,296	47.1%	1,552,203	49.6
2012	Romney		Obama	
Early (Mail or in-person)	1,294,067	47.2%	1,426,129	51.9%

Source: North Carolina State Board of Election

Unlike other battleground states, in North Carolina, there were neither recounts nor litigation concerning the statewide federal races. While the count and call took longer than other states, North Carolina did not experience the same forms of scrutiny as did other states for the count and outcome of the race. President Trump, who along with his campaign were key drivers of litigation in other battleground states, carried the state of North Carolina and thus did not file claims challenging the state results.

Provisional ballots in North Carolina were less than 1% of ballots cast in the 2020 general election. The NCSBE confirmed that there were just over [40,000 provisional ballots](#) cast in the November election. In 2016, nearly [61,000 provisional ballots](#) were cast statewide, but only about 27,000 of them (44 percent) were counted.

After Election Day, each county board of elections met, before certifying the results, to make decisions about whether provisional ballots submitted by voters would be counted. Such meetings were held between Election Day and November 13, and approved provisional ballots

were added to the vote totals. There are specific rules about which provisional ballots can be counted, and the decisions are made by the five-member bipartisan boards for each county.

VII. Conclusion

North Carolina managed to conduct an accessible and safe election amidst the global pandemic. The state legislature and the NCSBE took action to ensure the monetary and human resources necessary were available to adapt their system for the election. North Carolina had record-breaking voter registration, total votes, and votes by mail, and had the lowest mail rejection rate in recent elections. Accomplishing these feats required local election officials to adapt their processes in order to receive, count, and tabulate a five-fold increase in mail votes. Despite confusion caused by the numerous lawsuits regarding the notice-and-cure process for voting, the election did not face the same challenges that were present in other states. North Carolina provided an example of a state implementing significant changes to effectuate a safe and fair election amidst unprecedented challenges. It is unclear whether the state will maintain these accessibility changes for future elections.

Pennsylvania 2020: Election Administration in the Coronavirus Pandemic

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Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“Pennsylvania Election Readiness,”](#) Jacob McCall & Jules Ross (Aug. 17, 2020)
- [“The 2020 Pennsylvania Primary Election,”](#) Jerry Yan, Nicole Collins, Bill Wermuth, Jeffrey Rodriguez, Mateo Massey, Sarah Maung, Sreya Guha (June 25, 2020)
- [“Pennsylvania: 2020 Election Policies & Practices,”](#) Axel Hufford (Nov. 2, 2020)

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I. Introduction

During the 2020 election, Pennsylvania became the pivotal state in determining the outcome of the presidential race. It also served as a critical bellwether state—an example among swing states of how election officials, political parties, and the courts would interact (and sometimes clash) before the election was officially certified. Although President-Elect Biden ultimately received over 80,000 more votes than President Trump in Pennsylvania (a margin of 1.2%), Biden's victory was far from certain on election night. As of Wednesday, November 4, President Trump was leading Biden by over 600,000 votes statewide. But the vast majority of the votes counted by November 4 were votes cast in-person on Election Day. Over the next several days, officials tabulated mail-in ballots and provisional ballots. By Friday, November 6, Biden's vote total exceeded President Trump's.

On Saturday, November 7, when the vast majority of news outlets had projected Biden would win Pennsylvania, it was clear that Pennsylvania's 20 Electoral College votes would give Biden the presidency, placing him over the required 270 electoral votes to win. But the story of Pennsylvania's 2020 election did not end there. Over the subsequent several weeks, Trump campaign officials filed multiple lawsuits, Republican state officials demanded election investigations, Trump's personal lawyers hosted several press conferences claiming voter fraud, and national Republican leaders called for the U.S. Supreme Court to hear several cases they hoped would overturn Biden's victory. Nevertheless, Pennsylvania certified its election results on November 24, officially confirming Biden's victory in the state and authorizing Biden's slate of electors to participate in the Electoral College.

II. Lay of the Land

In the presidential contest, Biden won by 80,555 votes—a margin of 1.2%. Statewide election results are detailed on the Pennsylvania Department of State's [Election Returns website](#), with additional information on mail-in ballots available on [the non-partisan U.S. Election Project research site](#) that has been endorsed by the Pennsylvania Department of State as an unofficial information dashboard. Of the total votes counted, 60.6% were cast on Election Day, 37.8% through absentee ballots (which includes both mail and early voting), and 1.5% through provisional ballots. This election cycle, voter turnout (measured as the percent of registered voters casting a ballot) was 76.5% out of 9,090,962 registered voters. In comparison, in 2016, voter turnout was 70.11% out of 8,722,977 registered voters.

III. Background

Pennsylvania's June 2, 2020, primary election highlighted several challenges to running a successful election during a pandemic, challenges which officials grappled with in the months leading up to November's general election. Pennsylvania first allowed no-excuse absentee voting in the June primary pursuant to a 2019 law, [Act 77](#). Prior to the passage of Act 77, absentee voting represented a very small percentage of the state's vote. In 2016, for example, just [5%](#) of the total vote was cast by absentee ballot. The new law eliminated the need for an excuse, but it would face several obstacles to implementation.

During the primary, Pennsylvania's 67 counties initially struggled to process the large volume of requests for mail-in ballots. Mail [delays](#) with the United States Postal Service (USPS) caused some voters to receive absentee ballots too late to return on time, an issue exacerbated by the fact that the state's ballot request deadline was May 26, just one week before Election Day. Although Governor Tom Wolf issued an executive order to extend by a full week the deadline for receipt of mail ballots in six counties, [tens of thousands](#) of ballots were received after the Election Day deadline and not counted. Pennsylvania also faced challenges counting mail-in ballots in a timely fashion for the primary; officials in Philadelphia County, Bucks County, Delaware County, and Montgomery County took over [two weeks](#) from Election Day to count all the mail-in ballots, and about [half](#) of all counties took at least one week to count primary ballots.

Moreover, during in-person voting for the June 2 primary, Pennsylvania faced large [reductions](#) in poll workers and polling places. Several large counties [closed over half](#) of all polling places, in part due to poll worker shortages and in part due to safety concerns around the coronavirus pandemic. All told, Allegheny County closed [85%](#) of its polling places, and Philadelphia County closed [77%](#) of its polling places. In the midst of the coronavirus pandemic and its increased risk of COVID-19 to senior citizens, many other counties in Pennsylvania also suffered severe [poll worker shortages](#), a problem exacerbated by [Pennsylvania law](#), which required poll workers to reside in the precinct in which they work.

In response to the challenges posed by Pennsylvania's June primary, election officials implemented several initiatives to prepare for the much larger expected turnout in the general election. Accommodations included the increased use of early voting [satellite elections offices](#) to reduce Election Day crowding and a [massive](#) poll worker recruitment effort that successfully addressed feared shortages throughout the state for the general election. In response to credible fears that the USPS could delay legally cast ballots, the Pennsylvania Supreme Court [allowed](#) officials to extend the deadline for receipt of mail-in ballots to November 6, so long as

ballots were postmarked on or before Election Day. The use of ballot drop boxes was also [expanded](#) in some counties. Officials [encouraged voters](#) to make use of provisional ballots on Election Day if they believed that their mail-in ballot might be rejected (if, for example, a voter realized after mailing the ballot that they had failed to include the secrecy sleeve or forgot to sign the attestation). While virtually all of these changes were eventually challenged in state or federal court, they all ultimately went into effect during, or in preparation for, the general election and helped Pennsylvania administer a more successful November election compared to the June primary.

To help fund additional costs associated with the general election, Pennsylvania received federal funds as a result of two related federal laws: the December 2019 [Consolidated Appropriations Act of 2020](#), which included \$425 million to states for election security purposes; and the March 2020 Coronavirus Aid, Relief, and Economic Security Act ([CARES Act](#)), which provided \$400 million to states in new Help America Vote Act (HAVA) emergency funds for the 2020 election cycle. Under the [2019 Consolidated Appropriations Act](#), Pennsylvania received \$15.2 million of federal funding toward 2020 election security, and the state contributed a 20% match of \$3 million in state funds. In the [2020 CARES-HAVA funding](#), Pennsylvania received an additional \$14.2 million in federal grant funds, and contributed a similar 20% state funds match (around \$2.8 million). Around \$7 million of these funds was used for equipment, personnel, and other expenditures related to implementing the state's Act 77 of 2019, as well as for "[r]ansomware . . . and other cybersecurity measures; [i]ncreased security of voting systems and ballots; and/or Increased expenditures to expand vote by mail and other voter services." Other funds were dispersed to Pennsylvania counties through individualized grants.

Additionally, many counties received private contributions from several sources, such as the nonpartisan Center for Tech and Civic Life (CTCL). Through CTCL's COVID-19 Response Grants Program, [22 Pennsylvania counties](#) and the city of Philadelphia received grants for the 2020 elections. This funding was part of a national effort by the nonprofit group to supplement local election department funds with private funds to help election officials address the challenges of adapting elections to the pandemic—challenges which in many cases were exacerbated by funding shortfalls. The grants were designed to [enable](#) local election officials to provide safe and secure voting procedures during the pandemic. Most of the funds were [used](#) to purchase personal protective equipment for voters and election workers, to recruit and train additional staff, to provide improved security, to establish in-person polling places, to process mail-in ballots, and to ensure emergency preparedness.

IV. Mail Ballots

A. Mail Ballot Statistics

Of the total [6,915,283 votes counted](#) during Pennsylvania's 2020 general election, 37.8% were cast via absentee ballot. This was a massive increase from the 2016 general election, in which only 4.3% of votes were absentee ballots. Moreover, in November 2020, over 80% of absentee ballots were returned prior to Election Day.

Many political observers feared that the high number of absentee ballots would result in an [unprecedented number of rejected ballots](#) in 2020, particularly due to the large number of voters using absentee ballots for the first time. In the 2016 general election, [1%](#) of absentee ballots (2,534 ballots) were rejected by election officials and, in the 2018 midterm election, [4.4%](#) of absentee ballots were rejected. Rejection rates for [first-time absentee ballot voters](#) tend to be higher than average. Despite the large number of first-time absentee ballot voters, however, just 0.282% of all absentee ballots ([7,411 ballots](#)) were rejected in the 2020 Pennsylvania general election. This was a significantly lower rejection rate compared to the 2016 cycle and the historical average.

Reports of [delays](#) in U.S. Postal Service deliveries in the weeks before Election Day prompted concerns that a massive number of ballots would be rejected due to late arrival. Historically, a substantial portion of rejected ballots in Pennsylvania have been rejected for [arriving too late](#)—from [86%](#) in 2014 to [53%](#) in 2016. In Philadelphia, a week before Election Day, it was [reported](#) that “42% of all first-class mail is taking longer than five days to be delivered,” up from just 13% at the start of 2020. In response to [concerns](#) that these delays would significantly increase the ballot rejection rate, a federal judge [ordered](#) the USPS on November 4 to conduct sweeps of Pennsylvania facilities to find any remaining mail ballots and to prioritize their delivery.

In the end, just [10,000 absentee ballots](#) arrived after November 3, representing a much lower rate of late ballots than in previous election cycles. It is unclear whether reports of USPS delays were exaggerated or, perhaps more likely, that a larger percentage of the electorate submitted their absentee ballots early (or used an alternative ballot delivery method, such as a ballot drop box or in-person ballot drop offs) in response to media reports about potential mail delays and [warnings](#) from election officials and get-out-the-vote campaigns.

B. Vote-by-Mail Rules

Voters in Pennsylvania were able to vote by mail without an excuse for the first time in 2020. To receive an absentee ballot, voters were required to request one in advance. While there was ultimately widespread access to mail ballots in 2020, Pennsylvania had limited experience administering mail voting because no-excuse vote-by-mail was first enacted in 2019. For instance, Pennsylvania voters requested [107,000](#) absentee ballots in the 2016 primary and more than [1.8 million](#) mail ballots for the June 2, 2020, primary. In preparation for the 2020 general election, Pennsylvania officials [rejected around 370,000](#) requests for mail ballots, about 20% of all absentee ballot requests processed after the June 2 primary. But 90% of these rejections were identified as accidental duplicate requests. According to [The Philadelphia Inquirer](#), “people who had requested mail ballots for the state’s June 2 primary did not realize they had [also] checked a box to be sent ballots for the general election.”

Pennsylvania voters were also given multiple options for returning their completed absentee ballot before or on Election Day. In addition to mailing in their ballot, voters could use drop boxes in most counties (which became available after a [legal battle](#)). Pennsylvania voters could also vote in person before Election Day through a process called absentee in-person voting. The period for absentee in-person voting ran from Monday, September 14, 2020, to Tuesday, October 27, 2020. In Philadelphia, voters could drop off completed absentee ballots at early voting centers, according to election officials. Finally, any voter could drop off a ballot at that voter's [county election office](#) by 8 p.m. on Election Day.

Under state law voters were not able to drop off completed absentee ballots at their polling place on Election Day. Instead, if a voter who had requested to vote by mail came to their polling place, they could hand over their absentee ballot to poll workers [to be voided](#). At that point, voters were allowed to vote on the machines as though they had never requested a mail ballot.

C. Signature Verification

Absentee ballot envelopes in Pennsylvania required a signature, printed name, date, and address, but Secretary of the Commonwealth Kathy Boockvar advised county election officials not to reject ballots based solely on signature mismatches. Officials could determine whether the ballot envelope was missing a signature and, if it was, reject a ballot on that basis.

Pennsylvania has historically reviewed and rejected absentee ballots by comparing the signature on the ballot envelope to the signature stored in the voter file. The [state laws](#) do not

provide any clear standards for assessment of signatures; they simply call for a “comparison of elector’s signature with the signature on the district register.” Due to litigation over the lack of statewide signature verification standards before and after the June 2020 primary, Secretary Boockvar published [new guidance](#) on September 11, 2020, instructing the 67 county boards of elections not to “set aside returned absentee or mail-in ballots based solely on signature analysis.” The guidance stated simply that, “The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.” Accordingly, Pennsylvania election officials would no longer engage in signature matching to verify a voter’s identity for a ballot.

Moreover, on October 10, a [federal court dismissed](#) a lawsuit by the Trump campaign and Pennsylvania Republican Party. The court [held](#) that the “Election Code does not require signature comparison for mail-in and absentee ballots or ballot applications.” It also held that the lack of a signature comparison does not violate substantive due process. Finally, on October 23, the Pennsylvania Supreme Court issued a [unanimous decision](#), holding that county boards of elections cannot throw out absentee ballots due to alleged signature mismatches.

In the event the ballot envelope was *missing* a signature, however, the ballot was considered defective and the voter was required to complete an affidavit to validate the ballot. While there is no state requirement that election officials notify voters of this ballot defect to provide them an opportunity to cure it, some counties allowed political parties to notify voters that their ballots were defective and to encourage them to cure, an action that caused some controversy (discussed in section E. below). For a ballot with a missing signature to be counted, the voter [had to](#) subsequently appear before or provide to the county board of elections an “electronic, facsimile, or paper copy” of an affirmation that they were, in fact, the voter. Codified guidance provided that voters with serious vision impairments or who have “lost the hand with which he was accustomed to sign his name, or shall have been otherwise rendered by disease or accident unable to sign his name” were nonetheless required to “establish [their] identity to the satisfaction of the election officers.”

D. The Secrecy Sleeve

Pennsylvania was one of several states that provided absentee voters with a “secrecy sleeve,” or special inner envelope to hold the marked ballot inside the return envelope. The secrecy sleeve protects the privacy of the voter’s choices while election officials are verifying the absentee voter information provided by the voter on the back of the external return envelope.

On September 17, 2020, the Pennsylvania Supreme Court [ruled](#) that absentee ballots arriving without secrecy envelopes had to be rejected and, therefore, not counted in the November election. Four days later, on September 21, Philadelphia's City Commissioner Lisa M. Deeley sent a [letter](#) to the state legislature, urging it to take immediate action in response to the court decision. Describing the secrecy envelope requirement as a "vestige of the past" that only served to "disenfranchise well intentioned Pennsylvania voters," Deeley noted that secrecy sleeves had lost relevance over time. In a previous era, secrecy sleeves protected the identifying information of voters because absentee ballots were counted in public view at individual polling locations. Today, however, absentee ballots are counted at a central location and through an "industrialized process," Deeley explained, so their primary purpose has disappeared.

In addition, Deeley wrote that removing the secrecy sleeve requirement would save thousands of dollars per year and speed up the counting process. Without any secrecy envelopes, for example, absentee votes could be removed from envelopes at 24,000 ballots an hour (double the current rate) and scanned at 32,000 ballots an hour. At that speed, Deeley wrote, "there is no opportunity to stop, or even slow down, and identify how an individual voted—anonymity is maintained."

Because all absentee ballots arriving without sleeves would be rejected, Deeley estimated that over 100,000 ballots in Pennsylvania could be thrown out during the 2020 general election, based on estimates from previous elections and the massive increase in first-time absentee voters expected in 2020. It is difficult to independently estimate the impact of the court decision because many counties (including Philadelphia) [did not keep track](#) of so-called "naked ballots" during the primary. However, [Mercer County](#) and [Lawrence County](#) tracked naked ballots and found that five percent of all absentee mail ballots lacked a secrecy envelope. According to Lawrence County's elections director, [Ed Allison](#), more ballots were rejected for lack of the secrecy sleeve during the primary than for arriving late.

The Pennsylvania Supreme Court decision came down to whether the statutory language of Pennsylvania's secrecy envelope provision was mandatory or discretionary. Justice Baer's [majority opinion](#) concluded that the provision was mandatory and that, "[w]hatever the wisdom of the requirement, the command that the mail-in elector utilize the secrecy envelope and leave it unblemished by identifying information is neither ambiguous nor unreasonable." The decision also ruled on a number of other voting-related matters, allowing ballots to be counted if received up to three days after Election Day (as long as they were postmarked by Election Day), permitting the use of ballot drop boxes, and blocking the use of partisan poll watchers from out-of-county. After the decision, Pennsylvania Republicans [asked](#) the U.S. Supreme Court to stay the holding but, on October 19, the Supreme Court [denied the request](#), with four [justices dissenting](#). The decision also sparked a flurry of voter education efforts from nonprofit

organizations and political campaigns, which included graphics and videos that highlighted the now-required secrecy envelope.

After the court decision, election officials [urged voters](#) to make use of provisional ballots if they believed that they had failed to include the secrecy sleeve in their absentee ballot. The Pennsylvania Department of State released a statement that said, “[i]f the voter believes that he/she has not returned or cast the ballot successfully or otherwise contests his/her ballot status, the poll worker shall provide the voter a provisional ballot.” According to *The Philadelphia Inquirer*, “[i]f your original mail ballot is rejected, the online status tracker will say so and you will receive a rejection notification . . . [and] after about a week, you can [check the status of your provisional ballot online](#) to know whether it was counted.”

Ultimately, however, only [3,000](#) ballots were rejected for lacking secrecy sleeves, and only about [7,000 ballots](#) were rejected *in total*, for all reasons statewide during the general election. Thus, it appears that Deeley’s concerns were either unwarranted or that media coverage of the issue and non-profit advertising and education successfully reminded the vast majority of Pennsylvania voters to include the secrecy sleeve (or, in the alternative, to cure their vote through a provisional ballot on Election Day).

E. Ballot Tracking and Opportunity to Cure

Pennsylvania provided voters with a [ballot tracking website](#) which allowed voters to check the status of their absentee ballot. A [technical glitch](#) in September initially indicated to some voters that their ballots had already been mailed before ballots were even printed. The ballot tracking website functioned by election officials scanning the barcode on every received ballot, tracking the ballot’s status in the state’s voter database, and sending notification emails to voters at various stages.

When voters made technical errors resulting in the rejection of their absentee ballots, however, Pennsylvania did not have consistent rules on notifying voters of these rejections. Jonathan Marks, Pennsylvania’s deputy secretary for elections and commissions, advised all counties to scan all flawed ballots as quickly as possible and mark them as canceled in order to trigger notification emails to voters. Some counties (such as Lycoming County) decided to mark these ballots as received with [no indication of any problem or ballot rejection](#). Other counties, meanwhile, marked them as cancelled and sent voters a warning email. Some counties went even further, attempting to contact voters via mail or phone to help voters “cure” their ballot defects. Allegheny County, unlike all other Pennsylvania counties, mailed the flawed ballots back to voters but did not mark these ballots in the tracking system at all. In addition, state

officials [urged voters](#) to make use of provisional ballots if they believed that their ballot might be rejected (such as if they failed to include the secrecy sleeve or forgot to sign).

On November 2, the day before Election Day, dozens of voters waited in line outside of [Bucks County's courthouse](#) to correct issues with their absentee ballots after receiving a notification from the county. That same day, Pennsylvania's secretary of state also sent [guidance](#) to all county boards of elections that "the county boards of elections should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected and should promptly update the [online ballot tracking] system." While some counties followed this guidance on Election Day, several counties—including Blair, Berks, Carbon, Clinton, Dauphin, Lancaster, Lycoming, and Perry counties—refused to accept the guidance, alleging that it violated state law. Citing Pennsylvania's election code provision that "[n]o person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of a pre-canvass meeting prior to the close of the polls," these counties failed to provide any names of voters with rejected ballots to official poll workers and, later, several lawsuits were filed over the legality of the guidance itself. At least one of these lawsuits, filed by Republican candidates, [sought](#) to block voters whose ballots had been initially rejected from casting provisional ballots.

Ultimately, although Pennsylvania law does not explicitly define "ballot cure" processes, a Pennsylvania court ordered such provisional ballots to be segregated (in case an appeals court decided they should not be counted) but [denied](#) the lawsuit's request for an order that the ballots not be counted. Similarly, a court in Montgomery County also [rejected](#) a request for a temporary restraining order regarding the county's ballot cure process.

F. Early Voting

In 2020, Pennsylvania voters could vote in person before Election Day through an early voting process officially called "absentee in-person voting." Early voting ran from Monday, September 14, 2020, to Tuesday, October 27, 2020. As part of absentee in-person voting, Philadelphia and its adjoining counties expanded the use of early voting [satellite elections offices](#) where voters could request and then submit a mail-in ballot on the spot. In Philadelphia alone, there were at least [17 early voting locations](#). According to the state's [website](#), "satellite locations may be open additional hours, including weeknights and weekends." In addition, each satellite location had a secure ballot box to store completed mail-in and absentee ballots submitted at the location. Only [seven of the state's 67 counties](#)—Philadelphia, Centre, Chester, Delaware, Allegheny, Bucks, and Montgomery—opted to create satellite offices for early, in person voting.

Early voting locations in Pennsylvania were not traditional polling places where voters cast in-person ballots. Instead, they were [absentee in-person voting locations](#), allowing voters to request a ballot in person, receive it on demand, fill it out, and return it [all during the same visit](#). This caused [some controversy](#) on the last day of early voting in Pennsylvania, where some counties (such as Philadelphia) allowed voters who were *in line* by 5 p.m. (the absentee request deadline) to still cast early ballots, while other counties imposed a hard stop-deadline and turned voters away after 5 p.m. on October 27.

Some officials expressed concerns about recruiting enough poll workers to keep polling places efficient and operational both before and on Election Day. Many counties in Pennsylvania, for example, struggled during the summer to address [poll worker shortages](#). Because of COVID-19, many poll workers, a majority of whom, historically, are over 60, were unable or unwilling to participate in 2020. This problem was exacerbated because [Pennsylvania law](#) required poll workers to reside in the precinct in which they served. Poll worker shortages also increased the time it took to tabulate results because poll workers also helped count [mail-in ballots](#). Nevertheless, despite these challenges, election officials in most counties ultimately [had a surplus](#) of volunteers for the general election, including for early satellite offices.

G. Vote-by-Mail Litigation

On September 17, 2020, the Pennsylvania Supreme Court [ruled](#) that absentee ballots in Pennsylvania should be counted if received within three days after Election Day as long as they were postmarked by the time polls closed on November 3. The [decision](#) incorporated various recommendations from Pennsylvania's secretary of state, including a ruling that ballots lacking a postmark (or having a non-legible postmark) could be counted unless there was evidence that they were mailed after the polls closed. Pennsylvania Republicans [asked](#) the U.S. Supreme Court to stay the Pennsylvania Supreme Court decision pending appeal but, on October 19, the U.S. Supreme Court—with one vacant seat due to the death of Justice Ruth Bader Ginsburg just a month earlier—[denied the request](#), with four of the eight justices dissenting.

Four days later, on October 23, Republicans returned to the U.S. Supreme Court, [asking the court](#) to rule, before Election Day, on the merits of their case against counting absentee ballots received after Election Day. On October 28, Pennsylvania's Department of State confirmed that election officials would be segregating all absentee ballots arriving between 8 p.m. on Election Day and 5 p.m. on November 6 in anticipation of a U.S. Supreme Court ruling. Later that day, the U.S. Supreme Court [denied the GOP request](#) to decide the merits of the case before Election Day but left open the possibility that it could rule on the merits after November 3. On November 6, Justice Samuel Alito [ordered](#) that all absentee ballots received after 8 p.m. on

November 3 be segregated and that, if such ballots were counted, that their tally be counted separately. The ballots in question, however—approximately [10,000](#)—represented a far smaller number than the 80,000-plus margin by which Democrat Biden beat Republican Trump in Pennsylvania; and, therefore, the disposition of the segregated absentee ballots did not delay the state’s [certification](#) of the election results.

In the two months following Election Day, the Trump campaign and GOP allies filed [24 lawsuits in Pennsylvania](#) contesting various aspects of the presidential election, more than they filed in any other state. Most cases related to aspects of Pennsylvania’s absentee voting procedures, such as the delivery and processing of absentee ballots in the state and the rights of election observers to oversee the process. On Election Day itself, Republican groups filed three lawsuits in Pennsylvania seeking to prevent voters from being notified if their absentee ballots were defective or from curing their ballots: [Barnette v. Lawrence](#), [Hamm v. Boockvar](#), and [In re: Motion for Injunctive Relief of Northampton County Republican Committee](#). None of these lawsuits were successful.

Other lawsuits [requested](#) to exclude absentee ballots with technical errors, such as missing dates, addresses, or partially unsealed envelopes. The Trump campaign brought several unsuccessful election board challenges, all of which were dismissed or [denied](#). State senate candidate Nicole Zicarelli piggybacked on the president’s strategy and brought [three election board challenges](#), two of which succeeded, resulting in the disqualification of a total of 474 ballots.

Several lawsuits sought to prevent certification of the election results. For example, one [filed](#) on November 9 alleged mail-in ballot fraud and the requested relief was [denied](#) by the Third Circuit U.S. Court of Appeals. Another, filed November 21 by Congressman Mike Kelly, [challenged](#) the constitutionality of Act 77’s no-excuse mail-in voting provision. The case was [dismissed](#) by the Pennsylvania Supreme Court but rose all the way to the U.S. Supreme Court, which declined to grant preliminary injunctive relief and later declined certiorari.

Finally, even after state officials certified the election results on November 24—that Joe Biden [won](#) 50.01% of the vote compared to President Trump’s 48.84%—several lawsuits sought to decertify Pennsylvania’s election results. And litigants continued to pursue attempts to reach the U.S. Supreme Court. The Trump campaign bundled one pre-election and two post-election cases and [appealed them to the U.S. Supreme Court](#), which [denied certiorari](#) on February 22, 2021. Even the state of Texas filed a [lawsuit](#) in the U.S. Supreme Court, arguing that the alleged maladministration of election practices in certain other states, including Pennsylvania, diluted the votes of Texas voters. On December 11, 2020, the Supreme Court [denied](#) Texas’s motion to file its complaint, for lack of standing, explaining that the state of Texas failed to demonstrate “a

judicially cognizable interest in the manner in which another State conducts its elections.”

In the end, plaintiffs lost all but two of the 24 post-election cases filed in Pennsylvania, and the two wins resulted in disqualification of a total of 474 ballots. But the lawsuits succeeded in amplifying fraud allegations, claims of election misconduct, and conspiracy theories that would undermine many voters’ confidence in the election. For a more detailed summary of each of the Pennsylvania cases filed post-Election Day, and the disposition of each, see the Stanford-MIT Healthy Elections Project’s report on [Post-Election Litigation Analysis and Summaries](#).

V. Election Day Voting

A. In-Person Voting Statistics

Of the total votes counted, 60.6% of the state’s 6.9 million votes (4,193,889 votes) were cast in person on Election Day. This is a significant departure from 2016, when almost all votes were cast in person on Election Day (and only 4.3% of votes were mailed-in).

B. In-Person Voting Performance: Lines and Wait Times

Throughout Election Day, the Pennsylvania Department of State’s election response team monitored and addressed all reported issues, including incidents of polling places opening late, long lines, and confusion over provisional ballots issued to voters who received a mail-in ballot but preferred voting in person at the polls. Several polling places opened late, including “Pittsburgh 5-5,” which was [delayed](#) because the election judge’s vehicle, containing the election suitcase needed to open the polling place, was stolen. The suitcase did not contain any ballots and has since been recovered.

Most lines were well-managed throughout the state, and voters did not encounter lengthy wait times at their polling places, with few exceptions. Election Day witnessed an early morning rush in many polling places across the state. In [Washington County](#), there were 200 people in line at multiple polling places by the time the polls opened at 7 a.m.. Similarly, polls across Allegheny County had [around 100 voters in line at the time of opening](#) and little to no wait towards the evening. Also in [Allegheny County](#), there was also a long wait at the Christ Episcopal Church polling place, where two precincts were located inside the one church. Some voters waited in line for an hour to go into one entrance, only to discover that their voting precinct was inside

the other entrance, or vice versa. In Montgomery County, however, some voters encountered wait times of up to 80 minutes. Some voters in East Manchester Township, [York County](#), experienced the longest wait time of the day—four hours. Election Commissioner Julie Wheeler provided [three reasons](#) for the long wait: limited building occupancy due to social distancing requirements, checks to make sure that “no one who mailed a ballot also voted at the poll,” and higher-than-expected voter turnout. Two additional poll workers were sent to the site to speed up the voting process.

C. Safety Provisions for In-Person Voting

The Department of State did not mandate mask usage but [recommended](#) and [strongly encouraged](#) voters to “wear a face covering and follow social distancing guidelines.” Voters were not to be turned away if they were not wearing a face covering but were urged to wear masks to “protect themselves, other voters and poll workers.” To make sure polling places had the necessary supplies, the Pennsylvania Department of State and the Pennsylvania Emergency Management Agency [provided](#) counties with masks, hand sanitizer, sneeze guards, marking tape for social distancing, and other supplies.

[Leading up to the election](#), the Pennsylvania Department of State released [guidelines](#) for polling place management. Recommendations included:

- Remote training of poll workers, including online Q&A sessions and pre-recorded videos;
- Provision of personal protective equipment (PPE), such as gloves and masks, for poll workers;
- Physically marking out spaces for voters to stand in line and vote at a safe distance;
- Posting poll workers as “greeters” to explain social-distancing protocols;
- Making hand sanitizer available on entry and exit from polling places; and
- Maintaining separate check-in and polling areas for “consolidated” precincts where voters from multiple precincts shared the same polling place.

Despite the many guidelines in place to promote a safe, in-person voting experience, a [COVID-19 outbreak](#) among election staff in Westmoreland County a few days prior to Election Day infected 11 staffers, leaving only two full-time and one temporary elections bureau staffers on the job. All other department employees, including the director, either tested positive or were quarantined at home as they awaited test results. Many of the volunteer election workers [quit their positions](#) in response to other volunteers not wearing masks and taking the

necessary precautions to stop the virus' spread. The outbreak significantly delayed the county's certification of its votes.

D. Polling Places

Statewide, the secretary of state noted that Pennsylvania had 9,152 polling places staffed by about 45,000 poll workers. In a shift from the June 2 primary election, the number of polling places across counties was close to normal levels for the general election. Election officials in most counties had a surplus of volunteers, as “many [thousands of volunteers](#) signed up to be poll workers around Pennsylvania, including over 20,000 volunteers in Philadelphia for just 8,500 poll worker positions.” As a result, counties were able to operate many more polling places than they did during the primary. In [Montgomery County](#), 325 polling places were returned to their individual polling locations. In Allegheny County, all [1,323 usual polling places](#) were open.

A few counties gave voters incorrect locations for polling places, causing considerable voter confusion over their assigned polling place. In Philadelphia, “the polling place locator tool listed different voting sites than the state,” according to a review by Stateline (an initiative of the Pew Charitable Trusts) and the Center for Public Integrity. This error was discovered and corrected on the polling place locator tool the night before Election Day. In [Allegheny County](#), officials found that some polling locations had been listed incorrectly in the public facing interface of the Statewide Unified Registry of Electors (SURE) system, and changes in other polling places had not been updated. County officials sent letters to voters in those polling precincts just days before the election and also encouraged in-person voters to use online tools to verify information before Election Day. Similarly, in [Chester County](#), around 875 voters were sent a last-minute notification listing an incorrect polling location. The county attempted to remedy the mistake by emailing voters and posting notice of the error on social media. Despite these efforts, at least 20 people went to the wrong polling place, an elementary school, and had to be redirected to the correct one, a fire station, around four miles away. Some voters had stood in line for close to an hour before being told of the error.

E. Poll Workers on Election Day

After severe poll worker shortages during the June 2 primary election, state election officials and voting rights groups launched wide-reaching campaigns and recruitment drives to encourage younger voters to sign up as poll workers for Election Day. The department of state increased the stipend paid to poll workers, from \$140 to \$200, the maximum amount permitted by state law, plus \$50 for training. The State Department's Bureau of Professional and

Occupational Affairs encouraged licensing boards to incentivize their licensed professionals to volunteer as poll workers by making them eligible for up to two hours of continuing education credits for serving as poll workers. And outside civic groups, such as the nonpartisan [Power the Polls](#), in partnership with [The Voter Project](#), recruited tens of thousands of potential poll workers through coalitions with businesses, social media platforms, and local stakeholders.

These efforts enabled the state to go into Election Day voting with more than 45,000 poll workers staffing 9,152 polling places and with most counties across the state having a surplus of poll workers. In Philadelphia, for example, more than 20,000 people [volunteered](#) for 8,500 positions. Philadelphia also created “reserve” lists of volunteers in case of last-minute cancellations or unexpected needs. In Allegheny County, more than 12,000 people volunteered to fill about 6,600 slots. Despite the surplus, poll workers in Allegheny County reported uneven staffing at polling places—some were short workers while others had many more than needed.

In interviews by Spotlight PA and Votebeat on Election Day, eight Allegheny County poll workers [described](#) “a high-wire act of learning important election procedures on the fly, often with anxious voters and other poll workers who also had little to no training.” A lot of the issues raised by volunteers were attributed to unclear communications with hard-to-reach county workers prior to Election Day, late assignment notifications, inadequate training, and long-standing state level deficiencies.

In Pennsylvania, poll worker training is left entirely to the discretion of individual counties; therefore, the length and quality of the training varies greatly across the state. A post-election report from Erie County’s clerk [found](#) “significant instances where judges of elections lacked understanding about the basic operation of the polling place” and concluded that poll workers needed more training on how and when to utilize provisional ballots. Voting rights organizers in Allegheny County claimed they received [reports](#) of multiple poll worker mistakes. Poll workers in several polling locations, for example, did not know how to properly discard or “spoil” a mail-in ballot so a voter who had applied to vote by mail could vote in person instead, they said, and in some of these cases poll workers incorrectly issued voters provisional ballots.

F. Provisional Ballots

Provisional ballots were required to be adjudicated individually by county election boards to determine if they could be counted. This was done by first confirming the voter was registered to vote in the precinct in which the ballot was cast and then confirming whether the voter had already voted by mail. If the voter had already voted by mail, the provisional ballot was not counted. In cases where voters had applied for and received a mail ballot and then chose

instead to vote in person at a polling place, voters were required to bring the absentee ballot declaration envelope and their ballot with them to the polling place to be “voided” before they could vote on a machine. Voters arriving without their mail-in ballot were allowed to submit a provisional ballot, but election boards would have to verify that the voter did not previously vote by mail before the provisional ballot could be counted.

On Election Day, a few counties ran low on provisional ballots (including some Philadelphia precincts which briefly ran out of provisional ballots), but, in every case, election officials were able to quickly resolve the issue. Pennsylvania counties began counting provisional ballots on November 6, after most mail-in and absentee ballots had already been counted. Some election officials had been [concerned](#) that large numbers of people trading in their mail ballots for provisional ballots would be time-consuming and, therefore, lengthen lines and wait times at polling places, but there were only limited instances of excessive lines on Election Day.

G. Voter Intimidation

There were widespread concerns of potential violence and voter intimidation at polling places, after President Trump, during the first presidential debate, [encouraged](#) supporters to go to the polls in Philadelphia and “watch very carefully.” While there were some reports of polling place incidents, the worst fears did not materialize. On Election Day, the Philadelphia District Attorney’s Office Election Task Force witnessed 52 reports of potentially violent incidents, but 47 of these incidents were resolved peacefully. Most cases were minor, and the most urgent cases were traced back to disinformation that spread on social media. According to the District Attorney’s Office, “[m]isinformation being spread online has driven more calls to the ETF hotline than actual incidents at polling sites.”

There were also a few isolated instances of voter intimidation throughout the state. In Penn Hills, for example, [two poll watchers were removed](#) for alleged voter intimidation, while two election workers were kicked out of polling places in Pittsburgh for fighting. Another poll worker was removed from her assigned voting location after other workers claimed she was “causing a disturbance, taking pictures and video of polling place activities, and looking at voters’ ballots prior to those being scanned,” according to a statement from Allegheny County. She was reinstated by the Election Court judge but resumed the disruptive behavior. In response, the court issued an order for her removal. The poll worker left the polling place on her own after the order was issued.

H. Poll Watchers and In-Person Voting Litigation

Shortly after Election Day, the Trump campaign brought a [lawsuit](#) against Philadelphia's County Board of Elections, seeking to stop the county from counting ballots until Republican election observers were allowed "to be present and observe the canvassing of all mail-in and absentee ballots." Unfortunately for the plaintiffs, a Trump campaign attorney [admitted](#) to a federal judge during oral arguments that the campaign had multiple representatives present to observe the canvassing at all times. And, according to Philadelphia's city commissioners, both parties had observers present and both parties were given equal access throughout the process.

The Trump campaign did achieve one minor victory, however, securing a [court order](#) on November 5 that required poll watchers be allowed within six feet of ballot counting in the Pennsylvania Convention Center, rather than the initial 20-foot barrier. This change [paused counting altogether](#) for two hours and subsequently slowed down the counting process in Philadelphia, as poll workers could use only the tables closest to the observers' perimeter barrier, which "left the other tables empty, equipment unused, and ballots counted at a slowed pace." President Trump later continued to [claim](#) on Twitter that "Pennsylvania and Michigan didn't allow our Poll Watchers and/or Vote Observers to Watch or Observe." This claim was [unequivocally false](#), as poll watchers were allowed to observe the canvassing of ballots throughout the state.

VI. After Election Day

By the morning after Election Day, roughly 75% of Pennsylvania's votes had been counted and President Trump led candidate Biden by over [600,000 votes](#) statewide. The overwhelming majority of these votes, however, were in-person Election Day votes. Because [Pennsylvania law](#) prevented officials from tabulating mail-in ballots until after the close of polls, it would take weeks to officially canvass and tally 100% of the votes. Over the course of the next several days, as election officials began to canvass about [2.6 million](#) mail-in ballots and [over 100,000](#) provisional ballots, the margins between Trump and Democrat Biden began to tighten. This was expected, given the [widespread evidence](#) that Trump voters were more likely to vote in person on Election Day compared to Biden voters, due to Trump's politicization of mail voting. By Friday, November 6, the number of votes counted for Biden exceeded Trump's vote count for the first time. And by November 7, [Associated Press](#) called Pennsylvania for Biden and declared Biden the presumptive president-elect. Biden's margin over Trump exceeded 34,000 votes, or

[0.51 percentage points](#), which placed him beyond the margin where a mandatory recount is required under Pennsylvania law.

That same day, on November 7, President Trump [tweeted](#) “[l]awyers Press Conference at Four Seasons, Philadelphia. 11 a.m.,” which was later [amended](#) to “[b]ig press conference today in Philadelphia at Four Seasons Total Landscaping—11:30 a.m.!” At the press conference, Rudy Giuliani, the president’s personal lawyer and one of the Trump campaign’s top advisors, made [several unsubstantiated claims](#), alleging voter fraud in Pennsylvania. Over the next several weeks, Trump’s campaign and its Republican allies pursued various efforts to delay or circumvent the state’s official certification of the election results. For example, Pennsylvania’s Republican-controlled House attempted to initiate a “legislative audit” of the election. That move was [rejected](#) by the Legislative Budget and Finance Committee in a 2-1 vote due to the ongoing, legally mandated department of state audit. In addition, Rudy Giuliani [joined](#) an existing lawsuit urging the court to prohibit the certification of Pennsylvania’s results, but a federal court rejected the request, [finding](#) that the plaintiffs had presented “strained legal arguments without merit and speculative accusations ... unsupported by evidence.” The Third Circuit also [denied relief](#) to the Trump campaign.

On [November 24](#), Pennsylvania officially certified the election results in favor of Biden, with the department of state confirming the county-by-county figures and the governor signing the certificate of ascertainment for the slate of electors supporting Biden and running mate Kamala Harris. Although minor disputes over the validity of small batches of ballots with certain technical flaws (such as ballots with illegible or missing printed names, dates, and so on) [delayed results](#) in some counties, ultimately all disputes were resolved before the statutory deadline.

After the state certified the results, 64 Republican state lawmakers [signed a letter](#) asking Congress to block Pennsylvania’s slate of electors from casting votes for President-elect Joe Biden. On December 14, the Republican Party of Pennsylvania also released a statement [claiming](#) that, at the request of the Trump campaign, the Republican slate of electors met in Harrisburg to “cast a conditional vote for Donald Trump . . . [as a] procedural vote to preserve any legal claims that may be preserved going forward.” Neither of these actions, however, had any practical effect on the state’s official certification for President-elect Joe Biden.

Overall, Pennsylvania’s counting of in-person and absentee ballots played out as many expected given the high number of absentee ballots. The legal prohibition preventing the counting of absentee ballots until Election Day produced a “[red mirage](#)” effect—a phenomenon where the in-person votes, those first counted, favored the Republican (red), but that “red” lead evaporated as absentee votes, counted later, skewed in favor of the Democrat (blue). In the

end, Pennsylvania's election officials fully complied with the law and successfully oversaw the canvassing, tabulating, reporting, and certifying processes, and the grand total of Democrat votes in the presidential contest outnumbered Republican votes.

VII. Conclusion

When Pennsylvania's 2020 election was officially certified, Governor Tom Wolf [said](#) that the certification "is a testament to the incredible efforts of our local and state election officials, who worked tirelessly to ensure Pennsylvania had a free, fair and accurate process that reflects the will of the voters." After a rocky primary election in June, where the state faced demanding problems from delays in the distribution and receipt of absentee ballots to poll worker shortages and poll closures, Pennsylvania's election officials successfully responded in preparation for the 2020 general election. Although the state's legislature was unable to reach a deal to reform the state's absentee ballot counting procedures—which resulted in long delays and arguably kept the country's major news outlets from declaring a presidential winner for nearly a week—the election was administered successfully.

Despite the obstacles to running a high-stakes election in an important swing state during a global pandemic, Pennsylvania responded successfully. Voters who wanted to vote by mail successfully did so, rejected ballot rates were far lower than expected, in-person voting lines were largely manageable, instances of violence and intimidation were relatively few, and the onslaught of post-election litigation was resolved efficiently and decisively by state and federal courts. Overall Pennsylvania's election administration should serve as an encouraging example of a difficult task accomplished with competence and leadership.

Wisconsin 2020: Election Administration in the Coronavirus Pandemic

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- [“Wisconsin’s 2020 primary in the Wake of COVID-19,”](#) Grace Scullion, Peter Prindville, Lexi Rubow, Bea Phi, Jeff Rodriguez, Joaquin Garcia, Alison Cohen (June 30, 2020).
- [“Wisconsin 2020 Election Policies and Practices,”](#) Evie Freeman (November 2, 2020).
- [“Mail Voting Litigation During the Coronavirus Pandemic,”](#) Connor Clerkin, Lane Corrigan, Zahavah Levine, Aviel Menter, Christopher Meyer, Alexander Perry, and Theodora Raymond-Sidel (October 29, 2020).
- [“Post-Election Litigation in Battleground States: A Summary,”](#) Zahavah Levine and Jacob Kovacs-Goodman (Last Updated: March 1, 2021)

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I. Introduction

Despite a quickly escalating coronavirus pandemic, Wisconsin election officials managed their general election well. After taking lessons learned from conducting the April primary with record high numbers of absentee voters, Wisconsin invested more resources in the absentee voting process. Millions of dollars were invested across the state to assist voters in applying for absentee ballots, as well as to bolster mail-ballot tracking and ensure that more locations were available for voters to safely vote early in person, if desired. Investments were made to increase the number of voting locations open on Election Day and to make these locations as coronavirus-safe as possible. These efforts proved successful, with no major issues reported. Nonetheless, the Wisconsin Elections Commission and cities across the state faced lawsuits and accusations of fraud, as the Trump campaign and its supporters attempted to discredit the administration of the election.

II. Lay of the Land

In total, 3,278,963 Wisconsinites (72.3% of the voting-age population in 2019) [voted](#) in the 2020 general election, [up from](#) 3,004,501 (67.3%) in 2016.¹ President-Elect Biden won the presidential contest with [1,630,866](#)—or 49.57% of—votes. President Trump received 1,610,184 votes, thereby losing by 20,682 votes, a margin small enough to qualify for a recount in the state.

More than half of Wisconsin voters cast absentee ballots in the 2020 general election. 1,957,514 people (59.7% of voters) [voted early](#)—651,422 (33%) voted in-person early, and 1,306,092 (66.7%) voted by-mail. This was more than the 1,321,449 votes cast in person on Election Day and significantly more than the 830,763 absentee ballots cast in the [2016 general election](#).

III. Background

Several of Wisconsin's preexisting election laws positioned the state well to administer an election during a pandemic. Prior to the pandemic, Wisconsin law did not require an excuse to register to vote by mail, and voters were able to register online or at polling sites to avoid postal delays (both prior to and [on Election Day](#)). Existing Wisconsin law also offered early voting beginning two weeks before Election Day.

¹ The presidential primary turnout [decreased](#) from 2016 to 2020 with 2,113,544 votes to 1,555,263 votes respectively.

Other existing state laws, however, added difficulty to the voting process, both for voters and for election workers. Most Wisconsin voters are required to provide a [form of photo ID](#) when they cast their ballots, either by providing it in person or by submitting a photocopy along with their absentee ballot request. Options for the type of photo ID are limited: voters must provide a Wisconsin driver's license, a passport, a naturalization certificate, a tribal ID, or one of [several other fairly uncommon documents](#). One exception to this is for "indefinitely confined" voters (voters who, because of age, physical illness, infirmity or disability, may have difficulty traveling to the polling place). They are not required to include a photocopy of their ID with their absentee ballot request, if they are unable. This category is self-identified and led to lawsuits over whether the Wisconsin Elections Commission had given adequate guidance as to who was eligible in the midst of the pandemic. Absentee voters were also required to return their ballots with a [witness signature](#). Obtaining a witness signature presents a potential barrier for absentee voters, particularly those living alone during the pandemic. In addition, state law does not allow ballots to be counted that were received after Election Day, regardless of whether they were postmarked on or before November 3. This law has also led to lawsuits. Although a federal judge in the spring extended the deadline by six days for the primary election, the federal appeals court suspended the order, and the [U.S. Supreme Court](#) declined to grant a stay of that appeals decision in October.

Wisconsin is also one of only four states with laws that prevented election workers from processing absentee ballots until Election Day—meaning that the ballots could not be removed from their return envelopes, unfolded, or prepped to go through the counting machines until the polls opened November 3. With almost two million absentee ballots to be counted in the 2020 election, processing was a daunting task, and the state's county clerks association [asked](#) the state legislature to allow them to begin opening envelopes earlier. This request was ignored, however, and led to clerks counting ballots through the night.

Despite lawsuits and proposed changes, the days leading up to the general election were not nearly as uncertain as they were going into the April primary. Wisconsin's April 7 primary was one of the first statewide elections held after President Trump declared a state of emergency on March 13 because of the public health hazard posed by the coronavirus pandemic. Preparing for the primary, voters and election officials faced almost daily changes to election procedures—even the date of the primary election itself. Governor Tony Evers pushed to postpone the primary election, while Republican state lawmakers, led by State Senate Majority Leader Scott Fitzgerald and Assembly Speaker Robin Vos, defended the status quo. On the eve of the primary, the Wisconsin Supreme Court, divided along party lines, held that the primary would go forward as planned. Meanwhile, the Democratic Party and voting rights organizations filed lawsuits in federal court, seeking absentee voting accommodations. Among other things,

their lawsuits asked to delay the deadline to submit absentee ballots. While a federal district court issued an injunction extending the deadline for receipt of ballots, the order was [reversed](#) by the U.S. Supreme Court on the eve of the primary.

State election officials also faced logistical challenges for the April primary, such as poll worker shortages, challenges obtaining protective gear and cleaning supplies, and an overwhelming influx of absentee ballot applications. Despite valiant efforts by the Wisconsin Elections Commission and local election officials, many voters waited in long lines outside of limited polling facilities or waited for absentee ballots that never arrived. Concerns over health risks led roughly [7,000 poll workers](#) statewide to step down before or on the day of the election.² In Milwaukee, just [five polling places out of 180](#) were open the day of the primary because of poll worker shortages and social distancing considerations in traditional polling places. Though Governor Evers' administration worked with the Wisconsin Elections Commission to find protective equipment for poll workers, and freed up more than 2,400 members of the Wisconsin National Guard to serve at polling sites, reports described the day as "[chaotic](#)." Clerks consolidated numerous, smaller polling places into fewer, [large facilities](#), like gymnasiums, to allow for social distancing, only to cause some voters to stand in line for hours, which went against public health recommendations.³ Opportunities for in-person early voting were [slashed considerably](#) in places such as Madison and Milwaukee—the state's two largest cities. According to a study by the [Brennan Center for Justice](#), a combination of closures and fears of contracting coronavirus depressed Black turnout by 15.9 percentage points in Milwaukee during the primary, compared to 9.9 percent for non-Black voters. And there were numerous reports of people never receiving absentee ballots despite having requested them. In all, an estimated [9,000 requested ballots](#) were never sent by the state.

The Wisconsin primary illustrated the challenges of administering an election during a pandemic. However, election officials had more time to prepare for the general election on November 3 and were bolstered by federal and private grants to pay for needed resources. Polling places were more widely available, pandemic-prepared, and ready for the influx of absentee ballots on November 3.

² Green Bay Mayor Eric Genrich, a former Democratic state lawmaker, said his city started with [270 poll workers](#) before the coronavirus pandemic and ended up with just 15 (the city was offered help from the National Guard, but it declined; the mayor said "[w]e didn't know what the National Guard could do for us—how many people were available—until the 11th hour").

³ In Milwaukee, the Election Commission Director [consolidated](#) 180 polling places into just 5, causing many voters to stand in line for hours.

IV. Absentee Voting (Mail and In-Person Early Voting)

[Reports indicated](#) that absentee voting proceeded relatively smoothly for the general election. Nevertheless, President Trump and his allies used the influx of absentee ballot tallies after midnight on Election Night as a major driver of misinformation and conspiracy theories that led many Americans to believe the outcome was fraudulent. President Trump, his campaign, and other Republican figures and groups also launched numerous (unsuccessful) lawsuits.

A. Statistics

Out of the 3,278,963 people who voted in Wisconsin, 1,957,514—or 59.7%—voted absentee (651,422 in-person early; 1,306,092 by mail). This was a significant increase from the 2016 general election, in which 819,316—or 27%—of voters voted absentee. This increase was largely expected because of the coronavirus pandemic. Because the state law prohibited election workers from processing absentee ballots until Election Day, the time required to conduct the initial vote count extended into the morning of November 4.

B. Rejection Rates

Wisconsin Elections Commission data [shows](#) the percentage of rejected absentee ballots for the 2020 general election was in line with past November general elections (except for the November 2016 election, which had abnormally high rejection rates—2.3%—due to newly instated voter ID laws), and improved from the April 2020 primary. The November 2020 absentee ballot [rejection rate](#) was 0.2%, down from 1.8% in the April Primary and down slightly from 0.23% from November 2018.

The Wisconsin State Journal reported on October 28 – less than a week before the general election – that county elections clerks had [found problems](#) with just 1,506 absentee ballots out of the 1.45 million already returned. Most of those problem ballots were returned to voters so they could be corrected (contacting voters to correct or "cure" their ballots is optional for clerks in Wisconsin). Because absentee ballots could not be opened and processed until Election Day, these errors found prior to Election Day would have been visible on the outer return [envelope](#), such as a missing witness signature or address.

The fraction of ballots that were [rejected](#) because they were received after Election Day fell from 1.4% in 2016 to 0.1% in 2020, resulting in a small numerical increase in late-arriving ballots

(1,277 to 1,508), despite the number of ballots cast by mail growing more than ten-fold, from 91,00 to nearly 1.4 million. The percent rejected for “certification insufficient,” which includes a missing voter or witness signature or a missing witness address, was 0.07%.

C. Rules

Any registered Wisconsin voter was eligible to vote absentee (whether by mail or early in person) in the 2020 general election. Voters were required to provide a photocopy of their [photo ID](#) to cast an absentee ballot by mail and to show their photo ID when casting an in-person absentee ballot at their municipal clerk’s office. There were some exceptions to this rule, such as for “[indefinitely confined](#)” voters (defined as persons who, because of age, physical illness, infirmity or disability, may have had difficulty traveling to the polling place). While no excuse was required to receive and cast an absentee ballot, there was some dispute over who was permitted to request an absentee ballot as an “indefinitely confined” voter during the coronavirus pandemic. According to statistics kept by the Wisconsin Elections Commission, nearly [216,000 voters](#) said they were indefinitely confined during the 2020 election, up from under 57,000 in 2016. This led to assertions that voters were misclassifying themselves as indefinitely confined because of the pandemic. The Wisconsin Elections Commission [provided guidance](#) that the indefinitely confined status was a decision “for each individual voter to make based upon their current circumstances.”

After completing their ballots, absentee voters were [required to sign](#) the return “certification” envelope in front of a witness, who was then required to add their signature and address. Despite some [pushback](#), the state did not waive the witness signature requirement during the coronavirus pandemic. Instead, the Wisconsin Elections Commission [provided additional guidance](#) on how to secure a ballot witness while social distancing. The Commission urged voters to find a family member, mail delivery person, or grocery store employee to serve as a witness. It specified that the process could be done over video chat, with the ballot then left outside of the door or in a mailbox, or even mailed to the witness for the witness to sign and provide their address after the fact.

The return deadline for absentee ballots was Election Day (November 3). This deadline [did not change for the general election](#), despite much advocating (and some suing) for an extension because of the coronavirus pandemic, and even though a [six-day extension](#) of the deadline was granted for the April 2020 primary election at the onset of the pandemic’s spread in the U.S.

Under Wisconsin state law, election officials could not begin processing absentee ballots until Election Day. Local elections officials had lobbied the legislature [for years](#) to preprocess ballots.

While there was some [bipartisan support](#) in the legislature for [changing this law](#) in advance of the expected influx of absentee ballots, no change was enacted. Some experts [noted](#) in advance of the election that the processing time associated with a high-influx of mail ballots could give ammunition to the losing party to complain that the process appeared improper and challenge the state's results; for an analysis of post-election challenges and litigation, see section VI.⁴

Different localities [employed different approaches](#) to counting their absentee ballots in Wisconsin. While most jurisdictions, including Madison, processed them at the polls, Milwaukee and over three dozen other places did so at a central counting location. Those with a central count system posted their initial results representing in-person voting totals on Election Day and added absentee ballot tallies later. Localities with a central counting system reported incomplete results in initial tallies that did not include the large number of absentee ballots cast.

D. Absentee Voting Litigation – Pre-Election Day

Prior to the election, lawsuits were filed challenging Wisconsin's absentee voting laws to address the needs and protect the health of Wisconsinites in the midst of the coronavirus pandemic. Plaintiffs brought lawsuits in the hopes of increasing ballot access, extending deadlines, and removing barriers to voting (such as the need to find a witness at a time when everyone was asked to stay home and stay physically distant from individuals outside their household). Ultimately, none of these lawsuits were successful.

The city of Green Bay, Wisconsin, filed a lawsuit to ensure that eligible voters actually received mail-in ballots. The city filed a [constitutional claim](#) in federal court, arguing that, in light of the pandemic, election officials should be required to send ballots to all eligible voters automatically. The case was dismissed for lack of subject matter jurisdiction under a doctrine that holds that municipal organizations lack standing to bring an equal protection challenge against their own state government.

In [DNC v. Bostelmann](#), the Democratic National Committee and the Democratic Party of Wisconsin challenged the Election Day mail ballot deadline in Wisconsin, arguing that the deadline constituted an undue burden on the right to vote under the Anderson-Burdick test; that it violated the Fourteenth Amendment by denying procedural due process; and that it violated the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs initially saw some

⁴ Barry Burden, director of the Elections Research Center at the University of Wisconsin-Madison, noted that delayed processing of mail ballots could lend "ammunition" to complain that the election was illegitimate.

success on these constitutional claims, with a federal district court granting their request for a preliminary injunction and [ordering](#) the state to accept all ballots postmarked and received within six days of the primary election. However, the U.S. Supreme Court [stayed](#) the postmark-change portion of the order, reasoning that it was issued too close to the election and was, therefore, likely to cause confusion among voters. The ballot receipt deadline-change portion of the order was permitted to stand. Five months later, in late September, the district court [granted](#) a preliminary injunction in four consolidated lawsuits, including *DNC v. Bostelmann*. The injunction extended the deadline for receipt of an absentee ballot in the general election to November 9, provided the ballot envelopes were postmarked by Election Day, November 3. But the Seventh Circuit U.S. Court of Appeals [stayed](#) the district court's injunction in early October. It agreed with the Wisconsin legislature's contention that a federal court should not change rules so close to an election and that political, not judicial, officials should decide when a pandemic justifies making changes to otherwise valid rules. On October 26, 2020, the U.S. Supreme Court, in a 5-3 vote, [rejected](#) Democrats' and voting rights groups' request to vacate the Seventh Circuit's stay.

Also in *DNC v. Bostelmann*, the federal district court [suspended](#) Wisconsin's witness requirement during the pandemic. The Seventh Circuit [overturned](#) this decision as well, concluding that the district court "did not give adequate consideration to the state's interests" and citing precedent that "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government." Therefore, witness signatures were required for both the primary and general election in Wisconsin.

Finally, [election clerks](#) in Outagamie and Calumet counties sought the Wisconsin Supreme Court's permission to correct a small misprint of timing marks on 13,500 absentee ballots.⁵ Timing marks are small black boxes printed along the edge of a ballot that guides the scanning of a ballot in a vote tabulation machine. The misprint prevented machines from correctly processing the ballots. The election clerks proposed using black ink to fill in the misprinted timing marks—a solution backed by the Wisconsin Election Commission's six commissioners to save time during ballot-processing. The WEC did not have the authority to approve the solution but sent a letter urging the court to allow election officials to permit this practice. The court [declined](#) to take the case, forcing election workers instead to remake⁶ those ballots, a process Outagamie County Clerk Lori O'Bright estimated would take about four minutes per ballot and would "slow things down."

⁵ Timing marks are the black boxes printed around the edges of ballots. See image [here](#).

⁶ The procedure for making a duplicate is prescribed in [Wis. Stat. § 5.85\(3\)](#): "If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the election officials, in the presence of witnesses, shall make a true duplicate ballot of all votes on that ballot by using one of the marking devices so as to transfer all votes of the elector to an official ballot of that kind used by the elector who voted the original ballot in that election."

E. Absentee Voting Litigation – Post-Election Day

Delays in counting ballots, whatever the reason, can have consequences. The significant increase in absentee ballots in 2020, combined with the state law prohibiting the processing of absentee ballots until Election Day, led to post-election lawsuits filed by the Trump campaign, Trump voters, and conservative groups, alleging fraud in the absentee ballot count. These lawsuits did not have any success in Wisconsin.

In [*Langenhorst v. Pecore*](#), three Wisconsin voters sought to exclude all of the votes cast in Menominee, Milwaukee, and Dane counties from Wisconsin's total based on differences in the rules for handling absentee ballots in those counties. The lawsuit objected to the counties' policies allowing voters who say they are "indefinitely confined" to cast absentee ballots without providing photo identification. The complaint also cited two voters who said they received absentee ballots without requesting them, and three absentee ballots apparently cast by people who died before November 3. However, the plaintiffs [voluntarily dismissed](#) their lawsuit four days later.

On December 1, a Republican presidential elector, William Feehan, and the Republican nominee for Wisconsin's Third Congressional District seat in the U.S. House of Representatives, Derrick Van Orden, [brought suit against](#) the Wisconsin Elections Commission with numerous allegations. Among other things, they alleged that the Commission's guidance for submitting an absentee ballot as an indefinitely confined voter violated state law, as was their guidance permitting clerks to contact absentee voters to cure a missing witness address on their return certification envelope. The plaintiffs asked for emergency relief in the form of numerous orders and declaratory judgments, including an order directing Governor Evers and the Commission to de-certify the election results. They also sought a declaratory judgment "that mail-in and absentee ballot fraud must be remedied with a Full Manual Recount or statistically valid sampling that properly verifies the signatures on absentee ballot envelopes and that invalidates the certified results if the recount or sampling analysis shows a sufficient number of ineligible absentee ballots were counted." Two days later, plaintiff Feehan filed an amended complaint removing Derrick Van Orden as a plaintiff. On December 9, the federal district court [held](#) that it lacked the jurisdiction to grant the relief sought, saying "federal judges do not appoint the president in this country." The court also held that the plaintiff lacked Article III standing to sue in federal court over a state election claim, and dismissed the claims on the additional basis of mootness. The U.S. Supreme Court [denied certiorari](#) on March 1, 2021.

President Trump [filed](#) a lawsuit in federal district court against the Wisconsin Elections Commission, alleging that absentee voting discriminated against "able-bodied" voters and that the widespread availability of voting by mail contradicted the Wisconsin Legislature's disfavor of absentee voting policies. The suit also alleged that the Commission "eliminated state laws requiring that voters provide information on the mail-in ballot envelope" and permitted election workers to alter ballots, among other claims.⁷ President Trump's legal team argued that the alleged conduct violated both the Elections and Electors Clauses of the U.S. Constitution. The suit also challenged the validity of 17,000 votes that were absentee ballots collected at "Democracy in the Park" events sponsored by the city of Madison.⁸ As a remedy, President Trump requested that the result of the Wisconsin election be remanded to the Wisconsin Legislature. On December 12, the court [dismissed](#) the lawsuit with prejudice. The court found that the Commission's guidance on indefinitely confined voters, the use of absentee ballot drop boxes, and election workers' corrections to witness addresses were not challenges to the "Manner" of Wisconsin's appointment of presidential electors but rather disagreements over election administration. The court also found the Wisconsin Elections Commission conducted the election in the manner directed by the state legislature and in accordance with the Electors Clause.

F. Overall Performance of Absentee Voting

After the April 2020 Wisconsin primary, an [investigation](#) by the Milwaukee Journal Sentinel, the PBS series FRONTLINE, and Columbia Journalism Investigations revealed numerous breakdowns in the state's absentee ballot system, including delays in mailing ballots, misleading ballot tracking systems, and thousands of missing ballots. In addition, because the absentee ballot applications asked only for voters' mailing addresses, election clerks were not able to call or email voters to let them know if there was an issue with their application, leaving many voters unaware that their applications were pending or had been rejected.

In one of the worst examples from the April primary, "three large tubs" of [undelivered absentee ballots](#)—1,600 in total—from voters in Oshkosh and Appleton were reportedly discovered at a post office the day after the April primary. A post office report on the discovery [concluded](#) that

⁷ In Wisconsin, absentee ballots must be returned in an envelope that is signed by both the voter and a witness, and the witness must also write their address. If a witness does not provide an address, election clerks are permitted to fill in the address if they can find that information by talking to the voter, talking to the witness, or looking at voter rolls and tax databases (a policy established in 2016 by Republicans serving on the Wisconsin Elections Commission). President Trump [argued](#) that only a voter or witness can fill out the address on the ballots and that ballots "cured" by a clerk should be disqualified.

⁸ Madison's Democracy in the Park events [irked Republicans](#), who asserted that they constituted an "illegal collection of ballots" that "falls outside lawful categories." They did not challenge them in court at the time, however.

the ballots “faced mailing problems or mailing labels were never applied to the ballot envelopes.” In Milwaukee, nearly 2,700 absentee ballots were never sent to voters because of a [glitch](#) in the state’s computer system and another [386 ballots](#) that were filled out and returned successfully were never read because of a “human error” at the counting center.

In response to these and other breakdowns, the Wisconsin Elections Commission pledged to implement a number of changes to the state’s absentee ballot request process. The changes included a new ballot tracking system, in coordination with the U.S. Postal Service, with a unique barcode on each return envelope and additional fields on absentee ballot applications so voters can provide contact information (such as email address and phone number). The changes also included a move from processing ballot applications via email to a completely online database. The Commission also announced \$4.1 million in federally funded block grants to help local election officials and voters prepare for the general election, such as helping to fund significant unbudgeted expenses, like postage and envelopes because of the high demand for absentee ballots.

In June, the Commission [voted](#) to send out absentee ballot applications proactively for the general election. The applications would be sent out by September 1 to all 2.7 million Wisconsin voters who had not yet applied, with the exception of 158,000 voters whose names were flagged by a multi-state government database as having potentially moved. According to a [Wisconsin State Journal](#) report in September, Wisconsin Elections Commission Administrator Meagan Wolfe said “the Elections Commission didn’t really have a formal relationship with the U.S. Postal Service. Now, state elections officials meet weekly with the federal agency.” As part of this closer coordination, the Commission had already begun adding [intelligent barcodes](#) to outgoing ballot envelopes, enabling them to be scanned at postal centers, verifying that the ballots were in the mail and received by county election offices. In July, the Commission Administrator announced there had been some [glitches](#) with the new barcodes that they hoped would be quickly resolved.

In addition, the Commission made improvements to the state’s online voter registration system to prepare for increased usage and to make it easier for clerks to process absentee ballot requests. Under the improved system, clerks needed only to use the state’s online registration system instead of manually entering absentee requests received via email. These applications included fields for the voter’s phone number and email address in case of issues with their application.

As a result of these efforts, Wisconsin’s absentee voting process went fairly smoothly for the November election. However, the Wisconsin Legislature’s failure to allow the processing of absentee ballots to begin before Election Day, despite knowledge of the likely surge in absentee

ballots because of the coronavirus pandemic, would still likely lead to delayed announcement of the results. And that, in turn, would lead some (including the Trump campaign and its allies) to claim the absentee ballots were “vote dumps” in favor of Joe Biden, sparking [conspiracy theories](#) of widespread voter fraud and a “rigged” election (theories that were [resoundingly disproven](#)).

V. In-Person Voting

Overall, reports indicate that in-person voting went smoothly on Election Day in Wisconsin. According to the Wisconsin Elections Commission, there were [no widespread issues](#), threats of violence or intimidation, or threats to cybersecurity. Local election officials also [reported](#) that things ran smoothly and, though there were [lines](#), the waits were not excessive.

A. Improvements from the April Primary

There were long lines at polling places during the Wisconsin primary in some jurisdictions, resulting in voters waiting for hours to vote. The coronavirus forced the closure of the majority of polling places around the state for the primary, which was held less than four weeks after President Trump declared a national emergency. Between the primary and general election, however, municipalities had the time and received the resources (through federal and private grant funding) to implement health department regulations that aided in recruiting enough poll workers for the general election and to supply each polling site with sufficient health-protective equipment and sanitation supplies.

These efforts resulted in the [return](#) of most of the closed polling sites in time for the general election. On November 3, 2020, there was only a 5% reduction in the number of open polling stations across the state compared to the 2016 general election. Milwaukee increased open polling sites from five in the primary to 173 (out of the usual 180) for the general election. Green Bay had [only two open polling places](#) in the primary out of the usual 31, but [increased this number to 16](#) for the general election. [Madison](#) increased its polling sites from 66 in the primary to the usual 92. Other municipalities, however, were still forced to shut down locations that were physically too small to accommodate social distancing or that housed vulnerable communities, such as nursing homes. As a result, some areas still had significant polling place closures during the general election. The Center for Public Integrity found that Brown, Kenosha, Rock, and Waukesha counties saw some of the [largest decreases](#) in polling places compared to 2016. In Brown County, the number of polling places decreased from 75 to 52, a 31% drop. Kenosha’s number dropped 38%, Rock’s dropped 19%, and Waukesha’s dropped 17%. In

Cudahy, Wisconsin, all in-person voters had to cast their ballots at the local high school's auxiliary gym, down from four locations available in 2016.

B. Election Funding

In June, the Wisconsin Elections Commission approved the use of [\\$7.2 million](#) in federal funding through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, including a \$4.1 million block grant program to help local election officials and voters prepare for fall 2020 elections amid the coronavirus pandemic. This [funding was used](#) to procure sanitation supplies and absentee ballot envelopes and distribute them to all 1,850 municipalities. CARES Act funding also went towards further development of the state voter registration system and implementation of intelligent barcodes. Local election officials were also able to [use the funding](#) to cover printing and postage costs, additional protective equipment, public communications on changes to the voting process, installing additional absentee ballot dropboxes, leasing of polling places when existing sites were closed or relocated, and additional equipment to process absentee ballots.

The Center for Tech and Civic Life ([CTCL](#)), with grant money funded by Priscilla Chan and Mark Zuckerberg, provided assistance to Wisconsin election administration. CTCL announced in July that it would commit \$6.3 million to election administration assistance in Wisconsin through supporting programs in five cities.

- City of Milwaukee: \$2,154,500
- City of Madison: \$1,271,788
- City of Green Bay: \$1,093,400
- City of Kenosha: \$862,779
- City of Racine: \$942,100

Assistance to the cities was based on a document called the "[Wisconsin Safe Voting Plan 2020](#)." The 21-page document was co-signed by the mayors of Milwaukee, Madison, Green Bay, Kenosha, and Racine. The plan described the issues Wisconsin election administrators were facing as a result of the pandemic, laid out four actionable "recommendations" that were needed to improve the election process in preparation for the general election, and identified the resources needed to achieve each. These recommendations were:

1. Encourage and Increase Absentee Voting;
2. Dramatically Expand Strategic Voter Education and Outreach Efforts, Particularly to Historically Disenfranchised Residents;

3. Launch Poll Worker Recruitment, Training and Safety Efforts; and
4. Ensure Safe and Efficient Election Day Administration.

CTCL's funding sparked two lawsuits in Wisconsin. Prior to the election, a group of plaintiffs who organized under the name "Wisconsin Voters Alliance" [sued](#) the Cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine in federal district court, [arguing that](#) the grant funding was purposely directed to cities with a history of supporting Democrats, equating the funding to election bribery. The group also argued that private grants to run public elections were not permitted under state and federal law and the U.S. Constitution. The group asked a federal court to block the funding. The court denied the motion, finding "nothing in the statutes Plaintiffs cite, either directly or indirectly, that can be fairly construed as prohibiting the defendant Cities from accepting funds from CTCL." This [claim was rehashed](#) in a lawsuit filed by the same group after the election, though this time in state court. The plaintiffs made many of the [same arguments](#), alleging that the grant money was illegally awarded and, therefore, the election results should be nullified. The Wisconsin Supreme Court declined to hear this second suit. Justice Brian Hagedorn said plaintiffs came "nowhere close" in terms of establishing their claims with substantive facts. He added that their complaint fell "far short of the kind of compelling evidence and legal support we would undoubtedly need to countenance the court-ordered disenfranchisement of every Wisconsin voter."

C. Poll Worker Recruitment and Training

Election administrators nationwide have [struggled to recruit](#) sufficient numbers of poll workers for several years, and the 2020 coronavirus pandemic exacerbated this problem. One long-time reliable demographic group of poll workers—return volunteers who were on average over 60 years old—were at greater risk of suffering serious health complications from COVID-19, and therefore stayed home. As a result, during Wisconsin's April primary, roughly [7,000 poll workers resigned](#) statewide, and the state faced major shortages. For example, Milwaukee relied on fewer than 30% of its typical number of poll workers—[400 of 1,400](#). Governor Tony Evers called up more than 2,400 members of the Wisconsin [National Guard](#) to attempt to fill some of the gap. It marked the first time the Wisconsin National Guard was activated for this purpose, but it was not deployed in time to reopen any of the closed polling sites.

Election officials, advocacy groups, and others in Wisconsin and across the country began recruiting poll workers more aggressively in the months prior to November. Younger people were a particular target demographic group because they were determined to be less vulnerable to COVID-19 complications.

The grant funding provided by CTCL allowed some municipalities to entice additional workers through additional pay and outreach efforts. Green Bay, for example, was able to [increase its poll workers' salaries](#) by 50%. Milwaukee launched an “[Adopt A Voting Site](#)” initiative, which encouraged corporations and local organizations to take a more active role in the election process by agreeing to “adopt” one of Milwaukee's 195 voting sites and providing a certain number of poll workers (depending on the site selected) on Election Day. [Outside efforts](#), such as a student-run Poll Hero Project; LeBron James’ “[More Than A Vote](#)” campaign; [Power the Polls](#) in partnership with [Wisconsin Voices](#) and a coalition of voting rights, civic, and corporate organizations also stepped in to help recruit poll workers in Wisconsin and around the country.⁹

These efforts proved successful. By October 15, the Associated Press [reported](#) that only about 180 poll workers out of 30,000 were still needed across the state. Wisconsin Elections Commission spokesperson Reid Magney told AP that “clerks are doing a good job of recruiting and Wisconsin citizens are stepping up in response to either calls to action or problems that occurred in April,” and that there were no widespread gaps heading into the general election.

D. Coronavirus Safety Regulations

Polling stations implemented safety guidelines during the 2020 general election, such as instructing voters to maintain a social distance of six feet and not allowing long lines inside buildings. Poll workers who did not follow or enforce these guidelines were told they would be removed from their duties. The state [provided](#) locations with masks, gloves, and sanitizer for poll workers to use to follow health department protocols. While local election officials were [given the authority](#) to require their poll workers and observers to wear masks, they could not require voters to wear masks, as the Wisconsin Elections Commission determined that this would have required a new “qualification” for voting which, under the state constitution, only the state legislature could impose. Voters were [encouraged](#) to wear masks, however. According to JB Van Hollen, a former Wisconsin Attorney General who worked with a [bipartisan coalition](#) called “VoteSafe Wisconsin” to ensure Wisconsinites could vote safely and securely, “the clerks did a great job of anticipating the worst and based upon that, they have taken every precaution that I think you can really take and be able to function with in-person voting.”

Under Wisconsin law, all polling places are required to provide [curbside voting](#) for voters who cannot access a polling site due to disability. In both the April primary and the November

⁹ The new recruits were [far younger than usual](#). Of the more than 920,000 poll workers nationwide in the 2016 election, more than 56% of them were above the age of 60, according to the U.S. Election Assistance Commission. By contrast, nearly 90% of the more than 650,000 poll workers referred to local officials this year by Power the Polls were under the age of 65, and the Poll Hero Project recruited more than 31,000 students, more than half of them high school students.

general election, this service was [offered](#) to voters with COVID-19 symptoms. Each municipality has its own way of conducting curbside voting, including talking to a poll worker outside, ringing a bell, or calling the clerk. A poll worker then would bring out a ballot. Hospitalized and quarantined voters also had [another option](#) for voting on Election Day. Wisconsin law allows people who are hospitalized to designate any registered voter to pick up and drop off their ballot on Election Day, even after the regular deadline for requesting an absentee ballot has passed. In March, the Wisconsin Elections Commission voted to expand its definition of "hospitalized electors" to include "those quarantined in their homes due to COVID-19." They issued guidance to designated people for how to safely pick up and deliver these ballots.

VI. Post-Election Day

Despite state laws that prevented absentee ballots from being processed or counted before Election Day, a herculean effort by Wisconsin election workers provided the public with an unofficial final vote tally by the early hours of November 4. It was this very effort, however, that prompted the Trump campaign and conservative media to raise suspicions about the process, file lawsuits, and demand a partial recount.

A. The Vote Count

Election officials in Wisconsin [worked all night](#) and into the early morning of November 4 to count more than 3.2 million ballots, including the 1.9 million absentee ballots that workers could not start processing or counting until Election Day.

Early in the evening of November 3, President Trump was in the lead by more than 100,000 votes early. But the picture changed after the [city of Milwaukee's central count](#) finished processing its 170,000 absentee votes around 3:30 a.m. (Milwaukee and 38 other municipalities tallied all of their absentee ballots at one location, instead of individual polling places). The absentee votes were overwhelmingly Democratic. That late surge in votes for Biden from Milwaukee was expected, as absentee ballots tended to skew toward Democrats, and Milwaukee has historically been a Democratic stronghold. After Milwaukee reported those returns, Biden jumped ahead of Trump by about 8,000 votes. His lead widened to around 20,000 after Green Bay reported its in-person and absentee results and Kenosha finished its tally.

On Wednesday, November 4, the Associated Press [declared Joe Biden the winner](#) in Wisconsin, with unofficial results showing a lead for Biden of about 20,000 votes. Considering the

significant increase in absentee ballots, combined with the very short timeframe election clerks were given to process them, this was a timely turnaround. Wisconsin Elections Commission Administrator Wolfe called it “[a smooth day](#)” with no widespread issues reported.”

The lack of widespread issues and the “smooth” administration of the vote did not stop attempts to [discredit](#) Wisconsin’s results. Despite [bipartisan support](#) for pre-Election Day ballot processing (the legislature ultimately made no changes) and aggressive public messaging from Wisconsin officials warning that mail-in ballot results would trickle in as they were processed, the state was not immune from claims of fraudulent “ballot dumping.” One conservative website made a claim, later repeated by President Trump, that the sharp uptick in votes for Biden around 4 a.m. the morning after the election (when Milwaukee released its absentee ballot results) was [evidence of voter fraud](#). Another widely shared Facebook post called it a “[ballot dump](#),” while another referred to the votes as being “[found](#).” But under Wisconsin law, municipalities that use central counting facilities (such as Milwaukee) [must report vote tallies in a lump sum](#). The head of the Milwaukee Election Commission, Claire Woodall-Vogg, reported that she [requested permission](#) from the Wisconsin Election Commission to release a partial update of results at 8 p.m. specifically to head off claims of ballot dumping, but was ultimately not allowed to do so. President Trump followed the ballot dumping narrative when he [tweeted](#) around 9 a.m. that his lead in key states “started to magically disappear as surprise ballot dumps were counted.” Other widely repeated claims included that Wisconsin election officials “[took a break](#)” from counting votes at some point during the night and that, when they returned, they “suddenly came up with” hundreds of thousands of votes for Biden. They also claimed the state was reporting [more votes than registered voters](#) in the state. All of these theories were quickly disproved, but the Trump campaign and other sympathetic plaintiffs forged ahead with filing a recount petition and numerous lawsuits.

B. Recount

Under Wisconsin election law, a candidate who trails the leading candidate by 1% or less of the total votes cast [can petition](#) for a recount.¹⁰ The petitioning candidate can file a petition with the proper clerk; for any federal office, this is the Wisconsin Elections Commission. The petition can be filed after the canvass has been completed and the results have been certified at the county level. For an election for President of the United States, the recount petition deadline is 5 p.m. on the first business day after the Wisconsin Elections Commission receives the last county board of canvassers’ certified results (The [deadline](#) for counties to report in their certified results is November 17.) The candidate petitioning for a recount is required to pay a fee unless

¹⁰ There are no automatic recount procedures in Wisconsin.

the candidate trails by 0.25% or less following the canvass of all provisional and absentee ballots.¹¹

President Trump requested a [partial recount](#) in Wisconsin on Wednesday, November 18. His campaign wired \$3 million dollars to the Wisconsin Elections Commission to conduct recounts of Dane and Milwaukee counties, both of which are mostly Democratic areas in which Biden defeated Trump by large margins. Biden captured more than 75% of the vote in Dane and more than 69% of the vote in Milwaukee. The counties completed their recounts and [reconfirmed](#) Biden's victory on Sunday, November 29. After the completion of the recount in Wisconsin's Milwaukee County on Friday and Dane County on Sunday, there was little change in the final breakdown of the more than 800,000 ballots that had been cast in the two jurisdictions. In the end, Biden's lead over Trump in the state grew by 87 votes.

On December 1, the Trump campaign filed an appeal with the Wisconsin Supreme Court to contest the recount results. The appeal alleged that more than 230,000 absentee ballots had been illegally cast by voters in Dane and Milwaukee counties and should be thrown out.¹² In a 4-3 decision, the court [denied immediate review](#) of the case but left the door open for Trump to file his challenge in circuit court. The campaign then filed its case in Dane and Milwaukee counties' circuit courts and, pursuant to state law, Supreme Court Chief Justice Patience Roggensack consolidated the two cases in Milwaukee County Circuit Court and appointed Reserve Judge Stephen Simanek of Racine County to preside over the consolidated appeals. This appeal was rejected a week later by Judge Simanek, who held that election officials followed the state's voting laws and that President Trump failed to demonstrate that the laws were erroneously interpreted. The Trump campaign then again filed an appeal to the state supreme court, which heard the case on December 12. On Monday, December 14, hours before the state's 10 presidential electors were set to vote in the Electoral College, the Court [rejected](#) President Trump's challenge. In a 4-3 decision, the majority said that the campaign's challenge to Wisconsin's indefinitely confined voter laws was "without merit," and that he waited too long to challenge the other issues. The Trump campaign appealed to the Supreme Court, which [declined to review](#) on February 22. The final post-election case in Wisconsin, *Trump v. Wisconsin Elections Commissions*, concluded when the Supreme Court [denied certiorari](#) on March 8, 2021. For a more detailed summary of each of the Wisconsin cases filed post-Election Day, and the

¹¹ Green Party candidate Jill Stein [paid](#) nearly \$3.5 million to initiate a full state recount of the presidential vote in the 2016 presidential election.

¹² [These ballots included](#) those cast during early in-person absentee voting which the Trump campaign claimed lacked proper written applications; ballots cast by people who "improperly" claimed they were indefinitely confined, which meant the voters didn't have to provide photo ID; absentee ballots where clerks filled in missing witness address information (a practice that has been in place since 2016); and ballots returned to parks in Madison.

disposition of each, see the Stanford-MIT Healthy Elections Project's report on [Post-Election Litigation & Summaries](#).

VII. Conclusion

After learning from a rocky primary in April, the Wisconsin Elections Commission and local election officials were well prepared for the challenges of conducting the general election during an ongoing pandemic, from improved absentee ballot systems to more safety precautions and resources for workers at the polls. These preparations proved fruitful, as statements from both [county](#) and [state-level](#) officials confirmed that the election went smoothly and suffered no major problems or irregularities. When minor issues did occur, poll workers were [equipped](#) to address them efficiently and effectively. For example, when some misprinted ballots could not be counted in Outagamie County and poll workers had to duplicate the ballot onto new ones, the county had enough poll workers to prevent any significant delays in counting. As one Outagamie clerk described, "[t]he ballots affected by the misprint took more time to process, but they were prepared with more equipment and staff. Most polling places finished processing absentee ballots faster than expected. The extra equipment and additional staff from the National Guard helped." Other clerks said that the day "was better than expected," that they felt confident in their system and their process, and that counting the large number of absentee ballots "went as well as it could've for the amount. ... It was done the way it was supposed to be done and the way we've always done it."

This success did not deter President Trump and his supporters from attempting to discredit the integrity of the election process through conspiracy theories and lawsuits based on little to no evidence of fraud or unlawful behavior. Though these efforts did drag out the process and cause some to question the results, the former president's repeated failures in court underscored the preparedness and smooth administration of the operation at both the state and local level.

Arizona 2020: Election Administration in the Coronavirus Pandemic

March 10, 2021

Authors: Haley Schwab and Joven Hundal

Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“Arizona’s 2020 Election in the Wake of COVID,”](#) Mike Norton, Zahavah Levine, Sophia Danielpour, Rebecca Smalbach, Joven Hundal (June 25, 2020)
- [“Arizona’s Election Readiness After the August 4 Primary,”](#) Zahavah Levine, Ali Bloomgarden, Joven Hundal, Sophia Danielpour (Sept. 24, 2020)
- [“Signature Verification and Witness Requirements in the 2020 Elections,”](#) Ali Bloomgarden, Arushi Gupta, Garrett Jensen, Zahavah Levine, Chris Middleton, Kyra Sikora (March 10, 2020)
- [“Arizona: 2020 Election Policies and Practices,”](#) Haley Schwab (Nov. 2, 2020)

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I. Introduction

In the days following the November 3, 2020, general election, protests outside of the Maricopa County elections office in Phoenix, Arizona, made national news as one of many stories that thrust the state into the swing state spotlight. The [protests](#) may have given the impression of a chaotic election and vote-counting process, an impression bolstered by eight post-Election-Day lawsuits and the 20 days it took to tally results (though Arizona [historically has taken weeks](#) to canvass the vote). But the actual mechanics and administration of the election—the voting, the vote counting, and the certification of results—were smooth, timely, and accurate, a remarkable feat in light of the challenges posed by the coronavirus pandemic and the highly partisan landscape of Arizona which at times impeded consensus regarding appropriate election accommodations. Voter turnout reached a historic high.

Arizona was uniquely well-situated to administer a general election during the pandemic because of its long history and culture of mail voting (referred to in the state as “early voting,” as the same ballots are used for voting by mail and early voting in-person). Even so, early voting in the state reached a record rate of 88% in both the [August 2020 primary](#) and the [2020 general election](#), exceeding the early voting rates of 83% in the August 2016 primary, [75%](#) in the 2016 general election, and [79%](#) in the 2018 midterm election.

One of the chief concerns about Arizona’s election administration leading up to the general election was the potential impact of the state’s [historically protracted](#) vote-counting procedures. The vote-counting process in the 2020 general election took the entire period allowed by state law but went smoothly, despite the increased turnout. The last two counties—Mohave and Maricopa—submitted their results to the secretary of state’s office on November 23, on the 20th day after the election—the last day allowed by state law.

The post-election canvass also proceeded smoothly and was officially [adopted by](#) Governor Doug Ducey, Secretary of State Katie Hobbs, and Attorney General Mark Brnovich, a week later, on the state deadline of [November 30](#). Adoption of the canvass is the process by which Arizona certifies its [election results](#). Despite the boisterous protests, rampant conspiracy theories, and lawsuits that cast doubt about the accuracy of the results, the administration of the election went as smoothly as it ever has gone in the state, supporting record turnout and producing [results](#) that proved to be reliable and precise. In the end, both [Governor Ducey](#) and [Secretary Hobbs](#), members of different political parties and often political rivals, [used their respective platforms](#) to instill confidence in the results.

II. Key Election Facts

In the presidential contest in Arizona, Joe Biden received [10,457](#) more votes than Donald Trump. Biden is only the second Democratic presidential candidate to [carry the state](#) since 1948 and the first to do so in 24 years. Maricopa County, home to 60% of the state's population, also went blue for the first time since 1948.

The historic result in Arizona took place alongside an historic turnout. According to Arizona Secretary of State Katie Hobbs, roughly 80%, or 3.4 million, of the state's [4.28 million](#) registered voters turned out. That exceeds the [74%](#) turnout rate in the 2016 presidential election, in which almost [2.7](#) million ballots were cast by the state's [3.6](#) million registered voters. The number of registered voters in Arizona increased by almost [700,000](#) since the general election of 2016. Much of the growth in voter registration may be attributable to Arizona's population growth, which has increased steadily at a rate of approximately [1.7% yearly for the last few years](#), as well as increased voter enthusiasm.

Despite the historic turnout, Republican Governor Doug Ducey was able to certify the state's election results on schedule, on November 30, 2020. He did so after multiple [logic and accuracy tests](#) were applied to the results in Maricopa County, confirming the canvassed results. The certification also withstood several legal challenges brought by the state Republican Party, as detailed in section IV.

Like the state, Maricopa County, the state's most populous county, also experienced record turnout. The county saw a voter turnout of [80.51%](#) among registered voters, narrowly outpacing the state's 79.90% registered voter turnout rate. In fact, the county's turnout by October 30, 2020, three days before Election Day, [exceeded the county's total 2016 turnout](#).

III. Early Voting and Vote by Mail

Of the [3.4 million ballots](#) cast in the state, almost [three million](#) were cast by early ballot and about 400,000 were cast in-person on Election Day. Arizona does not distinguish between mail ballots and ballots cast through early in-person voting; the state labels all such ballots "early votes," and [statistics on "early voting"](#) reflect both types of voting. The November 2020 early vote turnout of [nearly three million](#) mail ballots and early-in-person votes [exceeded the November 2016 early vote turnout](#) by about one [million](#) votes, and exceeded the *total* 2016 general election turnout (of almost [2.7 million](#) ballots) by more than 300,000. Of the [three](#)

[million](#) early ballots cast in the Arizona 2020 general election, about [240,000](#) were dropped off by voters on Election Day.

While demand for mail voting was particularly high due to the pandemic, several statewide and county specific policies contributed to the high turnout of early votes in Arizona. First, Arizona has a “no-excuse” policy for vote-by-mail—registered voters can obtain a mail ballot for any reason. This has been the law in Arizona since [1991](#) and helped the state avoid the legal challenges that many other states encountered from plaintiffs seeking to ease state restrictions on eligibility to vote by mail. Also, registered voters in the state can choose to vote by early ballot in a single election or they can opt to join the [Permanent Early Voter List](#) (PEVL), to automatically receive an early ballot by mail for every election in which they are eligible to vote. Of the almost [3.5 million](#) early ballots requested and mailed out to voters in 2020, over [three million early ballots](#) were sent to voters on the PEVL for the 2020 general election, representing almost [75%](#) of registered voters in the state. In Maricopa County, [nearly 2 million](#) of the county’s 2.6 million registered voters (about 77%) are on the PEVL.

The state’s long early voting period also facilitated early voting at large scale. Voters who did not wish to mail their early ballot could drop off their early ballot or vote at any [in-person early voting location](#) in their county. Statewide, in-person [early voting](#) began 27 days before Election Day, on [October 7, 2020](#), and continued through the Friday before the election, October 30, 2020. Hours of operation varied by location, but many were open on weekends. Locations typically included the county recorder’s office, as well as designated locations in each county. Early voters who missed the October 30 deadline for early in-person voting could [drop off](#) their early ballots through 7 p.m. on Election Day at any drop-box or voting location in their county.

A [key change](#) for Maricopa County, the state’s largest county, in the 2020 elections was its shift from precinct voting to a “vote center” model. The county converted in-person polling locations at 500 local precinct polling places to [175 countywide “vote centers”](#) for the general election (and 160 countywide vote centers for the August primary). Vote centers are often referred to as “universal polling places” because, under the vote center model, voters are not required to vote at one specific precinct in which they live but can vote in any vote center in the county in which they live. The move to the vote center model was credited with [decreasing voter confusion](#) regarding where to vote and substantially reducing the number of provisional ballots, as discussed in more detail below.

Because of the [27-day](#) early voting period, Maricopa County vote centers opened October 7 and contributed significantly to Maricopa’s record early vote turnout. By November 1, 2020, the number of early votes cast in the county already [exceeded](#) total voter turnout in the county in 2016. Early voting at vote centers also included [ballot drop boxes](#), so that voters who received

their ballot by mail could return them to the drop boxes instead of returning them through the postal service.

The vote center model had the added benefit of requiring fewer poll workers (for a longer period of time), which helped address fears of poll worker shortages due to the coronavirus pandemic. In the March primary election, many retirees who typically volunteer at the polls [stayed home](#) because their age put them in a higher-risk category for serious complications from COVID-19.

State and county officials and civic organizations took several measures to avoid a similar poll worker shortage for the August primary and November general elections. On July 22, 2020, Governor Doug Ducey signed an [executive order](#) (EO 2020-50) designed to help counties recruit poll workers. The executive order [allowed state employees to serve as poll workers](#) on Election Day (for both the August primary and general election) without impacting their pay or leave time. Additionally, civic groups, such as the nonpartisan [Power the Polls](#) in partnership with [AZ Advocacy](#) recruited thousands of potential poll workers through coalitions with businesses, social media platforms, and local stakeholders.

Maricopa County, as part of officials' back-up plan, trained dozens of [extra poll workers](#) for the August 4 primary and, according to County Recorder Adrian Fontes, hired 115% of the required number of poll workers for November, in case some dropped out at the last minute. Ultimately, Maricopa County received [20,000 poll worker applications](#) for the 1,800 poll worker slots needed for November, rendering those fears moot.

Furthermore, [election system upgrades and increased staffing](#) helped the county process ballots much faster than in previous years. Maricopa County Recorder Adrian Fontes [explained](#) "...we more than doubled the staff at the elections department....Now, I've got trained career professionals, subject matter experts, processing ballots. They can supervise those citizen boards to make sure they're doing it right and we don't have to stop to send the experts out to set up polling places. Now we've got the resources, the human resources and the money we need, to make this all happen."

There were concerns leading up to the general election that the [U.S. Postal Service](#) would not be able to process the increased demand created by the record number of requested mail-in ballots. Arizona's "received by" ballot deadline requires that mailed ballots are received by election officials by 7 p.m. on Election Day or they are considered late and are not counted. To reduce the incidence of late ballots, Secretary Hobbs produced a [public messaging campaign](#) to encourage voters to [return their ballots](#) via the post office by Tuesday, October 27, one full

week before the election. Voters unable to have their ballots postmarked by that date were [encouraged](#) to return their ballots to a ballot drop box or a polling place.

Maricopa County provided a platform to ensure voters knew their [options](#) for voting and were able to [track](#) and [check the status](#) of their early ballots. [Navajo](#) and [Pima](#) counties provided similar ballot tracking services that voters could register for to receive updates. The text message service [notified voters](#) when their ballot was mailed out to them, when it was received back by the county, when it was verified, and when it was sent to be counted. The county also provided about 20 [drop box locations](#), including drive-through drop boxes, for voters to drop off mail ballots through Election Day. And, of course, voters could return their mail ballots in person at election sites.

The public messaging campaign instructing voters to drop off their completed ballots, instead of mailing through the USPS after October 27, was successful. Many voters chose to return their early ballots in person on Election Day, rather than risk sending them in the mail and having them arrive late. In Maricopa County, an estimated [175,000 early ballots](#) were returned on Election Day (dubbed “late earlies”). This increased the counting burden on Election Day because the dropped off ballots still had to be processed for signature verification before they could be counted. These ballots were also processed and counted last, after ballots cast in person on Election Day were counted. Additionally, if the signature on the return envelope was determined not to match the signature on file, the voter was notified and given until five days after Election Day to cure the mismatched signature. The process of signature verification and waiting for the cure period necessarily deferred the final vote tally.

A [new law](#) passed in 2019 allowed election officials to process and tabulate early ballots 14 days before Election Day, instead of the previously allowed seven days. Early results could not be reported until polls closed on Election Day. Consistent with the new law, tabulation of early ballots started 14 days before Election Day (pursuant to Ariz. Rev. Stat. § [16-550\(B\)](#)), after confirmation from the secretary of state that all voting equipment passed any required logic and accuracy test (pursuant to Ariz. Rev. Stat. § [16-552\(A\)](#)). November 2020 was the first general election with the extended pre-Election Day processing and tabulation timeline, and it helped Arizona deliver election returns more quickly, since the bulk of the early ballots could be processed before Election Day.

Early mail ballots generally take longer to process than in-person ballots due to the signature verification procedures required of mail ballots. Once the signature on an early ballot affidavit is verified by the county recorder, the ballot is sent to the early ballot board, which is made up of two or more volunteers of [opposite party affiliations](#). The early ballot board removes the ballots from their envelopes and transports them to the tabulation room where election

officials run them through [tabulators](#). The ballot tabulation room is required by [law](#) to have a live video feed so voters can watch the ballot tabulation process.

Smaller counties with fewer resources experienced challenges due to the high voter turnout. While early ballots could be processed before Election Day, the processing took time, required tremendous diligence, and involved voter outreach if the ballots required curing. In Pima County, which has about one-fourth the population of Maricopa, [376,000 early ballots](#) were returned as of October 30, over 72% of all the ballots requested by county voters, and the county began processing those votes before Election Day. By comparison, on Election Day, only [50,000 of the 638,000](#) registered voters in Pima County turned out to vote in person. In Yavapai County, which has about one-fourth the population of Pima, 80% of the registered voters were on the PEVL, but the county needed days after Election Day to count the [7,800 "late earlies"](#) dropped off at vote centers on Election Day.

A. Expanding Voting Access to the Disabled in the Pandemic

In an effort to expand voting access to voters with certain disabilities, Maricopa County Recorder Adrian Fontes [developed an accommodation](#) for some voters to receive virtual assistance from county officials to both register to vote and to actually vote [via video conference](#). Arizona law allows voters who are physically unable to go to the polls or mark their ballots due to limited mobility or severe illness to request what is known as a "special election board." Historically, these boards visit the voter in person, but in-person visits were not possible in 2020 due to the coronavirus pandemic. This accommodation was developed with [guidance](#) from Secretary of State Katie Hobbs, who also sought to permit a very limited number of voters with disabilities and a severe risk of COVID-19 complications to exercise their right to vote via video conference. Governor Ducey, the attorney general, and some county recorders [challenged the virtual voting by video conference](#) in state court, arguing that the state legislature did not permit voting by video. But a judge [upheld the practice](#), stating that videoconferencing may be necessary under a very limited set of circumstances and that, without this accommodation, those voters may be disenfranchised. According to Fontes, 44 voters requested such accommodation for the August primary, of whom 10 voters, including voters with amyotrophic lateral sclerosis (ALS), multiple sclerosis, and cerebral palsy, cast votes via video conference.

IV. Election Day Administration

While early voting in the 2020 general election reached record highs, about [400,000](#) voters showed up to vote in person on Election Day. Despite the unique challenges posed by the pandemic, Election Day voting went remarkably well. There were no reports of voters encountering any significant challenges across the state on Election Day. Most voting lines were relatively short, polling places were adequately staffed, health precautions were taken, and there were no reports of voter intimidation. Nor were there any reported problems with the issuance or collection of ballots.

Though a few polling places had [long lines](#) at various points throughout the day, there were no reports of lines that exceeded 45 minutes. This was a welcomed development after the state's March 17 Democratic primary, during which [long lines](#)—up to five hours—were reported throughout the state. Through Arizona's Citizens Clean Elections Commission, Maricopa County and other counties provided voters with an online "Voter Dashboard and Clean Elections" application to determine the current wait time at particular vote centers.

In Maricopa County, the vote centers [increased the number of check-in stations](#) at each center (with between 9 and 15 check-ins at each location), enabling each center to check in voters more quickly. In previous elections, the county's polling places typically had only two check-in stations. Also in Maricopa County, a relatively [new check-in tool](#), a proprietary technology system called "[SiteBook](#)," reduced check-in time for voters by 75 percent, according to Recorder Fontes, and allowed approximately 165,000 voters in Maricopa County to vote in person on Election Day without incident.

Procedures for tabulating and processing in-person ballots differed by county but, across the state, there were no reported issues, regardless of the method. Some counties used the [central count](#) method in which voters put their completed ballots in a "secured ballot bin" which was transported to the county's ballot tabulation center after the polls closed. This transportation was carried out by election workers of both political parties. Other counties used the [precinct tabulation](#) method, in which voters or poll workers fed the completed ballots into a tabulation machine located at the voting location. The machine tabulated the ballots immediately and saved the vote count to a media device inside the tabulator. After the polls closed, the poll workers or sheriff deputies removed the media devices and transported them to the central counting location for the county. At the central counting location, an election official loaded the results from the removable media device into the secure election management system and combined the vote totals for all the polling locations.

All counties followed [chain of custody protocols](#). These required documentation on the handling of every ballot, the storage of all ballots in secure locations, and a live video feed of the ballot tabulation rooms. Counties also followed the required protocols for ensuring the security of all ballots, including the use of tamper-evident seals, identification badges, and having two or more election officials of opposing political parties present.

There were some [minor hiccups](#). Some polling places ran out of ink for their printers faster than anticipated. At one voting center, computers crashed and had to be rebooted. These minor issues were resolved promptly and did not cause inordinate delay. Rain triggered a news alert (in the desert of Arizona) and was cause for brief concern for some polling places that had lines out the door.

There was one alleged incident, dubbed “[Sharpiegate](#),” rumored to have taken place on Election Day, which went viral on social media and led to a lawsuit in the state. The report has since been debunked. In-person voters on Election Day in Maricopa County were provided with Sharpie brand pens with which to mark their ballots, even though, up until the 2020 election cycle, Sharpie pens were a prohibited method for filling out a ballot. The reason for the change in 2020 was that the manufacturers of the new ballot tabulators, [Dominion Voting Systems](#), recommended the use of Sharpies on their machines because of the clear coloration and a change in ballot design with offset columns on the front and the back so that marker bleed-throughs were not an issue for the machines. Some voters claimed the Sharpie pen caused the tabulators to cancel their ballots. There was no evidence to support this claim, and the lawsuit on the issue was [quickly thrown out](#).

A. Health and Safety

Election officials in all states and localities had to scramble to purchase additional materials required to adapt to the pandemic. Polling places required personal protective equipment (PPE) for poll workers and voters, sanitation supplies, and materials to facilitate social distancing. The increase in mail ballots required additional ballot printing, processing, and tabulating equipment. The change in polling locations and Maricopa’s transition to the vote center model required new public outreach and education efforts. All of these accommodations required funding. Federal funding for states through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as well as grants from the nonpartisan, nonprofit [Center for Technology and Civic Life](#) (CTCL), helped fill gaps in local election funding to provide for a safe administration of the election.

On July 2, 2020, Governor Doug Ducey and Secretary of State Katie Hobbs [announced](#) that the \$9 million in CARES Act funding allocated to Arizona would be used to fund AZVoteSafe, a state plan to ensure voter and poll worker safety. The funding was allocated to the following initiatives in approximately these amounts:

- \$5 million to election departments and country recorders for their coronavirus pandemic response initiatives, such as increasing the number of ballot drop-off locations, hiring additional temporary staff and poll workers, and expanding curbside voting.
- \$1.5 million to increase early voting opportunities, especially in tribal and rural communities.
- \$1.5 million to inform voters of their voting options.
- \$1 million towards purchases of personal protective equipment (PPE) and sanitation supplies for voting locations, including face masks, face shields, gloves, hand sanitizer, disinfectant spray, disposable pens, and, in some areas, handwashing stations.

In addition to CARES Act funding, [nine](#) of Arizona's 15 counties received grant assistance from the nonpartisan [Center for Tech and Civic Life](#) (CTCL) as part of its COVID-19 Response Grant Program: Apache, Coconino, Graham, La Paz, Maricopa, Navajo, Pima, Pinal, and Yuma counties. [Maricopa County](#) received \$2,995,921 million; [Pinal County](#) received \$806,042; [Apache](#) received \$593,203; [Coconino County](#) received \$614,692; and [La Paz](#) received \$17,531. This funding was part of a national effort by the voting advocacy group to supplement local election department funds with private funds to help election officials address the challenges of adapting elections to the pandemic, challenges which, in many cases, were exacerbated by funding shortfalls. Specifically, the grants were designed to [enable](#) local election officials to provide safe and secure voting procedures during the pandemic. According to a [legal brief](#) filed by CTCL defending the grants against a legal challenge in the state, "[m]ost of th[e] funds were used to purchase personal protective equipment for voters and election workers, to recruit and train additional staff, to provide improved security, to establish in-person polling places, to process mail-in ballots, and to ensure emergency preparedness. (The legal challenge against the CTCL grants in Arizona failed, just as similar challenges against CTCL grants in other states also failed.)

Due largely to health measures and accommodations funded by the CARES Act and CTCL, there were no reported health-related issues at the polls during Arizona's August 4 primary or November 3 general election. State and county election administrators took significant [health and safety measures](#) to protect voters and poll workers for the August 4 primary, which proved successful, and those measures were then extended and enhanced for the general election in November.

Among other initiatives, Arizona used the CARES Act funds to produce and distribute voter education materials to encourage safe voting practices. The state released the [2020 AZVoteSafeGuide](#), which outlined voters' options to vote early, vote by mail, or vote in person. It also suggested precautions for in-person voting, such as wearing a face covering, bringing one's own pen, maintaining physical distance, washing one's hands, and avoiding touching one's face. The state also released [Guidance for Reducing COVID-19 Risks at In-Person Voting Locations](#), with numerous suggestions for reducing risks when voting in person.

Some counties also supplemented statewide measures with their own health and safety plans. Maricopa County released [detailed plans](#) for addressing the health risks of the coronavirus pandemic in the August 4 primary, which it supplemented for the [general election](#). In addition to increasing access to mail voting, these plans aimed to ensure safety during in-person voting by transitioning to the vote center model, establishing additional safety protocols, and expanding early in-person voting. Most of Maricopa's [vote centers](#) were about 2,000 square feet in size, allowing for [socially distanced in-person voting](#). They were also equipped with hand-washing and hand sanitizer stations.

Maricopa County also developed training materials for poll workers, such as a ["Health and Safety" training video](#) and a new training manual that addressed vote center safety in the pandemic. While the training manual is no longer available online, it substantively mirrored the Maricopa County ["Election Day and Emergency Voting Plan for November General Election,"](#) which required the following COVID-19 safety accommodations for both poll workers and voters at vote centers:

- **Physical distancing:** All voting locations will be large enough to accommodate physical distancing. We are separating check-in stations, voting booths, precinct tabulators, and areas for standing in line by at least six feet to allow for adequate physical distancing. We will also be providing signage and markers to implement physical distancing for voters when standing in line outside our Vote Centers.
- **Protective Safety Supplies:** We will be providing all voters with the ability to wear disposable latex gloves during the check-in and voting process. We will also offer masks for any voter that does not have a mask and would like a mask when voting in one of our in-person voting locations. Our Poll Workers will be provided with and required to wear a mask and gloves when working in our voting locations. We will also provide poll workers with face shields that should be worn when voters are present in the voting location.
- **Frequent cleaning and disinfecting:** Our cleaning procedures require the cleaning and disinfecting of high touch surfaces every 30 minutes. If a voter chooses not to wear a mask or gloves during check-in and while voting, we will immediately clean those surfaces after the voter uses them.

- **Encouraging good hygiene:** We will ask Poll Workers to monitor themselves for symptoms (e.g., high temperatures, cough, sore throat, loss of taste/smell) and to frequently wash their hands. In addition to hand sanitizer, we will also have hand washing stations or bathrooms available for voters and Poll Workers to wash their hands.

Most vote centers were [staffed](#) with between 10 and 12 poll workers in order to be able to assist voters, maintain safety protocols, and “allow for the Elections Department to still provide in-person voting options even if 30–40 percent of our Poll Workers were absent.” Voters were [encouraged](#) to wear masks as part of a county-wide mask mandate, but masks were not required, and no voters were turned away if they refused to wear a mask.

Pinal County published an [instruction manual](#) for poll workers which provided some guidance on polling place safety. The guide suggested that:

- Poll workers should stay home if they are sick and take other sensible precautions to prevent the spread of COVID-19, such as maintaining physical distancing, washing or sanitizing their hands often, and avoiding touching their eyes.
- Poll workers should ensure that the polls remain clean and safe. They were instructed to regularly disinfect voter marking pens, to encourage curbside voting, clean and disinfect tables and voting booths every hour with alcohol wipes, increase distance between voting booths when setting up equipment, and to encourage using a stylus for poll pads.

To ensure safety, poll workers in Pima County were [supplied](#) with masks, plastic face shields, gloves, disinfectant spray, and hand sanitizer. Furthermore, masks and proper social distancing were required to cast a ballot. If a voter did not have a mask, poll workers provided one at the polling location. [Special accommodations](#) were provided for those who chose not to wear a mask. There was either a separate place for them to vote, or they could vote outside or in their car. Those options were also available to voters who did not want to enter the polling place to drop off or fill out a ballot. [Coconino County](#) established a new protocol to allow voters with health concerns or fears of contracting COVID-19 to participate in emergency early voting (on the Saturday and Monday prior to the election, after the end of the statewide early voting period). Voters had to complete a form stating that they wished to vote early due to an emergency, but they did not have to disclose the specifics of the emergency. Ballot drop boxes were also made available.

V. Native American Voting

Election officials and community organizations worked with Native American communities in Arizona to improve access to both early voting and Election Day voting for the 2020 general election. They did so against a historical backdrop of cultural, socioeconomic, and language barriers and a contemporaneous [high rate](#) of COVID-19 infections in disproportionately high numbers for the population. Native Americans accounted for nearly [6% of the state population](#) and, for the 2020 election cycle, Native American voter turnout was higher than previous elections. The Navajo and Hopi reservations cast approximately [60,000 ballots](#) in 2020, compared to 42,500 in 2016. Turnout in some precincts in reservations rose as much as 13%, outpacing the statewide turnout growth of 8% from 2016 to 2020. Historically, Native Americans have had a [lower average turnout rate](#) than white voters in Arizona.

Some election observers cited [turnout among Native American populations](#) as a contributing factor in Biden's winning in the state. Precinct-level data, as of November 9, showed "the three counties that overlap with the Hopi Tribe and Navajo Nation went for Biden at a rate of 57%, as opposed to 51% statewide. Voter precincts in the Navajo Nation ranged from 60-90% for Biden." The data on voting patterns of Native American populations was limited by the fact that the majority of Native Americans live in [urban areas](#) and, therefore, do not appear in tribal land voting data.

A few specific initiatives may have contributed to the increase in Native American turnout. Many homes on the reservations [do not have street numbers and names](#) but are identified by way of directions to the location. And many Native Americans get their mail through post office boxes. Historically, many governmental institutions have failed to recognize these non-standard addresses on tribal lands, which has limited the ability of reservation residents to register to vote. But in 2020, Secretary Hobbs [updated](#) the state's online voter registration platform to accommodate voters with non-standard addresses.

Additionally, several civic organizations worked to increase voter turnout among Native American populations. The [Native Vote Election Protection Project](#) organized tribal residents to register to vote, helped drop off mail ballots, and provided transportation to the polls. A voter information initiative from the Arizona State University [Indian Legal Clinic](#) created a [poll locator tool](#) that helped voters find their polling location, ballot drop boxes, and early voting information to assist Native American citizens seeking to cast a ballot. A 30-year-old Diné woman named Allie Young created an initiative called "[Ride to the Polls](#)," which organized voters traveling by horseback to ride Navajo Nation trails together to early voting sites. She led

groups on horseback along the 10-mile route from Church Rock in Navajo County to the polling stations in Kayenta, Arizona.

Despite the increased turnout, Native American voters still faced some unique voting barriers in the 2020 general election. Due [to the closure](#) of an early voting site on Pascua Yaqui tribal land in Pima County in 2018, some tribal members had to travel up to two hours round-trip on public transportation to vote early in the 2020 general election. Tribal representatives sued and lobbied to reopen the early voting site, but their efforts were unsuccessful. Additionally, members of the Havasupai tribe had less time to vote in-person than other voters because tribal leaders [requested shorter voting hours](#) to limit the potential transmission of the coronavirus.

In-person voting options are particularly important for Native American communities. Ballots are [rarely translated](#) into indigenous languages, and monolingual Native American language speakers often depend on language assistance services at polling places. Such onsite assistance is particularly important for some Native American languages, such as Apache, because the languages are largely unwritten and translation assistance must be provided orally.

Although there was a surge in vote-by-mail across the nation because of the coronavirus pandemic, Native Americans were [more hesitant to adopt mail-in voting](#). In addition to language issues, voters living on reservations had less access to transportation to post offices and, in many cases, ballots could not be delivered to post office boxes. Limited internet access and mistrust of mail voting, based on a history of disenfranchisement, also played a role.

A federal appeals court [rejected](#) a request that 67,000 Navajo Nation members in Arizona get an extension of the deadline by which mail ballots had to reach state election officials. In [Yazzie v. Hobbs](#), filed in August 2020, plaintiffs, Navajo Nation members, alleged that Arizona's requirement that mail ballots be received—not postmarked—before 7 p.m. on Election Day was an unconstitutional burden on their right to vote, as applied to members of the Navajo Nation during the coronavirus pandemic and United States Postal Service (“USPS”) reorganizational issues. They argued that the Election Day receipt deadline disproportionately impacted Native Americans who owned far fewer cars and who lived in locations with fewer post offices and slower mail service.

Despite the particular challenges Native Americans in Arizona faced at the polls, the organizing efforts of statewide groups led to a record turnout among native populations, which ultimately helped [swing the state](#) for Biden in the 2020 election cycle.

VI. Ballot Processing, Tabulation, Counting, and Certification

Though some of Arizona's general election procedures were subjected to protests and court challenges, the procedures withstood the challenges of a record-breaking election turnout and pandemic circumstances. No evidence of election mismanagement or fraud was uncovered by the courts or otherwise, and the processing and tabulation of ballots and the certification of the election proceeded smoothly and timely.

A. Processing Ballots

A 2019 law (Ariz. Rev. Stat. § [16-550](#)) that extended the period for election officials to process and count early ballots—from seven days to 14 days before Election Day—helped ensure the smooth and timely processing of ballots cast in 2020. Under the new law, officials could verify the voters and open and tabulate the votes but were not permitted to release vote counts until all precincts had reported or until one hour after the polls closed (at 7 p.m.) on Election Day.

To be counted, all mail ballots in the state were required to be received by election officials by the close of the polls, 7 p.m. on Election Day. A case filed in August, [Yazzie v. Hobbs](#), challenged the requirement that mail-in ballots be *received* by election officials—rather than just *postmarked*—before 7 p.m. on Election Day. The Ninth Circuit U.S. Court of Appeals [affirmed](#) the district court's [denial](#) of plaintiffs' request to extend the ballot receipt deadline.

B. Signature Verification for Mail Ballots

The [new law](#) that allowed signature verification to begin as soon as mail ballots were received provided election officials ample time to process ballots. Mail-in ballots in Arizona are verified through a process that includes signature verification. Election officials are required to [compare the signature on the voter's mail-in ballot](#) return envelope with the signature on the voter's registration record. If the signature is "inconsistent," the election official is required to make "reasonable efforts" to contact the voter to provide an opportunity to cure the problem. The new law allowed election officials to undergo the signature verification process as soon as the ballot was received by the county recorder or official in charge of the election. Ballots were mailed out to voters beginning [October 7](#).

Arizona required election officials to notify voters and provide them an opportunity to cure ballots that had *mismatched* signatures (a signature that did not match the one on file with

voter registration) and those that were *missing* signatures altogether. However, the period allowed for voters to cure each of these defects was different. Mismatched signatures could be cured up to five business days *after* Election Day, while [missing signatures to be cured by 7 p.m. on Election Day](#), when the polls closed. In June 2020, the Arizona Democratic Party [sued](#) over this disparity and sought to extend to voters with missing signatures the same cure deadline allowed for voters with mismatched signatures. Though the party prevailed at the district court level, the U.S. Court of Appeals for the Ninth Circuit [overturned the district court ruling](#) in October, so the Election Day deadline for curing missing signatures remained intact for the 2020 general election.

C. Provisional Ballots

There was a substantial decrease in the number of provisional ballots cast in the 2020 general election, a development attributed to Maricopa County's new vote center model, the high-quality public information campaigns by the state and various counties on how and where to vote, and the lower rate of in-person voting relative to mail voting. Fewer provisional ballots meant less time waiting for voters to cure ballot issues and less time to tabulate and count those ballots. As one of the chief concerns going into the 2020 election was the historically slow nature of Arizona's vote count, the reduced number of provisional ballots helped to ameliorate that issue and to enable the state to finalize results on time.

Arizona state policy in 2020 was to discard provisional ballots cast in the wrong precinct. Some feared this policy might affect a high number of provisional ballots because so many precinct locations had to be closed or relocated to accommodate pandemic circumstances. In [Brnovich v. DNC](#), plaintiffs sought to [eliminate](#) the policy and proposed instead that votes for county, state, and national offices on provisional ballots cast in the wrong precinct should be counted and only votes for city council seats should be discarded. Plaintiff claimed that discarding the entire provisional ballot violated Section 2 of the Voting Rights Act. The Ninth Circuit sitting en banc [upheld](#) a district court decision that struck down the out-of-precinct policy for provisional ballots on January 27, 2020, finding that that policy was enacted with the intent to discriminate against minority voters. The Arizona attorney general [appealed](#) the decision to the Supreme Court of the United States, which [granted certiorari](#) before the election but scheduled to [hear the case](#) afterwards, in March 2021. The law, therefore, [remained in effect](#) during the 2020 general election and had the potential of disqualifying a large number of provisional ballots.

In the end, however, largely due to the adoption in Maricopa County of the vote center model, the number of provisional ballots in the state overall dropped dramatically in 2020, despite the new state policy of discarding provisional ballots cast at the wrong precinct. In the 2016

presidential election, [52,173 provisional ballots](#) were cast in Maricopa County; of those, 36,923 (71%) were eventually counted. In the 2020 presidential election, only [18,310 provisional ballots](#) were cast in the county; of those, 6,198 (34%) were eventually counted. The vote center model reduced the number of provisional ballots in Maricopa County because voters could go to any vote center in the county. They were not required to go to one specific precinct, so no county voters were “out of precinct.” The reduced number of provisional ballots was even more remarkable in light of the county’s increased voter turnout for the 2020 election, from [1.6 million](#) ballots cast in 2016 to nearly [2.1 million](#) in 2020.

D. Reporting and Counting the Vote

Under Arizona [law](#), unofficial tabulated results may be released publicly after all precincts have reported or one hour after the closing of polls, whichever comes first. On election night 2020, the secretary [of state \(SOS\) website](#) released the first results at 8 p.m., one hour after the polls closed at 7 p.m. The first results included early ballots, such as mail-in ballots, that had been counted starting 14 days before election night. After that, the results were updated “sporadically,” as counties received information from voting machines at their polling locations. [These results were unofficial](#), as they had not yet been certified by the board of supervisors or other officers in charge. Results were simultaneously shared with the secretary via phone, fax, or other electronic means as they were tabulated at each precinct.

For its election night reporting system, Arizona used software from [BPro](#), a private company that operates the TotalVote Election Software. Most Arizona counties also relied on this software to display their results to the public. On election night, the state updated election results on [its Election Night Reporting \(ENR\) website](#) as information came in from all counties. The state ENR website allowed the public to view results by county, and 13 out of the 15 counties relied on this website as their main ENR system. In most cases, the individual counties also uploaded results to their own websites as .pdf or .txt files. Two counties, [Greenlee](#) and [Pinal](#), used [ScytI](#), another private company’s election software, to post their results on their individual county websites.

By clicking on “[Precincts Reporting](#)” at the top of the page on the state’s ENR website, the public could view “the total number of voting locations that have reported election results, how many ballots have been cast and what the voter turnout is in each county.” Because results were updated “sporadically” as precincts reported, it was unclear if the number of “precincts reporting” included precincts that had reported partial tabulations but still had votes left to count or only those that had finished tabulating votes.

VII. Post Election Day

On the evening of Election Day, as the returns came in, the decision desks of various news organizations took different approaches to deciding when to call the state. The 14-day pre-election window to tabulate the vote meant that a greater number of ballots were reported as part of the election night early result releases than had been in the past. Two organizations, Associated Press (AP) and Fox News, called the election for former Vice President Joe Biden in the late hours of November 3 and early hours of November 4, respectively. Their announcements were controversial because other major news organizations, such as NBC, ABC, CNN, and the New York Times, maintained that the race was still too close to call in Arizona. While Biden was in the lead when AP and Fox News called the election in his favor, and while he remained in the lead with each successive vote update, his lead continued to diminish. It was not until late on [November 12](#) that the other networks, including [NBC](#), [ABC](#), [CNN](#), and the New York Times, finally called the state for Biden. That was three days after the final votes were cast, due to the signature mismatch cure deadline, and when the total number of [outstanding uncounted votes](#) (10,315) was smaller than Biden's lead at that time (11,434).

In Arizona, [recounts are triggered](#) automatically for presidential elections when the vote canvass indicates that the margin between the top two candidates is less than or equal to the lesser of (i) one-tenth of one percent of the number of votes cast for both candidates (in this case, about 3,334 votes) or (ii) 200 votes. Biden's margin of victory in Arizona was [10,457 votes](#), well above either margin that would have triggered a recount. Arizona does not permit recounts by request, as other states—such as Wisconsin and Georgia—allow. In Arizona, the only means by which the election could be challenged was through lawsuits challenging particular electoral processes. As discussed below, several such lawsuits were filed, but all were quickly resolved and none of them successfully invalidated any of the election results.

A. Logic and Accuracy Tests

Arizona required that all election equipment used in the state be tested and certified before the election. Under Arizona Revised Statutes § [16-449](#), this testing and certification process must take place both before and after each election to ensure the equipment counted votes accurately and attributed them to the correct candidates and ballot measures. Each county was required to test all of its [election equipment](#) (i.e. voting machines) before any tabulation could begin. These tests were required to be [overseen](#) by at least two elections staff or inspectors of different political parties. In addition, the testing was required to be open to observation by representatives of political parties, candidates, the press, and the public. For any election that

included a federal, statewide, or legislative office, the secretary of state was required to conduct additional [logic and accuracy tests](#) on equipment at random in various counties.

B. Certifying the Vote

State law required the election results to be certified no later than 27 days from Election Day—which, for 2020, meant November 30. To [certify](#) the election results, election officials were required to canvass the election results of each precinct or election district. The Secretary of State Election Services Division was in charge of [certifying](#) the results on the state level, while the board of supervisors for each county certified the results at the county level. The canvasses [verified](#) vote totals, including write-ins, for all contests.

At the county level, a [board of supervisors](#), composed of [county officials](#) elected to four-year terms, carried out the canvassing in public meetings between six and [20 days](#) after the election. The official election [results](#) were required by state law to include a Statement of Votes Cast, a cumulative Official Final Report, and a Write-Ins Vote Report. The [Statement of Votes Cast](#) included the number of ballots cast in each precinct and county, the titles of offices up for election, the name of the people up for election, the number and title of each ballot measure, and the number of votes cast for and against each ballot measure. The [Official Final Report](#) included the total number of precincts, total number of ballots cast, total number of registered voters eligible for the election, and number of votes cast for each candidate by district or division. The [Write-Ins Vote Report](#) included the name and number of votes for each authorized write-in candidate by precinct. Once the board of supervisors [completed](#) the election results certification, the Official Final Report and Statement of Votes Cast were published on the website of the county officer in charge of the election. Under Arizona Revised Statutes § [16-645](#), if the election included a federal, statewide, or legislative office or a statewide ballot measure, the board of supervisors or the county officer in charge was required to [transmit](#) the official canvass to the secretary of state electronically and by mail.

In November 2020, this entire post-election canvassing leading up to the certification went smoothly and efficiently. Governor Ducey and Secretary Hobbs certified the election results on schedule on November 30. Republican groups sought to nullify the certification through legal challenges, none of which were successful.

VIII. Legal Challenges

A. Pre-Election Challenges

Despite Arizona's historically accessible and popular vote-by-mail option, several lawsuits sought to extend deadlines and remove barriers in anticipation of large increases in the use of mail voting during the pandemic. The voter registration deadline was the target of one legal dispute, [*Mi Familia Vota v. Hobbs*](#), until just a month before Election Day. On October 5, the U.S. District Court for Arizona [extended the registration deadline](#) from October 5 to October 23, the same deadline to request an absentee ballot. On October 13, the U.S. Court of Appeals for the Ninth Circuit [stayed](#) that district court ruling and instated a voter registration deadline of October 15. The extension of the deadline from October 5 to October 15 enabled an additional [35,000 voters](#) to register.

Another lawsuit sought to extend the deadline for the receipt of completed mail ballots. Mail ballots in Arizona must be *received* by election officials by 7 p.m. on Election Day in order to be counted. (Some states direct that mail ballots must be *postmarked* by Election Day and received by some defined number of days after Election Day.) In [*Yazzie v. Hobbs*](#), plaintiffs sought to extend the Arizona mail ballot receipt deadline so that ballots would be counted if they were *postmarked* by Election Day. They noted the unique circumstances for voters in the Navajo Nation, such as living in large rural areas, having fewer cars, and experiencing high instances of COVID-19, as well as issues with the U.S. Postal Service. Both the [U.S. District Court](#) and the [Ninth Circuit](#) upheld the legislatively-enacted "received by" deadline, citing minimal burden on voters and the fact that the lawsuit was filed within a month of Election Day, while the deadline had been in place since 1997.

Another deadline dispute played out in the courts regarding the cure period for mail ballots missing the voter's signature. Arizona statutes are silent regarding a cure period for a ballot rejected because it is missing the voter's signature, but the [2019 Elections Procedure Manual](#), in effect for the 2020 general election, provided that missing signatures could be cured by 7 p.m. on Election Day. State law allows voters seeking to cure *mismatched* signatures up to five days *after* Election Day. The lawsuit [*Arizona Democratic Party v. Hobbs*](#) sought to extend the deadline for curing a missing signature by five days to match the deadline for curing a mismatched signature. The Election Day receipt deadline, plaintiffs argued, made voters who forgot to sign their ballots more likely to have their vote rejected because it was less likely they would receive notice in time to correct their error. In addition, there was a risk that the inconsistency between the deadlines could be a source of confusion for voters. The [U.S. district court](#) granted an injunction and extended the deadline, but the Ninth Circuit [overruled the decision](#) in October

and reinstated the Election Day receipt deadline established in the Elections Procedure Manual. The Ninth Circuit found that the Election Day deadline to cure missing signatures created only a minimal burden on voters and was outweighed by the state's interest in preserving its existing laws for orderly administration of the election.

Another major case, [*Arizona Republican Party v. Democratic National Committee*](#), was headed to the U.S. Supreme Court during the general election. This case challenged the legality of two Arizona election rules: One was a state policy of tossing out an entire provisional ballot if it was cast in the wrong precinct (rather than tossing just the votes for city council-specific races and counting eligible votes for county, state, and national offices). The other was a state law criminalizing the collection of completed mail ballots by a third party for the purpose of dropping them off to election officials on behalf of the voter (a practice sometimes called "ballot harvesting"). In January 2020, the U.S. Court of Appeals for the Ninth Circuit sitting en banc [issued a split ruling](#), invalidating both rules. The majority held that both policies violated Section 2 of the federal Voting Rights Act because both rules had a discriminatory impact on American Indian, Hispanic, and African American voters. The Ninth Circuit issued [a stay](#) of its ruling pending appeal to, and final disposition by, the U.S. Supreme Court. As a result, both election rules remained in effect during the 2020 general election. The state [appealed](#) to the U.S. Supreme Court, which [heard](#) oral arguments in the case in March 2021 ([together](#) with [*Brnovich v. Democratic National Committee*](#)). The legality of the challenged rules will be decided by the Supreme Court in 2021.

Both policies at issue in the case had a heightened importance in the pandemic. The need to reduce the number and location of polling places due to the pandemic arguably had the potential to confuse voters more than usual regarding where to vote. This confusion was mitigated, however, by Maricopa County's adoption of the vote center model, in which voters could cast votes at any vote center in their county. But not all Arizona counties adopted the vote center model. And plaintiffs contended that the continued criminalization of collecting ballots for others forced some voters to choose between incurring health risks by delivering their ballot in person or risk criminal penalties for having another person return their mail ballot for them and possibly not having the ballot counted.

B. Post-Election Challenges

After Election Day, the Donald J. Trump For President campaign and its allies filed over [72 lawsuits nationwide](#), primarily in swing states, alleging various incidents of election misconduct and fraud. [Eight](#) of these lawsuits were brought in Arizona.

Three were filed against Maricopa County Recorder Adrian Fontes and Arizona Secretary of State Katie Hobbs in the wake of the election returns; all three were dismissed without any effect on the results of the election. First, some voters in Maricopa County [alleged](#) that their in-person ballots cast on Election Day were not counted by the tabulation machines because they were given Sharpie brand markers by election officials to fill out their ballots. Their lawsuit claimed the voting tabulation machines could not read votes marked in Sharpie ink. Arizona officials maintained that the votes were properly counted, and the manufacturers of the machine specifically recommended the use of Sharpies for the ballots. The plaintiffs requested the court dismiss their suit just three days after they filed it.

In the second [lawsuit](#) against Fontes and Hobbs, the Trump campaign alleged that votes were rejected as “overvotes” after voters were induced by poll workers to override the tabulator’s rejection of the ballot. The Trump campaign asked the U.S. district court to halt the state’s canvass until the county’s Ballot Duplication Board could review the ballots that were allegedly improperly disqualified. The case was dismissed as moot because the ballot totals at issue would not impact the election outcome.

In the third lawsuit, the state Republican Party [brought suit against Maricopa County Recorder Fontes](#) to increase the sample size of the required quality control hand count—from 2% of “polling places” (which, in this case, would be 2% of the vote centers used by Maricopa County) to 2% of “precincts.” This case was dismissed as well.

Four cases filed between November 30 and December 7, sought to decertify the state’s election results—results that were officially certified on November 30, 2020—and/or to recertify the results for Trump, prior to the vote of the Electoral College. The first of these, [Ward v. Jackson](#), filed on November 30 by the Chairwoman of the Arizona Republican Party, [claimed](#) that mistakes in signature verification and in the duplication of ballots which could not be machine read in Maricopa County led to Trump’s defeat. The trial court permitted inspection of 1,626 randomly sampled ballots, for which there were fewer than 10 errors. The [Supreme Court of Arizona](#) found that the error rate was “statistically negligible” and might have resulted in only 153 votes lost for Trump, below the margin that triggers a mandatory recount. The state supreme court [affirmed](#) the trial court’s decision finding no fraud, and it confirmed the election of the Biden slate of electors under Arizona state law, effectively ending any further legal challenge to the outcome of the presidential election in the state. Ward and the Republican Party [filed for certiorari](#) with the U.S. Supreme Court, which denied review on February 22, 2021.

Three lawsuits seeking decertification of election results were filed against the governor, all of which alleged a wide range of fraud. In [Stevenson v. Ducey](#), plaintiffs argued that [private election](#)

[grants to Maricopa County](#) were unlawful and exacerbated problems with “unlawful ballots.” Plaintiffs eventually requested the court to dismiss the suit. In [Burk v. Ducey](#), plaintiff focused on the Dominion Voting Systems voting equipment and alleged that thousands of fictitious votes had been counted. The case was [dismissed for lack of standing](#) because the plaintiff was not registered to vote in the 2020 election in Arizona. In [Bowyer v. Ducey](#), Trump campaign attorney Sidney Powell’s so-called “Kraken” case, plaintiffs [alleged](#) a laundry list of fraud, from ballot chain-of-custody issues to allegations that some Maricopa County officials were biased because they were registered as Independents. The court [threw the case out](#) on December 10, 2020, criticizing the merits of the case as “sorely wanting of relevant or reliable evidence” but [dismissing](#) the lawsuit on the grounds that the plaintiffs—electors pledged to President Trump had he won Arizona—did not have standing. Petitioners [appealed](#) to the U.S. Supreme Court, which [denied review](#).

As of the time of writing (March 10, 2020), all efforts to prove fraud or to challenge or invalidate the election results in Arizona in the courts have been short-lived and unsuccessful. For a more detailed summary of each of the Arizona cases filed post-Election Day, and the disposition of each, see the Stanford-MIT Healthy Elections Project’s report called [Post-Election Litigation Analysis and Summaries](#).

IX. Conclusion

In the leadup to Election Day, a national narrative about the potential for delayed election results, voter intimidation, and election fraud allegations led to fears of ensuing chaos. The protests outside of the Maricopa County election department in the days following Election Day contributed to that narrative. In response, [Governor Ducey](#) and [Secretary Hobbs](#), members of different political parties and often political rivals, [each used their platforms](#) to instill confidence in the results and to urge for patience as the process played out. As a predominantly vote-by-mail state, Arizona often takes more time than other states to tabulate its election results and, with the added complication of a pandemic, 2020 was no different. Governor Ducey and Secretary Hobbs helped Arizonians and Americans understand that the allegations of voter fraud and election misconduct were unsubstantiated, that the Arizona election was conducted with [integrity](#), and that the results were accurate. Some were convinced. Unfortunately, others were not.

Despite the challenges of the pandemic, Arizona election officials administered a remarkably successful general election in 2020. It was safe, secure, accurate, and ultimately managed the largest turnout in the state’s history. Arizona was better poised than many other states to

address the challenges of mail voting at scale due to the state's history and culture that already supported and encouraged mail voting at scale. Mail voting was further augmented by a [2019 law](#) that permitted election officials to process and count early ballots 14 days before Election Day, seven days earlier than in past election cycles. Additionally, in response to challenges identified in the March presidential primary, state and local officials acted early and effectively to secure provisions and preparations required to support the record turnout election in the pandemic. An extended voter registration deadline, transition to a vote center model in Maricopa County, enhanced check-in technology, intensive poll worker recruitment efforts, the expanded use of ballot drop boxes and early voting, improved access for Native American populations, and strong public messaging campaigns, all supported with funding from the CARES Act and CTCL grants, encouraged and accommodated safe voting by a record number of voters. The ballots were counted accurately and the election was certified on time. Legal challenges to the results were unsuccessful and did not impact the outcome.

Georgia 2020: Election Administration in the Coronavirus Pandemic

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- [“Georgia: 2020 Election Policies & Practices,”](#) Bree Baccaglini (November 6, 2020).
- “Supply Chain Performance in the 2020 Election,” Alexandra Popke, Erin Pang, Neil Wary (March 10, 2021)
- [“Post-Election Litigation in Battleground States: A Summary,”](#) Zahavah Levine and Jacob Kovacs-Goodman (Last Updated: March 1, 2021)
- “Recounts and Challenges in Battleground States,” Haley Schwab, Bree Baccaglini, Matthew Simkovits, Mikaela Pyatt, Amanda Zerbe, Axel Hufford, Evie Freeman, Christopher Middleton, Christopher Wan, Ali Bloomgarden, and Garrett Jensen (November 13, 2020).

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I. Introduction

Despite the challenges of administering a general election with record-breaking turnout amidst the coronavirus pandemic, Georgia's state and local elections officials rose to the challenge in November 2020. Existing features of Georgia's election law—particularly no-excuse absentee voting and extended in-person early voting opportunities—proved critical in an election cycle where voters wanted to minimize transmission risks and gravitated in droves to traditional Election Day alternatives. In addition to leaning on existing laws, Georgia officials adopted measures that put them on even better footing. They approved dropboxes, permitted pre-processing of absentee ballots, introduced advanced ballot tracking, and launched an absentee ballot request portal. Compared to the June primary, they reduced Election Day lines, improved poll worker recruitment, and enhanced training on the new voting equipment. Although there were long lines on the first few days of early voting and some polling place closures, the improvements made during the primary season made the voting in the general election largely a success.

Unlike the case in most states, however, November 3 closed only one chapter of the 2020 presidential election in Georgia. In the weeks after Election Day, Georgia's election officials had to oversee a hand audit of five million ballots (the first statewide audit ever performed in Georgia) and a full machine-based recount. Despite the challenges and the enormity of the undertaking, county officials met their deadlines and, in so doing, affirmed the outcome of the Georgia presidential election three separate times. This accomplishment is all the more impressive given that officials and workers carried out their work in an environment of rancorous and even dangerous misinformation aimed at undermining confidence in the election results.

II. Lay of the Land

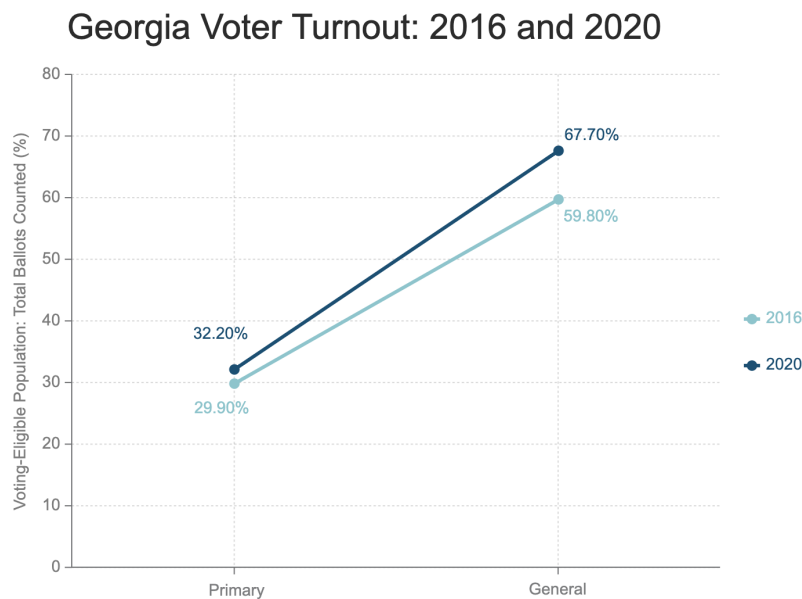
In the presidential contest, former Vice President Joseph R. Biden won Georgia by 11,779 votes (or 0.23%) of 4,997,716 votes cast in the presidential race. Democrat Biden received 2,473,633 votes (49.50%), Republican President Donald Trump received 2,461,854 votes (49.26%), and Libertarian candidate Jo Jorgenson received 62,229 votes (1.25%).¹ In the state's two U.S. Senate

¹ As described in Section IV, the presidential race in Georgia was subject to both an audit (which entailed a full hand tally) and a machine recount during the post-election period. The results recited here reflect the outcome of the recount, which were the figures ultimately certified by state officials and differ slightly from the [results](#) reported after the initial count.

racers, no candidate garnered more than 50% of the vote, forcing a run-off between the top two vote-getters from each contest. In that run-off on January 5, 2021, incumbent Republican Kelly Loeffler faced Democratic challenger Rafael Warnock, and incumbent Republican David Perdue faced Democratic challenger Jon Ossoff. The final presidential general election results are detailed [here](#), and the senate runoff election results are detailed [here](#).

Though the general election turnout in Georgia in 2016 [broke records](#) with 4.1 million people participating, the turnout in the 2020 election was even higher by almost 900,000 votes: Nearly [5 million](#) Georgians—or 67.7% of the voting-eligible population—cast ballots in the presidential election in 2020 in Georgia. (See Figure 1). The breakdown between early votes and Election Day votes is shown in Table 1, and the breakdown between modes of early voting is shown in Table 2.

Figure 1. *Comparison of 2016 and 2020 turnout rates (as a percentage of voter-eligible population).*



Source: [U.S. Elections Project](#)

Table 1. *2020 General Election Voting in Presidential Race in Georgia: Early and Election Day.*

Total Votes Cast	Early Votes Cast (In person & by mail)	Election Day Votes Cast	Provisional Votes
4,997,716	3,994,868 (79.9%)	992,707 (19.9%)	10,141 (0.2%)

Source: [GA SoS website](#)

Table 2. *Modes of Early Voting (absentee ballots versus in-person voting) in 2020 General Election.*

Total Votes	Early	Total Voters	Registered as of October 6, 2020	Early Voter Turnout Rate (of registered voters)	In-Person Votes	Early	Mail Ballots Returned and Accepted
3,994,868		7,587,625		52.6%	2,679,574		1,315,294

Source: [GA SoS website](#), [GA SoS Voter Registration](#)

III. Background

A number of existing state election laws, nimble adjustments, and emergency rules by Georgia's election officials proved critical in facilitating a smooth general election despite the raging pandemic. By remaining flexible and maximizing opportunities for Georgians to cast their ballots safely and securely—whether by mail, dropbox, early voting center, or Election Day polling place—Georgia's election officials made the November election an administrative success.

A. Existing State Laws

Of the state election laws on the books before the pandemic, the two most important provisions this cycle were likely [O.C.G.A. § 21-2-380](#), which permits no-excuse absentee voting, and [O.C.G.A. § 21-2-385](#), which provides for “advance” voting (a term that encompasses both absentee balloting and in-person early voting).² While other states had to adjust absentee ballot eligibility rules or launch early voting options at the 11th hour in response to the pandemic, Georgia's election officials and voters alike already had some familiarity with mail voting and early voting under existing law. In order to expand awareness of these alternatives to Election Day voting, the secretary of state, local county officials, and voting rights groups ramped up voter education efforts, but they were spared from having to launch and educate the public about entirely new voting options on the eve of the election.

² Relatedly, the absence of other restrictive provisions for absentee balloting in Georgia law—such as a witness or notary requirement—ensured that Georgians concerned with the transmission risks of in-person voting faced minimal barriers to casting a mail ballot.

B. Adjustments from the June 2020 Presidential Preference Primary

The June presidential primary was [widely reported](#)—including by Georgia’s own [House of Representatives Governmental Affairs Committee](#)—to be [beset by problems](#). However, Georgia’s election officials used their experience from that contest to prepare for and improve the infrastructure for the November election.

One area of concern in June related to absentee ballot request and delivery. Some voters ([especially in Fulton County](#)) reported that they requested absentee ballots through appropriate channels but never received a ballot.³ Election officials had been overwhelmed by an “[avalanche](#)” of absentee ballot requests and hamstrung by personnel shortages caused by the coronavirus pandemic. At least some of that avalanche could be attributed to Secretary of State Brad Raffensperger’s decision to send out absentee ballot request forms to all 6.9 million Georgia voters in March. His proactive effort indubitably lowered barriers for some voters to request absentee ballots, and many voting rights groups praised the action. But it also cost the state [millions of dollars](#) and may have contributed to [long lines](#), since many voters who had requested ballots showed up to vote in person anyway, requiring poll officials to take time at the polls to cancel their absentee ballots. (Raffensperger’s action also raised the ire of fellow Republicans: Republican state lawmakers [introduced](#) an amendment to an existing bill, Senate Bill 463, to prohibit the Georgia secretary of state and county election officials from sending out unsolicited absentee ballot applications. Though the amendment was adopted, [the bill](#) itself was later [withdrawn](#) and recommitted to the Governmental Affairs Committee.)

For the November 2020 elections, Secretary Raffensperger opted to simplify and improve the ballot request process for voters interested in mail voting. On August 28, he launched an online absentee ballot request portal—a move that was authorized by a State Election Board (SEB) [rule](#) passed earlier that month. In Secretary Raffensperger’s [press release](#) unveiling the portal, he explained that it would “save voters effort and postage and will increase confidence that the request has been received by county elections officials. It also makes it easier and faster for county election officials to process absentee ballot requests by minimizing the possibility of data entry errors.” Given that some county election officials were overwhelmed with absentee ballot requests ahead of the June primary and, [in some instances](#), failed to process the requests in time for the election, the secretary’s voting systems implementation manager, Gabriel Sterling, [expressed optimism](#) that the online portal would provide a more seamless experience for voters and officials alike.

³ Fulton County’s mishandling of absentee ballots became subject to a State Election Board (SEB) investigation. In August, the SEB [concluded](#) that Fulton officials may have violated multiple provisions of Georgia election law, and it referred the matter to the attorney general’s office.

Another issue in the June primary was inadequate poll worker recruitment and training. This issue was common to jurisdictions across the country amidst the pandemic. Converting existing poll worker training programs to a virtual format represented a hurdle for many jurisdictions, and it was especially problematic in Georgia. The state, in June, had rolled out brand new voting equipment and few of the poll workers who were available to staff the state's voting places [had any experience](#) handling the new machines. (The Georgia legislature had authorized, and the secretary of state [certified](#), a \$106 million election infrastructure overhaul from its prior Direct Recording Electronic voting machines in 2019. The upgrade involved [extensive litigation](#) over the prior ballot machines and resulted in a court order [prohibiting](#) use of the old equipment in the 2020 elections. The state contracted with Dominion Voting Systems to upgrade and roll out its voting technology, including electronic poll books ("PollPads" from KnowInk), Ballot Marking Devices, and optical ballot scanners. So, voters and voting staff across Georgia had to adapt to all new equipment. The combination of new equipment and insufficient numbers and training of poll workers led to [long lines and voter frustration](#).

Ahead of the November election, Secretary Raffensperger and election officials across Georgia invested heavily in poll worker recruitment and training in order to avoid a repeat of the problems encountered in the June primary. Secretary Raffensperger's office launched an [online form](#) to collect the names and information of potential poll workers and sent nearly [50,000](#) names to Georgia's 159 counties for follow-up by local election officials. The secretary also ran a [poll observer website](#) with recruitment messages and extensive poll worker training materials, and the office partnered with organizations such as the [Georgia Municipal Association](#) and various [chambers of commerce](#) to attract new and younger volunteers. Other organizations, such as [Power the Polls](#) in partnership with the [ACLU of Georgia](#), [ProGeorgia](#), and [Fair Fight](#), also helped with recruitment: Power the Polls had 35,507 Georgians sign up to be potential poll workers through their site.

Though Georgia, like many other states, was bracing for a reduced staff on Election Day, these recruitment efforts [helped counties](#) meet their personnel needs and execute a smooth in-person Election Day voting experience. [Some counties](#) made sure to have reserves of poll workers in the event of unexpected absences, and others experimented with [hazard pay](#) to boost recruitment. Ahead of the election, many counties [returned](#) to in-person training to ensure that poll workers had hands-on experience handling and troubleshooting the new Dominion voting equipment.

C. Relevant Policy Changes

The Georgia State Elections Board and the secretary of state did not rely solely on existing laws to carry the state through a pandemic-era election. The SEB passed two rules in February 2020 ahead of the June presidential primary (which were later made applicable to the November general election) that proved vital to the election's success.

The [first](#) rule permitted county election officials to process absentee ballots starting at 8 a.m. the third Monday before Election Day (October 19) instead of waiting for Election Day itself. Though officials were prohibited from making a tally of absentee ballots ahead of Election Day, this new rule permitted them to get a head start on everything short of tabulation—such as signature verification, absentee ballot error curing, ballot scanning, and adjudication of ballot marking errors—nearly three weeks before Election Day. Almost all of Georgia's 159 counties [expressed intent](#) to start processing, scanning, and/or adjudicating early, and Georgia's 10 most populous counties began (or expressed intent to begin) processing ballots on October 19 and October 20—the first two days of the approved pre-Election Day processing window. Given the tidal wave of absentee ballots that were submitted in Georgia, the ability to pre-process ballots enabled more timely reporting of the results. Though Georgia's results may not have seemed timely, that is largely a feature of the razor-thin margin of victory in both the presidential and two U.S. Senate races, and less indicative of vote tallying delays. While it is typical for state election officials to take days to finalize a presidential count, it is also typically apparent who the winner is within hours of polls closing. In the November general election in Georgia, the presidential race was separated by fewer than 12,000 votes and the senatorial races bobbed in and out of runoff territory; the race was sufficiently close that counting all of the nearly five million ballots was necessary before the state could be called. Had pre-processing of the absentee ballots not occurred, Georgia election officials would have needed even longer to count all the ballots. That delay could have further jeopardized the perceived legitimacy of the election and potentially compromised officials' ability to comply with the November 13 county certification deadline.

The second SEB [emergency rule](#) greenlighted the use of ballot dropboxes in the 2020 races. The rule permitted counties to establish one or more dropboxes on municipal property starting 49 days before Election Day until 7 p.m. on Election Day. It did not require counties to provide them, but those which did had to abide by the rule's requirements for anti-tampering measures and ballot retrieval. For example, county officials had to ensure that all dropbox locations had adequate lighting and were under constant video surveillance, and they had to send a team of two qualified people to collect ballots from the dropbox locations at least once every 72 hours until the second Monday before Election Day. At that point, they had to retrieve ballots once

every 24 hours. Given the increase in mail balloting and concerns over systemic United States Postal Service (USPS) delivery delays, ballot dropboxes proved to be an attractive feature for counties looking to facilitate greater mail voting and reduce the risk of ballot rejection for late receipt.⁴ Accordingly, the [majority](#) of Georgia counties opted to provide at least one dropbox under the emergency SEB rules, and more populous counties opted to set up multiple dropboxes. In the weeks ahead of the election, 36 dropbox locations were available in Fulton County, 26 in DeKalb County, 23 in [Gwinnett County](#), and 16 in [Cobb County](#).

The secretary of state also took independent steps to increase voter confidence in mail voting. In late September, Secretary Raffensperger [introduced](#) a new partnership with BallotTrax, an independent ballot tracking service, to provide more detailed ballot tracking services to all Georgians. Citing the need to innovate and adapt to “unprecedented times,” the secretary expressed hope that the service would provide Georgia voters with “greater clarity and increased confidence that their votes are accepted.”

IV. Mail Voting

Georgia voters cast 1,307,403 mail votes in the 2020 general election. As demonstrated by Table 3, this means mail voting increased by more than 5 times between 2016 and 2020, with more than 6 times the total absentee ballots cast in 2020 compared to 2016.

Table 3. *Mail voting rates in 2016 and 2020.*

	Total Absentee Ballots Returned (#)	Absentee ballots as percentage of total votes cast (%)
2016	213,033	5%
2020	1,307,403	26%

These high mail ballot return rates were no doubt facilitated in part by existing Georgia election law, which provides for no-excuse absentee voting and does not require the voter to obtain a witness signature or include a copy of a photo ID along with the mail ballot. Instead, county

⁴ Unlike a ballot placed in a blue USPS box, a ballot in an official drop box is deemed received by county election officials once it is deposited. So long as voters deposited their ballots into official drop boxes by the close of polls on Election Day, their ballots were guaranteed to be counted. Ballots deposited into USPS boxes, on the other hand, were counted only if they reached county elections officials by the close of polls on Election Day, and they were rejected for late receipt if they were received after that deadline, pursuant to Georgia law.

registrars verify voter signatures at two points in the absentee ballot process: once when the absentee ballot request form is received, and once when the absentee ballot itself is received in an official signed envelope. At the second stage, if the signature “appear[s] to be valid and other identifying information appears to be correct,” the clerk will certify the ballot envelope according to [O.C.G.A. § 21-2-386](#) by signing or initialing beneath the voter’s oath and will list the elector on the list of absentee voters prepared for the voter’s precinct. According to a March 2020 [settlement](#) in *Georgia Democratic Party v. Raffensberger* that amended the ballot verification procedure, if a majority of three registrars determine that “the signature does not match any of the voter’s signatures on file in eNet⁵ or on the absentee ballot application,” the registrars mark the ballot rejected and note the reason for rejection. Prior to the settlement, there was [no uniform statewide procedure](#) for ballot rejection, and there was a [wide disparity](#) in rejection rates by county. Due to changes in the law enacted through [House Bill 316](#) in 2019, the registrar or absentee ballot clerk is also required to “promptly notify” the voter of such rejection so that the voter can take steps to cure the issue. The settlement also required enforcement of Rule §183-1-14.13, which required registrars to contact voters via mail, phone, and email within three business days of rejection or within the next business day if the rejection occurs within two Fridays of election day.

Overall, [7,604 \(0.6% of all mail ballots\)](#) absentee ballots were rejected in the 2020 Georgia November election. The rejection rate for ballots rejected for signature issues was 0.15%, down from 0.28% in the 2020 June Primary. Secretary Raffensberger [attributed](#) the reduction in signature rejections to “both parties attempting to help voters cure their absentee ballots pursuant to the process set forth in Georgia statute.” However, the November 2020 signature rejection rate was [on par](#) with the November 2018 rejection rate, even though no signature cure procedures were in place in 2018. Only in 2019 did [House Bill 316](#) modify the existing signature verification procedures and introduce for the first time a notification and cure process for absentee ballots with signature defects. In the 2020 Georgia November election, [2,777](#) ballots were successfully cured.

Just 0.2% of absentee ballots were [rejected](#) for lateness in the November 2020 election, down from 0.8% in 2016. Despite the six-fold increase in mail ballots, the number rejected for lateness was 2,368—a slim increase from the 1,836 rejected for lateness in 2016. But during the June primary, late receipt accounted for 8,596 out of 11,889 rejected ballots; changes in the deadlines for ballot receipt close to the primary—which whipsawed due to litigation—may have misled some voters to believe they had more time to mail their ballots.

⁵ [ElectionNet](#), or “eNet,” is the computer system that Georgia uses [to check in voters](#).

In late August, Democratic plaintiffs in [New Ga. Project v. Raffensperger](#) secured a [preliminary injunction](#) extending Georgia's Election Day ballot receipt deadline by three business days—from November 3 to November 6. Though the U.S. District Court rejected the state's motion for a stay pending appeal in September, a three-judge panel on the 11th Circuit granted the [stay](#) on October 2. Since the 11th Circuit did not hear and rule on the state's appeal by November 3, Georgia rejected all absentee ballots received after 7 p.m. on November 3, regardless of when the ballot return envelope was postmarked. Voters who heard about the initial deadline extension but not about the 11th Circuit's stay of the extension may have mistakenly believed they had longer than they did to return their ballot. And USPS delays may have increased transit times even for voters who mailed their ballot in a timely fashion.

It is not clear to what degree the litigation influx negatively impacted voters, and the majority of the absentee ballot system ran smoothly. As described in section III, Georgia's election scheme was fairly mail-ballot friendly prior to the pandemic, and officials made a number of policy changes in order to promote greater use of mail voting: the introduction of an absentee ballot request portal, ballot dropboxes, and enhanced ballot tracking through BallotTrax. All of these policies also affected election administrators. Successfully promoting the use of absentee balloting as a safe and secure alternative to in-person voting relieved pressure on in-person voting locations. There were also adjustments made to improve the workload of election administrators, including the introduction of absentee ballot pre-processing. That change also had an impact in shoring up public confidence in the election's legitimacy. These changes seemed to have achieved their desired effect: The use of mail voting shattered historical records while largely avoiding mishaps during the election. The sheer volume of absentee ballots, however—along with snafus such as [technical glitches in Gwinnett and a burst water pipe in Fulton](#)—meant that the count was not complete by Election Night despite pre-processing efforts. While some counting was expected to spill into the Wednesday or Thursday after the election, Secretary Raffensperger expressed [frustration](#) with the delays.

Federal funding helped election officials in Georgia establish the infrastructure necessary for executing the election. Georgia received around [\\$11 million](#) in CARES Act funding earmarked for pandemic-related election assistance. In a [narrative grant report](#) submitted by the Georgia comptroller on November 24, it appears that Georgia spent nearly all of that money—around \$8.5 million—on “voting process” materials and infrastructure, such as “printing and mailing ballots, ballot tracking software, high-speed scanners and letter opening equipment, mail drop boxes, and hardware and software associated with signature comparison of returned ballots.” Georgia also received election assistance funding from the Center for Tech and Civil Life (CTCL). Dougherty County, for example, received [\\$300,000](#) to cover the cost of installing three additional drop boxes. Though CTCL does not publicize the amount or purpose of the grants,

the organization's [grant tracker](#) indicates that Dougherty County was one of 43 Georgia counties that received grant assistance this past cycle.

V. In-Person Voting

While the number of people who voted in person on Election Day decreased in the 2020 general election, compared to 2016, the number who vote in-person early markedly increased, as shown in Table 4. Many voters in Georgia and elsewhere gravitated to absentee voting and less crowded in-person voting opportunities during the early voting period. Of the 3,680,090 people who voted in-person in Georgia in 2020, 73.2% of them voted before Election Day, 26.8% on Election Day. In 2016, only 55.9% of in-person voters voted early and 44.1% voted on Election Day.

Table 4. *In-Person Voting in the 2020 General Election: Early v. Election Day*

	In-person early votes (% of total in-person votes)	In-person Election Day votes (% of total in-person votes)	Total in-person votes # (% of total votes cast)
2016	2,200,467 (55.9%)	1,733,661 (44.1%)	3,934,128 (94.9%)
2020	2,694,763 (73.2%)	985,327 (26.8%)	3,680,090 (73.62%)

In-person voting, despite some hiccups, was largely a success. Georgia's existing early voting laws gave voters a great deal of flexibility in making a voting plan. This year, Georgia counties were [required](#) to offer early voting at county vote centers Monday-Friday between October 12 and October 30, 2020, and on Saturday, October 24. Many counties chose to offer extended business-day hours and additional days of weekend early voting, and some counties (such as [Fulton](#), [Cobb](#), [Gwinnett](#), and [Macon-Bibb](#)) increased the number of available voting locations from the June primary. While some early voting locations were simply county elections offices, many counties across Georgia offered voting in less traditional locations, such as [parks](#), [fairgrounds](#), and the [State Farm Arena](#), in order to minimize the risk of coronavirus transmission. These efforts made it easier than in past years for voters to cast a ballot at their convenience anywhere in their county of residence.

In-person voting in 2020 presented novel health concerns and election administration considerations. Though Georgia never adopted a statewide mandate to wear a mask in public, Governor Brian Kemp renewed an [Executive Order](#) prior to the election, allowing counties to enforce a mask mandate on government property if certain coronavirus infection thresholds

were exceeded in the jurisdiction. However, the Executive Order specifically prohibited enforcement at polling places. While voters were highly [encouraged](#) to wear masks, they legally could not be turned away or cited if they didn't wear one, even in a jurisdiction that voluntarily adopted a local mask mandate. Some counties—for example, Fulton, Henry, Douglas, Clayton, and Rockdale—urged poll workers to wear masks and others such as Cherokee and Paulding [required](#) them. However, there was no enforcement mechanism in the state to ensure compliance.

The secretary of state worked to secure the appropriate personal protective equipment (PPE) for poll workers ahead of the November election. A [press release](#) from Secretary Raffensperger reported that he worked with the Georgia Emergency Management and Homeland Security Agency to fulfill requests from 153 counties for “180,000 masks, 46,700 face shields, 4,700 packages of gloves, and 10,100 boxes of disinfecting wipes for their poll workers and election officials.” Further, the CARES [grant report](#) indicated that the state spent around \$550,000 on supplies such as masks and cleaning materials. These efforts to promote poll worker safety may have contributed to the success of poll worker recruitment efforts. As described in Section III, the concerted campaign to secure election personnel was effective in mitigating serious Election Day staffing issues.

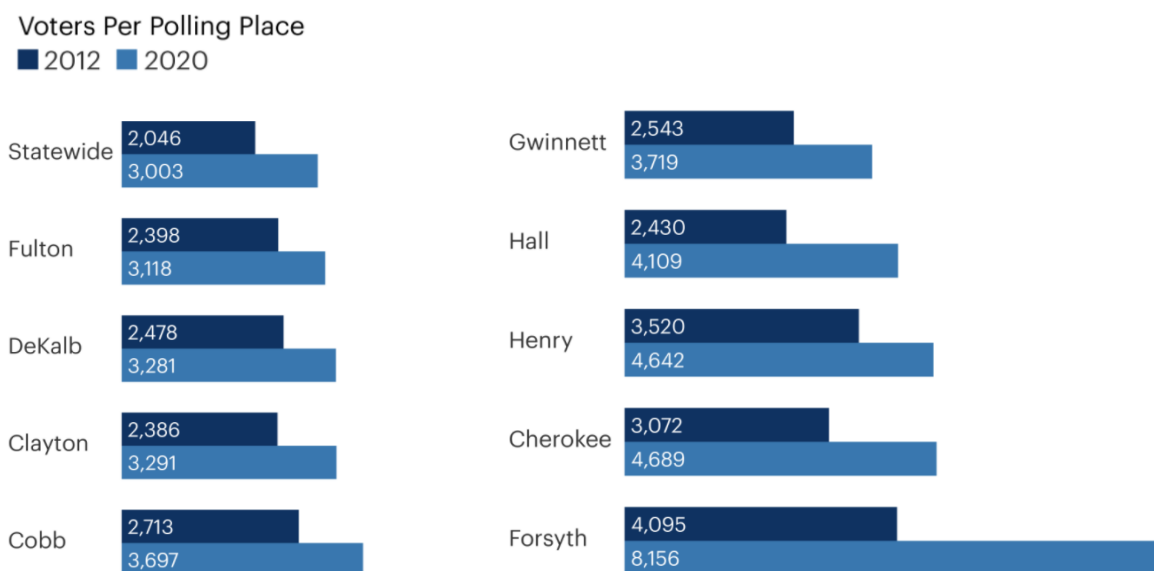
In general, adequate staffing, improved training, and a long early voting period kept lines short across the state. However, the first days of the early voting period were rocky in some places, with record-shattering turnout overwhelming the electronic check-in systems. On the first day of early voting, [128,590 Georgians](#) came out to vote early—a more than 40 percent increase from the previous record for the first day of in-person voting in 2016. That first day turnout strained the bandwidth of the new electronic “poll pad” check-in tablets. While not all Georgia voters were affected by this issue (voters in [Polk County](#), for instance, were able to vote “swiftly”), more populous counties, such as [Gwinnett](#) and [Fulton](#), experienced snaking lines of voters waiting for hours due to insufficient bandwidth. The delays, however, did not persist long: Within days, wait times began leveling out as the state worked with the vendor to resolve the [bandwidth issues](#). The remainder of the early voting period proceeded uneventfully, except for the arrival of Hurricane Zeta, which [impacted](#) voting hours and wait times across the state when it made landfall in Georgia on the second-to-last day of early voting.

High turnout during the early voting period relieved pressure on Election Day polling facilities and kept lines short across the state. In fact, Secretary Raffensperger [reported](#) that, on average, Georgia voters waited a mere three minutes to vote on Election Day. This is particularly notable given the novelty of the new election technology and widespread concerns about an Election Day meltdown scenario. The short average wait times in November also marked a vast

improvement in administration since the 2020 primaries, where wait times hit 2 or 3 hours in many areas within an hour of polls opening.

Yet the impacts of polling place closures may not have been felt equally across the state. Since the 2013 Shelby County decision, Georgia's voter rolls have grown by two million voters, but the state has seen a [10% reduction](#) in its number of polling places, with closures concentrated in Black and minority communities.⁶ The reduction has caused an increase in voters assigned to each polling place statewide, but as Figure 2 shows, the nine counties that make up metro Atlanta (and have the most diverse populations in the state)—Fulton, Gwinnett, Forsyth, DeKalb, Cobb, Hall, Cherokee, Henry and Clayton—have experienced polling place consolidation at a higher rate than elsewhere in the state. While these counties have nearly half of the state's active voters, they had only [38%](#) of the polling places leading up to the November election. And in an [analysis](#) of the 2020 Georgia primary, researchers found of polling places that stayed open late to accommodate waiting voters, "the average wait time after 7 p.m. across Georgia was 51 minutes in polling places that were 90% or more nonwhite, but only six minutes in polling places that were 90% white."⁷

Figure 2. *Number of Voters per Polling Place in 2012 and 2020.*



Source: [ProPublica/Georgia Public Radio](#)

⁶ In Georgia, local boards of elections, rather than the secretary of state, select polling locations.

⁷ To prevent a repeat of the June primary problems in November, some counties tried to add back polling places before November 3rd. Fulton County, for example, approved 91 new polling places weeks before Election Day—a move that carried risks as well, since last-minute polling place relocation has been [shown](#) to depress turnout.

There were also concerns of repeating technical errors from the primary in the November general election. After the bungled voting machine rollout in the June primaries, some plaintiffs were so concerned about the prospect of technical malfunctions in the November election that they [brought suit](#) to force polling places to maintain back-up paper records in case the new electronic pollbooks (called “PollPads”) failed. While state procedure already [required](#) paper backup lists at every polling place in Georgia prior to the suit, those lists did not indicate whether a person had voted already through mail or early voting. On September 28, U.S. District Court Judge Amy Totenberg [granted](#) plaintiffs’ [motion](#) for a preliminary injunction (later amended in a subsequent amended [order](#)) and directed Georgia’s secretary of state to provide county superintendents a physical list of voters updated at the close of the in-person early voting period to distribute to each polling place. The court-ordered back-up paper pollbooks would be used to “determine voter eligibility and precinct assignment in the case of equipment malfunction or other emergency.” Judge Totenberg’s amended order also [directed](#) the secretary of state to maintain a sufficient number of emergency paper ballots “so that voting may continue uninterrupted if emergency circumstances render the electronic ballot markers or printers unusable.” Judge Totenberg declined to mandate that the secretary maintain a certain number of paper ballots at each precinct location. However, the District Court [denied](#) the state’s request to stay the injunction pending appeal. An 11th Circuit panel, however, granted the [stay](#) on October 24 and, thus, Georgia was not required to generate the paper pollbooks listing in-person early voting records..

Fortunately, plaintiffs’ fears of widespread technical malfunction did not materialize on Election Day, though there were isolated issues. Spalding County saw a countywide shutdown of its voting machines after incorrect information was [loaded](#) into the voting machines, creating [long lines](#) and prompting [extended voting hours](#). (After the election, the secretary of state called on the Spalding election supervisor to step down, as voters were improperly given [provisional ballots](#) instead of emergency paper ballots during the machine outages.) Similarly, in Cherokee, Cobb, DeKalb, Fulton, Gwinnett, and Houston counties, [voting hours were extended](#) in at least one polling place. In Morgan County, four of seven polling sites experienced [technical difficulties](#), though all were resolved by afternoon. At a polling site at Morris Brandon Elementary School in Atlanta, voters initially had to cast [paper ballots instead of voting on machines](#) due to technical difficulties, though the machines were fixed later in the day.

VI. Post Election Day

In the days and weeks after November 3, Georgia's election became the subject of intense national interest and scrutiny. With a razor-thin margin separating the two presidential candidates, Georgia election officials took several days to announce a final vote count after giving intermediate updates, reporting that Democrat Biden had won the state's popular vote. (the race was not [called by AP](#) until November 12). However, that was only the beginning of the post-November 3 story in Georgia, which ultimately involved an audit, a recount, a dozen lawsuits, and dangerous partisanship and misinformation.

A. Audit

In 2019, the Georgia legislature [updated](#) the state's election laws in a variety of ways. One change adopted required, in even-number years, a manual statewide risk limiting audit (RLA) before certification of election results. In general, RLAs are used to confirm, with strong statistical likelihood, that the votes cast for a certain contest were tabulated correctly (i.e. that the same results would have been reached had the ballots been counted by hand). The RLA limits the risk that the wrong winner gets certified. Unlike traditional post-election audits, where the number of ballots to be examined is fixed in state law, the number of ballots subject to an RLA [depends](#) on the closeness of a given race. Where the margin is wide, fewer ballots must be inspected to reach statistical confidence about the results; where the margin is narrow, significantly more sample ballots must be examined.

On November 11 at 1 p.m. EST, Secretary of State Raffensperger [announced](#) that the presidential contest would be the subject of the pre-certification Risk Limiting Audit. At the time, Biden was leading by [11,779](#) votes. However, instead of selecting a random sample of ballots for each county to review, the secretary announced that the close margin of votes between the two major party presidential candidates (about 0.3%) would trigger a full hand re-tally of the approximately five million ballots cast across all 159 counties. The announcement followed public [pressure](#) on the secretary from Trump's campaign and other Georgia Republicans to conduct a full recount. [Voting Works](#), a nonpartisan election technology company contracted to develop Georgia's audit technology, said that, while only around 1.5 million ballots needed to be audited in order to provide statistical confidence about the winner, in a presidential contest this close it is actually "less work to sample every cast ballot, simply because attempting to audit a large subset incurs the work of retrieving and replacing specific ballots, while reviewing all ballots does not."

The secretary's office [directed](#) counties to begin the audit process no later than 9 a.m., November 13 (the deadline for county certification) and complete it by 11:59 p.m. on November 18—two days prior to the state certification deadline. Given that the audit involved all ballots, the audit teams were responsible for hand-counting all presidential votes instead of comparing electronic and paper results for randomly selected ballots. The [audit process](#) involved “inventory sheets to track which batch of ballots were counted when, audit board sheets that identify vote totals for each batch and the people that audited them and even a sign-in sheet for partisan monitors [who] closely watch the process.” VotingWorks made copies of this paperwork (and even a humorous [video](#) demonstrating the tasks required in a full hand tally) publicly available [online](#). Some facilities also [live-streamed](#) the audit process. The press was allowed to track the process.

Though it was widely expected that counties would need to work around the clock to meet the November 18 deadline, many counties—even [Fulton](#), the state's most populous county—finished early. On November 19, Secretary Raffensperger [announced](#) the completion of the audit—the largest hand tally in United States history—and shared the [audit results](#) and [audit report](#).⁸ According to the report, the audit “confirmed the original result of the election, namely that Joe Biden won the presidential contest in the State of Georgia.” The audit data showed that the vast majority of Georgia's 159 counties experienced negligible vote changes: 52 counties reported no changes in their vote totals, and another 73 reported vote total changes of fewer than 10 votes. That said, seven more populous counties had vote count differentials greater than 100 votes, and DeKalb, Floyd, Fulton, and Gwinnett had discrepancies greater than 500 votes. Most notable was Floyd County, which turned up [2,600](#) previously untallied votes—an oversight for which a local election administrator was later [fired](#). In the course of the audit, President Trump netted 496 votes, bringing Biden's lead to 12,248 votes out of nearly five million cast. Governor Kemp [certified](#) the results of the audit on November 20, but in his remarks he explicitly [referenced](#) that the law required him to do so and encouraged Secretary Raffensperger to investigate all potential instances of electoral fraud.

B. Recount

Even though the results of the audit (which doubled as a full hand tally) corroborated the original tally, the Trump campaign was entitled under Georgia law to request a machine recount by November 22 (two days after the certification deadline) if the post-audit margin remained below 0.5%. The margin hovered around 0.3% after the audit, and the Trump

⁸ On November 18, Secretary Raffensperger also [announced](#) the successful completion of the forensic audit of voting machines and shared that a certified testing laboratory “found no evidence of the machines being tampered.”

campaign formally [requested](#) a taxpayer-funded recount on November 21. The secretary of state instructed counties to complete the machine recount by December 2, which they did. The final results of the recount, available [here](#), indicate that Biden officially won the state of Georgia by [11,779](#) votes—reflecting 99.965% accuracy in the original Election Day count.

On December 7, the secretary of state [recertified](#) the results of the presidential election, as [did](#) Governor Kemp—the last step towards committing Georgia’s electoral votes to Biden. That same day, Governor Kemp issued a [statement](#) along with Lt. Governor Geoff Duncan, responding to Republican lawmaker’s request that the Georgia General Assembly convene a special session to select a slate of electors who would, instead, vote for Trump. Kemp’s statement unequivocally denied the request, stating that “[i]n the 1960s, the General Assembly decided that Georgia’s presidential electors will be determined by the winner of the state’s popular vote. Any attempt by the legislature to retroactively change that process for the November 3rd election would be unconstitutional.”

In this [statement](#), Governor Kemp and Lt. Governor Duncan also advised Republican lawmakers that “the judicial system remains the only viable - and quickest - option in disputing the results of the November 3rd election in Georgia.” While it may have been the only option, the courts, ultimately, were not a successful forum for litigants hoping to invalidate the will of Georgia voters. A summary of the seven lawsuits filed in Georgia during the post-Election period—none of which had any impact on certification or results—is included in the Appendix.

C. Post-Election Environment

The post-election period in Georgia was rife with rampant misinformation, hyper partisanship, and unrelenting attacks, including by the President, on the legitimacy of Georgia’s election administration. On December 9, once Biden’s victory had become apparent, Republican senate candidates Loeffler and Perdue [called on](#) Secretary Raffensperger, a Republican and Trump supporter, to resign. Without citing evidence or specific shortcomings, the statement called Georgia’s election management “an embarrassment” and criticized the secretary for failing “to deliver honest and transparent elections.” Secretary Raffensperger responded in a [strong statement](#), defending the legitimacy of the elections and refusing to step down. However, pressure continued to mount on him from Republicans loyal to President Trump. [According to Raffensperger](#), U.S. Senator Lindsay Graham (R-SC) contacted him to “ask whether Raffensperger had the power to toss all mail ballots in counties found to have higher rates of nonmatching signatures.” ([Senator Graham disputes this account](#)). On November 13, President Trump himself claimed, in a [post on Twitter](#), that Secretary Raffensperger would not “let people

checking the ballots see the signatures for fraud” and called the process “unfair and close to meaningless.” President Trump repeatedly [lambasted](#) Governor Kemp as well.

The promotion of baseless fraud claims by the president and his supporters triggered an avalanche of media coverage saturated with unsubstantiated claims of voter fraud and other election-related misinformation. The fraud conspiracies in Georgia were far ranging and quickly refuted by the media: that dead people voted ([false](#)), that more people voted than even live in Georgia ([false](#)), that ballots were tossed into a Spalding dumpster ([false](#)), that an election worker ripped up a Trump ballot ([false](#)), that a voting machine technician in Gwinnett manipulated votes ([false](#)), that suitcases of ballots were counted without observers in Fulton County ([false](#)), that an election worker fabricated votes ([false](#)), that there was no signature verification process ([false](#)), and countless more.

Even though many of these fraud theories were easily debunked, the effects of politically motivated misinformation and disinformation being weaponized to denigrate the election’s integrity were profoundly dangerous. Secretary Raffensperger and his wife, state election official [Gabriel Sterling](#) and his wife, and [election workers](#) across the state received numerous death threats and were subjected to intimidation. The election worker captured on video ripping up instructions that a viral video claimed was a Trump ballot said he had to go into [hiding](#), dye his hair, and shave his beard after he was doxxed and received death threats. On December 1, Sterling held a [press conference](#) to denounce the threats, declaring that “it has all gone too far” and “has to stop.” He addressed President Trump directly, observing that Trump “had not condemned these actions or this language” and imploring him to “stop inspiring people to commit potential acts of violence,” because “someone’s gonna get hurt, someone’s gonna get shot, someone’s gonna get killed.”

After losing the presidential race, Trump, his campaign, and his allies filed more than 70 lawsuits challenging the validity of the election. More lawsuits were filed in Georgia than in any other state. These suits included allegations of fraudulent or unqualified voters voting in Georgia, challenges to administrators using private funding, and complaints that Dominion Voting machines rigged the election in favor of Biden. None of the suits filed in Georgia ultimately reversed or revised the election results, and a signature audit ordered by the Georgia secretary of state found no evidence of issues. A detailed analysis of post-election litigation in Georgia can be found [here](#).

The intensity of the political climate in Georgia may have become particularly vitriolic after the election because of the stakes of the senate runoffs. Both of Georgia’s seats in the U.S. Senate were set to be decided January 5 in a run-off, and the outcome of those races would also decide, for the nation, which party had control of the U.S. Senate in the new Congressional

session. Republicans needed to keep their base of supporters engaged after November's defeat. However, the strategy of denigrating the Georgia presidential voting may have backfired: Vilification of the electoral process may have [hurt](#) Republican incumbent prospects in the January 5 senate runoff, as some hardline Trump supporters claimed that Republican candidates had not done enough to secure a Trump victory in Georgia.

VII. Conclusion

This year's general election offered many and varied challenges to Georgia's election officials. They had to grapple with a dangerous pandemic, new voting machines, an overwhelming interest in absentee balloting, and a record-shattering surge in voter turnout. In the post-election period, they faced the daunting challenge of a never-before-run Risk Limiting Audit in Georgia, plus a recount and relentless personal and political attacks on the integrity of Georgia's election administration. Despite it all, they welcomed close to five million voters into the electoral process—an increase of around 800,000 voters from just four years ago—and facilitated an overall smooth and safe election. While there were issues that could be improved, Secretary of State Raffensperger [called](#) Georgia's administration of the November 2020 election “a resounding success” in light of these accomplishments.

Georgia 2021: Election Administration in the Senate Runoff Elections

March 10, 2021

Author: Axel Hufford

For information on the November 2020 general election in Georgia, please see [“Georgia 2020: Election Administration in the Coronavirus Pandemic”](#)

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I. Introduction

On January 5, 2021, Georgia held statewide runoff elections for the U.S. Senate. Since no candidate received a [majority of votes](#) in either race as required by [Georgia law](#), both Senate races required a runoff election months after the November 3, 2020 general election. Moreover, because of the [50-48 Republican senate majority](#) after the 2020 general election, Georgia's runoffs would determine which political party controlled the Senate during the start of the Biden presidency. As a result, Georgia's January 5 elections received [national attention](#) and [shattered campaign spending records](#), with both races ultimately becoming the two most expensive Senate races in U.S. history.

II. Background

During the 2020 general election, Georgia held two Senate elections: a regularly scheduled Senate race between incumbent Republican Senator David Perdue and several challengers, including Democratic candidate Jon Ossoff; and a special election between incumbent Republican Senator Kelly Loeffler (who had been [appointed](#) by Georgia governor Brian Kemp following the 2019 vacancy left by the [resignation](#) of Senator Johnny Isakson) and several challengers, including Reverend Raphael Warnock.

In 2020, no candidate in either Senate race reached a required 50% threshold to take office. In the [regular election](#), Perdue received 49.7% of the vote compared to Ossoff's 47.9%, and in the [special election](#) Warnock received 32.9% of the vote (with the remaining votes split largely between Loeffler's 25.9% and Republican candidate Doug Collins's 20.0%). Under [Georgia law](#), "to be elected to public office in a general election, a candidate must receive a majority of the votes cast in an election to fill such public office." In any election where no candidate receives more than 50% of the vote, the state holds a runoff election between the top two candidates. After Georgia [certified](#) the initial results, therefore, a runoff was scheduled for January 5, 2021, with three races to be held simultaneously: the regular Senate election between Perdue and Ossoff, the special Senate election between Warnock and Loeffler, and a [third race](#) to determine the state's next public service commissioner.

III. Runoff Election Rules

For the most part, Georgia's runoff election followed the same statutory rules and regulations as November's general election, including the continued use of several state laws such as [O.C.G.A. § 21-2-380](#), which permits no-excuse absentee voting, and [O.C.G.A. § 21-2-385](#), which provides for "advance" voting (a term that encompasses both absentee balloting and in-person, early voting).¹ Critically, the Georgia State Election Board also [extended several emergency rules](#) that were previously implemented during November's general election, including the allowance of ballot drop boxes at county election offices and certain polling locations and the use of early ballot processing (requiring absentee ballots to begin being scanned and processed at least eight days before Election Day.)

Several deadlines were extended to allow more voters to register and vote before the runoff election on January 5. For example, voters were allowed to register to vote until [December 7](#), and early in-person voting began on December 14. Voters were also allowed to request an absentee ballot up until [January 1, 2021](#), and some Georgians were newly eligible to vote, such as minors who turned 18 between November 3, 2020 and January 5, 2021.

In between the general election and the runoff election's registration deadline, [nearly 76,000](#) new voters registered in Georgia, 56% of whom were under 35 years old. The newly registered voters were also racially more diverse than the state as a whole, although new registrants represented a small percentage of the [7.7 million registered](#) voters in total. However Georgia already had a relatively high rate of registered voters, in part because in 2016, the state implemented [automatic voter registration](#) when obtaining a Georgia driver's license.

Despite the relative consistency between Georgia's general election rules and the runoff elections, the surge in national attention focused on Georgia's runoffs created several new concerns during the run-up to the January runoffs. For example, several notable Democratic leaders announced that they would temporarily relocate to Georgia to campaign for Ossoff and Warnock—including former presidential candidate [Andrew Yang](#)—and some Republican leaders accused them of impropriety. Georgia GOP Chair [David Shafer](#), for example, called on state officials to investigate every new registered voter and claimed, without evidence, that "unlawful attempts by outsiders to influence our elections are potentially criminal, offend fundamental notions of a fair election process, and must be stopped." [Senator Perdue](#) also appeared on Fox News and asserted that Democrats are "willing to do anything – lie, steal, cheat – to win this election," despite Andrew Yang's clarification that he would not himself be voting in Georgia and without any evidence of Democratic voters moving to the state for the

¹ For more information, see "[Georgia 2020: Election Administration in the Coronavirus Pandemic](#)."

purpose of voting in the runoff. Nevertheless, Secretary of State Raffensperger [warned](#) out-of-state voters from relocating to Georgia unless they planned to establish legal residency, as it is a [felony](#) for someone to vote in Georgia with the intention to move away after the election. Per [O.C.G.A § 21-2-561](#), such a violation is punishable by up to 10 years in jail and a \$100,000 fine.

In December, state Republican officials also urged Georgia governor Brian Kemp to convene a special legislative session in order to (among other things) tighten residency requirements for the runoffs. State Representative [David Clark](#), for example, said that the legislature should pass new measures to prevent non-Georgians from “interfering in our elections.” These proposals, however, were rejected by Governor Kemp, Lieutenant Governor Geoff Duncan, and House Speaker David Ralston, who released a [joint statement](#) arguing that “[a]ny changes to Georgia’s election laws made in a special session will not have any impact on an ongoing election and would only result in endless litigation.”

Secretary of State Raffensperger released several statements in the lead-up to the runoff elections, sending warning letters and announcing investigations into allegations of fraud and potential misconduct.

- First, the secretary of state’s office [sent letters](#) to 8,000 individuals who had requested absentee ballots for the January runoff but who had also recently filed a National Change of Address notice with the United States Postal Service (USPS), which might mean that they now live out-of-state. Although many of these 8,000 individuals might still be eligible to vote in the election (such as students living on college campuses or military personnel), Raffensperger reiterated that the letter would “be a warning to anyone looking to come to Georgia temporarily to cast a ballot in the runoffs or anyone who has established residence in another state but thinks they can game the system: we will find you and we will prosecute you to the fullest extent of the law.” As of March 2021, there had been no evidence that any individual contacted by the secretary of state had committed any form of voter fraud.
- Second, Raffensperger [launched an investigation](#) into several nonprofit groups who had sought to help register Georgia voters, including America Votes, Vote Forward, and The New Georgia Project. According to the secretary of state’s office, these groups “have repeatedly and aggressively sought to register ineligible, out-of-state, or deceased voters before the January 5 Senate runoff elections.” In doing so, the announcement said, the groups could be charged with felony racketeering under Georgia law. Officials from these groups said that they were fully complying with Georgia law, however. New Georgia Project’s CEO [Nse Ufot](#) said that the investigation was “ridiculous,” adding that “sending out postcards reminding people to vote [and] reminding people that there is

an election is not nefarious.” Since the January 5 runoff, it appears that no formal charges were ever made against any nonprofit group related to these allegations, with the exception of one individual who [allegedly submitted](#) “70 false voter registration applications while canvassing for the Coalition for the People’s Agenda.”

IV. The Georgia Runoffs

Early voting in Georgia started on Monday, December 14, 2020 and lasted for [three weeks](#) until Wednesday, December 30 or Thursday, December 31, depending on the county. All told, [3,145,672](#) Georgians cast their votes early, by far the [largest](#) number of early voters in a runoff election in state history. These early voters represented [over 40%](#) of all registered voters statewide, and two-thirds of this group voted early in person, as opposed to absentee. During the early voting period, over [1 million](#) mail ballots were received and accepted; just [3,376](#) mail ballots were rejected for any reason, representing just 0.3% of all returned mail ballots. Overall, early voting turnout during the runoff election was [around 78%](#) of the 2020 general election early turnout, a much higher rate than a typical runoff election.

Bolstered by high early voting and vote-by-mail turnout, Election Day ran smoothly. According to [Secretary Raffensperger](#), wait times averaged just one minute at polling locations throughout the state, even lower than the two-minute average on November 3. By the afternoon of January 5, no polling locations reported waiting times longer than 30 minutes, and just one location reported wait times over 20 minutes. “Georgia’s election administration is hitting a new milestone for effectiveness and efficiency,” Raffensperger said.

According to [Helen Butler](#), the executive director of a statewide voter education organization, the election went well for the most part and only “minor issues” surfaced on Election Day. Moreover, [Kristen Clarke](#), then-executive director of the Lawyers’ Committee for Civil Rights Under Law (and current nominee to become the assistant attorney general for civil rights as of March 2021) said that the most common reported issue was voters who did not receive absentee ballots before Election Day. Clarke added that “we are not surprised that we are not seeing poll sites flooded with large overwhelming numbers of voters today.” The secretary of state’s office reported that the only Election Day issues occurred in [Columbia County](#), where certain paper-ballot scanners and poll worker cards were programmed incorrectly, but all issues were resolved by 10 a.m. The state’s investment in poll worker recruitment before November’s general election also paid off in the January runoffs, with [some counties](#) recruiting a new wave of younger poll workers despite early voting occurring during the holiday season.

Although ballots could not be counted until polls closed at [7 p.m.](#) on Election Day, the State Election Board’s extension of its “early ballot processing” emergency rule helped ensure that many absentee ballots were processed and scanned before Election Day, so they could be counted more quickly on January 5. [Ryan Germany](#), an official in the secretary of state’s office, said that “without doing this early scanning, it would probably take weeks to get the amount of absentee ballots scanned.”

State officials focused on securing a timely count of all ballots after November’s election, in which [some people](#) were “upset about the days it took” to count all ballots. As a result, the vast majority of votes were counted on Election Night, January 5. The morning after the election, the secretary of state’s office announced that there were just 60,000 votes left to be counted and asked counties with outstanding ballots—mostly from the Metro Atlanta area—to upload the remaining ballots by 1 p.m. The [Associated Press](#) had already projected that Raphael Warnock had won his Senate race as of 2 a.m. that morning, and it later [projected](#) that Jon Ossoff had won his Senate race at 4:16 p.m. that afternoon.

V. Runoff Election Results

After all votes were counted, including provisional ballots, Jon Ossoff [defeated](#) David Perdue 50.61% to 49.39%. Raphael Warnock defeated Kelly Loeffler 51.04% to 48.96%.

Table 1. *Georgia’s 2021 Runoff Election Official Results: U.S. Senate Election*

	Jon Ossoff	David Perdue
Total votes (and percentages)	2,269,923 (50.61%)	2,214,979 (49.39%)

Table 2. *Georgia’s 2021 Runoff Election Official Results: U.S. Senate Special Election*

	Raphael Warnock	Kelly Loeffler
Total votes (and percentages)	2,289,113 (51.04%)	2,195,841 (48.96%)

VI. Post-Election Day

On January 19, the secretary of state's office [officially certified](#) the January 5 runoff elections (official results can be viewed [here](#)). The office affirmed “that all 159 counties have provided to the state the total votes tabulated for each state and federal candidate” and that “the statewide consolidated returns for state and federal offices are a true and correct tabulation of the certified returns received by this office from each county.”

Two weeks earlier, Georgia officials had responded to several claims of mass voter fraud about the runoff election, including then-President Trump's [meritless allegations](#) that Senator Perdue lost due to a “rigged election.” In response, [Gabriel Sterling](#), the secretary of state office's chief operation officer, said that the state had not found any evidence of widespread voter fraud, that there was “no evidence of any irregularities” during the runoff election, and that Trump's various allegations were “incorrect and they undermine faith in the elections process.”

Shortly after Georgia certified the runoff elections, both Jon Ossoff and Raphael Warnock were officially [sworn into office](#), becoming the first two Georgia Democrats to win a statewide race since 2000. Several weeks later, on February 11, the secretary of state's office—despite finding no evidence of widespread voter fraud—[referred 35 cases](#) of potential election law violations to local district attorneys or the state attorney general for prosecution. These cases included allegations of noncitizens voting, someone voting under someone else's name, and individuals registering to vote while serving a felony sentence, among other possible voting irregularities. Nevertheless, the results of the 2021 Georgia runoffs have not been credibly challenged since the election.

VII. Election Litigation

Georgia's runoff elections sparked several lawsuits prior to Election Day, many of which were filed by Republican officials or candidates to alter various election rules. In all cases, the lawsuits failed or their complaints were dismissed. These lawsuits included:

- A challenge by the [Republican National Committee](#) to restrict the use of ballot drop boxes and provide for certain rights for poll watchers. The plaintiffs' motion for a temporary restraining order was [dismissed](#) on December 29.
- A lawsuit filed by the [Twelfth Congressional District Republican Committee](#) challenging rules related to absentee ballot processing, ballot drop boxes, and signature verification. The complaint was [dismissed](#) on December 17.

- A complaint by the [Georgia Republican Party](#) challenging the state's signature matching procedures. The lawsuit was [dismissed](#) on December 17 and the Eleventh Circuit [denied](#) an appeal on December 21.
- Another challenge by the [Georgia Republican Party](#) seeking to segregate all ballots cast by people who had registered to vote after November 3, 2020. On December 23, 2020, the case was [dismissed](#).
- A pro se lawsuit, filed by [Lin Wood](#)—a prominent [pro-Trump attorney](#) who was under investigation for voter fraud in the state of Georgia as of February 2021—challenged the state's use of electronic voting machines and several other voting procedures. The motion for a temporary restraining order was [denied](#) on December 28.
- After the election was certified, at least one lawsuit attempted to [challenge](#) the certification of both Jon Ossoff and Rafael Warnock as winners of the Senate races.

In response to the dismissal of one of these lawsuits, Secretary of State Raffensperger [wrote](#) that "[t]ime and time again we have successfully fought off lawsuits from the right and the left looking to undermine rule of law in Georgia," arguing that "numerous baseless and frivolous lawsuits, funded by unsuspecting Georgians who are being duped by [Lin] Wood, are just the latest in a long history of lawsuits to nowhere in Georgia."

VIII. Conclusion

As the eyes of the nation turned toward Georgia, the state's election officials, poll workers, and voters alike conducted a successful runoff election, having learned many lessons from the June primary and November general elections. Although several political figures sowed seeds of doubt over newly registered voters and various election rules, ultimately the election proceeded smoothly, efficiently, and decisively. Voters turned out in massive numbers for a special election, but a large enough share of the votes were cast early or by-mail, ensuring that Election Day lines were short and the risk of coronavirus exposure was minimized. As Secretary of State [Raffensperger](#) said after the election, "...the facts are on our side. We had fair, honest elections in Georgia."

CHAPTER 3

IN-PERSON VOTING



CHAPTER 3: IN-PERSON VOTING

INTRODUCTION

The spring and summer primaries sounded the alarm as to the challenges states would confront in providing safe in-person voting during the pandemic. Even if a record number of voters would later cast their ballots by mail, tens of millions still would prefer to vote in person, as they had traditionally done. Election officials scrambled to meet an onslaught of new administrative challenges, including interruptions in the elections supply chain and a drought of poll workers willing to serve in-person locations. Throughout the nation, states struggled to obtain enough personal protective equipment, ballot packet supplies, ink, and other necessities to administer the primary elections. Yet aside from isolated incidents, election administrators were largely able to avoid supply chain issues and poll worker shortages in November. Many states chose to expand in-person early voting to disperse in-person voters over a longer period and reduce Election Day crowds. Nearly all states introduced new polling place safety measures to ensure the health of voters and workers. Yet despite impressive administrative successes, in-person voting was not immune from challenges, both during and after the election. Issues surrounding election observer access gave rise to legal challenges in the wake of the vote count.

This chapter compiles reports that explore topics such as whether and to what extent the supply chain issues and PPE shortages during the primaries reemerged in the November election; what innovative practices did states and civil society deploy to recruit a large, new army of poll workers for the general election; how states adapted existing legal and policy frameworks to ensure safe in-person voting; how courts dealt with challenges relating to election observers; and how states prepared for possible Election Day violence. A summary of each report follows.

Supply Chain Performance in the 2020 Election

The coronavirus pandemic prompted concerns regarding the material and products necessary to ensure a safe and accessible election. In response, election officials and other stakeholders coordinated efforts to prevent large-scale supply chain issues with respect to personal protective equipment for poll workers and mail ballot supplies for absentee voters. Although many states addressed these concerns before Election Day, supply chain issues exacerbated by the pandemic placed unique stresses on election administrators throughout the country.

Poll Worker Recruitment in the 2020 General Election

The coronavirus pandemic prompted concerns regarding the material and Poll worker recruitment and retention were among the main concerns facing election officials in advance

of the 2020 general election. As the coronavirus pandemic arrived in the United States in the spring of 2020, many poll workers, who historically have skewed older, declined to staff in-person voting locations. This led to major staffing shortages in the early 2020 spring primaries. However, herculean recruitment efforts and creative partnerships mobilized by election officials and organizations across the country produced a sufficient number of volunteers in most jurisdictions for the November election. As a result, most in-person voting locations were able to stay open and process ballots efficiently, contributing to a smoothly run general election.

Early In-Person Voting in the 2020 General Election

Early voting in the 2020 general election shattered records, driven in part by strong enthusiasm for the presidential candidates and by pandemic-driven fears of crowded Election Day polling places. Much of the attention surrounding early voting focused on mail ballots, as many states increased their mail voting capacity to reduce the need for person-to-person contact that could further spread the coronavirus. In-person voting, however, also played a major role in the early vote, particularly among states and voters concerned that mail voting could be unreliable. This memorandum explores the various approaches that states took in providing early voting options to better understand early in-person voting trends.

Polling Place Management in the 2020 General Election

During the spring and summer primaries, many election officials and voters faced challenges as coronavirus cases surged: long voter lines, closed polling places, and increased demand for mail and early voting. But administrators were largely able to scale election infrastructure quickly, find suitable locations for voting, and ensure that the November general election proceeded safely and securely. Despite the potential for catastrophe, polling places largely exceeded safety expectations and in-person voting proceeded smoothly in most jurisdictions.

Election Observer Rules and Litigation in the 2020 General Election

Election observers were a focal point of much of the litigation and misinformation surrounding the 2020 election. Election observers, sometimes called poll watchers, are people who watch over the U.S. voting process to report inconsistencies, flag legal or procedural violations, and challenge the eligibility or identity of voters. Poll watchers have important roles and responsibilities in election operations. Many post-election lawsuits alleged that election observers affiliated with the Republican Party were improperly denied access to the areas where votes were being counted. These claims were typically accompanied by implications of improper activities behind closed doors. This memorandum details the specific allegations laid out in battleground state litigation concerning the role of election observers in the 2020 election and the alleged issues regarding access throughout the vote tabulation process.

Violence and the 2020 General Election

The 2020 U.S. presidential election was the most acrimonious in recent memory, with rising political animosity threatening to erupt into partisan violence. But widespread fears that voting would be violently disrupted did not materialize. While scattered incidents of violence and voter intimidation did occur throughout the early voting period and on Election Day, voting was generally orderly and safe. After Election Day, protests and agitation by supporters of losing candidate Donald Trump did not translate into broad instability or widespread partisan violence. The shocking and deadly attack on the U.S. Capitol by a pro-Trump mob on January 6 did not prevent President-Elect Joe Biden from taking office on January 20. This memo analyzes the role of violence before, during, and immediately after the 2020 election, provides a catalog of the isolated occurrences of voter intimidation and violence, and considers several explanations for why the U.S. escaped widespread election violence.

Supply Chain Performance in the 2020 Election

March 10, 2021

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Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“Election Supply Chains in a Pandemic,”](#) Anne Warnke, Mikaela Pyatt, Grace Scullion, Sarah Maung, Frances Schroeder, William Howlett, Valeria Rincon (June 17, 2020)

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I. Introduction

The coronavirus pandemic imposed unprecedented strain on the supply chain of election equipment and materials throughout most of the 2020 election cycle. The election supply chain included all materials, processes, and resources necessary to administer and participate safely and efficiently in an election within the framework of state and federal election regulations. In the case of the coronavirus pandemic, the 2020 election supply chain adapted to the unique circumstances of maintaining a free and fair election while simultaneously considering the vulnerability of public health. The coronavirus pandemic prompted a variety of [concerns for the safety of voters and poll workers](#). Driving these concerns were early reports of scarcities in personal protective equipment (PPE) and inconsistencies, both within and among states, in regulations responding to the pandemic (such as mask and social distancing requirements). Election officials were tasked with protecting voters and poll workers with the limited resources available—all while facilitating a legitimate and timely election.

The coronavirus pandemic also prompted [significant increases](#) in the number of mail/absentee ballots used across the country, which put strain on printing and distribution resources. There were numerous [pre-election concerns](#) that the election supply chain would be unable to scale up to meet the unique demands of the 2020 election, including fears of ballot shortages and the complication of new regulations surrounding ballot drop boxes, vote-by-mail, and social distancing.

Though some precincts did face ballot shortages, supply issues, and issues finding facilities large enough to accommodate social distancing, these issues were largely isolated. While minor supply chain problems occurred in precincts across the country, few atypical problems arose, and most were quickly resolved, causing no significant delays in election procedures or election results. Thus, despite pre-election concerns of supply chain issues, the United States election supply chain performed well, and the 2020 general election occurred without [significant delays or widespread issues](#).

II. Election Supply Chain

This report builds on a prior Healthy Elections Project memorandum, “[Elections Supply Chain in a Pandemic](#)” (June 2020), and analyzes issues within the election supply chain during the November election. As in the June memorandum, this report focuses on eight potential

breakdowns in the election supply chain: Ballot Packages; Ballot Tracking and Election Services Software; Polling Place Equipment; Ballot Storage; Ballot Drop Boxes; Polling Place Safety; Polling Place Locations; and Miscellaneous Supply Chain Issues. The most common issues among precincts included large-scale ballot printing errors, technical glitches in voting machines and e-poll books, and delays in ballot tracking software. Each category is further defined below and includes reports of relevant issues.

A. Ballot Packages

Ballot packages are envelopes containing all the materials a voter needs to cast their ballot from home. They vary from state to state but have similar attributes, typically including the ballot, an envelope in which to return the marked ballot, and additional voting materials. Most ballot packages also include instructions for completing and returning ballots; some include a second, inner envelope or “secrecy sleeve” (to place the ballot into before putting it in the return envelope), and some include information about candidates and propositions. Given the various components of a ballot package, a number of issues can arise in the printing and mailing process, including printing errors, duplicate ballots being included in one ballot package, delayed mailing of ballot packages, and material shortages.

Absentee ballot *application* materials can also be affected by printing errors or supply shortages. Application materials can include absentee ballot application forms or voter registration forms. For a more detailed explanation of ballot package parts and processes, please refer to [Election Supply Chains in a Pandemic](#). Ballot-related issues reported by election officials during the 2020 election are listed below.

a. Printing Error—Ballots

Most reports concerning ballot printing issues occurred prior to Election Day. Voters requested and returned a record-high quantity of mail ballots in many states during the 2020 general election. While errors in the ballots were sometimes realized prior to ballot packages being sent to voters, in some precincts, they were discovered only after voters alerted election officials.

In Los Angeles County, California, for instance, 2,000 absentee ballots, which had already been mailed to voters, contained [printing errors](#) that left out the presidential race. In Pennsylvania, a [printing glitch](#) resulted in ballot vendor Midwest Direct sending the wrong ballot to 29,000 voters throughout Allegheny County, the state’s second most populous county. Allegheny County officials created an [online search feature](#) for voters to see if their ballots were affected, and they mailed [new ballots](#) to all affected voters two weeks before the general election. In

Utah's Sanpete County, an Integrated Voting Systems [printing error](#) affected 13,500 absentee ballots, causing widespread confusion among voters. The ballot vendor subsequently had to mail instructions to address [the error and offer a solution](#). In Outagamie County, Wisconsin, a tiny [printing error](#) affected 24,600 ballots—5,000 of which were sent out prior to discovering the error. The error, an incomplete inking of a black square that ballot counting equipment uses to properly line up ballots for reading, also affected some [Calumet County ballots](#). [Replacement ballots](#) were printed and redistributed. Ohio's Franklin County sent approximately 50,000 [incorrect absentee ballots](#) to voters, listing races that were not in their voting districts. The county sent out corrected ballots in early October. Additionally, a [printing error](#) in Park County, Montana, left random ink splotches on at least one ballot, covering an oval next to a candidate's name. The affected voter was provided a new ballot.

b. Printing Error—Voter Materials

In addition to printing errors on ballots, some precincts reported printing errors on voter materials, such as registration forms, ballot envelopes, ballot instructions, and mail ballot applications. These errors were typically resolved through the distribution of corrected materials and a formal statement with instructions by election officials.

For example, printing errors in Nevada's Lyon and Humboldt counties resulted in [incorrect instructions being printed on mailing materials](#). In a press release, Secretary of State Barbara Cegavske clarified the instructions and assured voters that their ballots would be counted despite the printing error. Some voters in New York's Monroe County reported receiving [mail ballot applications](#) for persons who did not live at their addresses. The county commissioner said that the incorrect information would be corrected and sent back to the Board of Elections. Additionally, about 100,000 voters in Queens and the Bronx in New York City [received absentee ballots with the wrong information printed on the return envelopes](#). The error was attributed to a mistake on the part of the printing vendor; voters with affected envelopes were [encouraged to contact the NYC Board of Elections](#) and receive new ballots with correct information on the envelopes.

Some errors involved formatting mistakes that did not affect the voting process but did cause confusion among voters. For example, in August, a [printing error](#) in Virginia caused by a misaligned spreadsheet affected 500,000 absentee ballot applications mailed by a nonprofit. The nonprofit worked with election officials to [reduce voter confusion](#). Similarly, Oregon's Washington County reported a [formatting error](#) in the mail ballot explanation, though the issue did not affect the voting or counting of ballots. Additionally, a printing vendor mailed out 11,000 voter registration forms in North Carolina with [incorrect voter information](#). The State Board of Elections instructed people to discard the incorrect forms.

c. Printing Error—Processing, Scanning, Tabulating

In some cases, ballot printing errors caused problems only when ballots were scanned by election officials. For example, in Texas's Tarrant County, up to 25,000 ballots could not be read by a scanner because of a [printing error](#) with the ballot's barcode, forcing election officials to duplicate ballots in order to be scanned. In Indiana, a laser printer error resulted in printed ballots that [were millimeters too narrow](#) to be tabulated properly by tabulation machines. Additionally, in Morris County, New Jersey, election workers had to enter barcode numbers into scanners by hand because of [blurry ink on about 20% of the ballots](#), causing "massive delays."

In this type of instance, officials quickly assured voters that all ballot affected by the error would be counted. Dorchester County, Pennsylvania, was unable to start counting absentee votes because of a [printing error](#) that prevented 13,500 ballots from correctly scanning. Officials assured voters that all votes would be counted despite the error. In South Carolina, a scanner in Dorchester County failed to read 14,600 absentee ballots because of a [printing error](#) on the ballot; election officials assured voters that all affected ballots would be counted through a [hand-count](#).

d. Delayed Printing and Mailing of Absentee Ballots

In some precincts, various issues caused absentee ballots to be sent out late, thus delaying the anticipated election timeline. For example, in Missouri's Pulaski County, a printer was [late in printing and delivering ballots](#) to polling sites, causing in-person absentee voting in the county to start a day or two later than the rest of the state. Nevada's Washoe County sent out absentee ballots a few days late because of [printer delays](#). Meanwhile, printing and delivery problems at Midwest Direct, a Cleveland-based ballot vendor, [delayed absentee voting](#) in 16 Ohio counties. While the exact number of delayed ballots remains unclear, Ohio election officials said that the number of affected ballots was well into the thousands. Because of those printing delays, [nine Ohio counties](#) opted to instead print their ballots in-house.

e. Duplicate Ballots

In some precincts, voters reported receiving multiple ballots, though in each incident, election officials assuaged any concerns of potential double-voting. For example, in Idaho's Bonneville County, several voters [received duplicate ballots](#) because of a software glitch. The Idaho secretary of state's office said that no Idaho voters would be disenfranchised because of the error. Similarly, in Pennsylvania's Blair County, 78 voters received [two ballot packages](#) each because of a printing malfunction. Ballot vendor NPC was able to identify which voters received

two ballots, enabling county officials to [prevent double-voting](#). In Richmond, Virginia, a jammed printer in suburban Henrico County and the rush to mail out ballots in Richmond City resulted in 400 voters receiving [duplicate ballots](#). Officials in Fairfax County, Virginia, [accidentally sent](#) duplicate ballots to 1,000 voters. But state election officials assured voters that a statewide voter verification program tracked when voters have cast ballots and thus [prevents](#) duplicate ballots from being counted twice.

f. Shortages—Ballots, Ink

Because of the large quantity of mail ballots needed throughout the 2020 election, some worried about [widespread ballot shortages](#). Although no incidents of widespread ballot shortages occurred in 2020, some precincts did report shortages of provisional ballots, ink to print ballots, and ballots for Election Day voting. For example, on Election Day, some Alabama counties reported [shortages of provisional ballots](#); voters in affected counties were asked to return later in the day once more provisional ballots had been printed. Similarly, in Illinois, three Woodford County precincts [ran out of provisional ballots](#) shortly before polls closed on Election Day. In California, a voting center in Manteca [ran out](#) of standard ballots because of high voter turnout. In Pennsylvania, several [York County](#) polling sites and two [Mercer County](#) polling sites ran out of ballots. In Mercer County, officials admitted they underestimated the number of ballots needed by Sharpesville voters and that they ordered the wrong number of ballots for Jackson Township, resulting in shortages. Pennsylvania election officials [picked up and delivered more ballots](#) prior to polls closing in affected precincts. In contrast, and contrary to a local news report, Wyoming's Wood County did [not run out of ballots](#).

In Arizona, several polling locations [ran out of the ink](#) to print ballots on Election Day, including in Fountain Hills and [Maricopa County](#). Similarly, an [ink shortage](#) in Green Bay, Wisconsin, delayed absentee vote counting. Though not reflective of a ballot or ink shortage, an Idaho polling place reported [running out of voter registration cards](#) leading up to Election Day.

g. Miscellaneous Ballot Issues

Although the vast majority of ballot-related issues are reflected in the categories above, some precincts reported miscellaneous incidents, typically affecting a small number of voters. In some cases, voters did not receive their ballots. For example, in Tuscaloosa County, Alabama, some voters reported [never receiving mail ballots](#) and, instead, had to vote in person. In Florida, a few voters were [wrongly denied provisional ballots](#), though the mistake was quickly fixed. At West Virginia's Ruthlawn Elementary in Kanawha County, poll workers incorrectly informed several voters that [they had already voted absentee](#) when they had not.

Some voters encountered issues regarding ballots provided on Election Day at polling sites. One voter in the Town of Wilton, Maine was [accidentally given an absentee ballot that had already been filled out](#). After bringing the issue to an election clerk's attention, the voter was issued a blank ballot. In South Dakota, a precinct at a church in Sioux Falls handed out 38 [wrong ballots](#). An auditor found there to be “no remedy” for such error.

Lastly, a Texas Supreme Court ruling allowing Green Party candidates on the ballot, prompted the counties that had already sent out mail ballots to send [corrected ballots](#) along with a written notice explaining the change and instructions to destroy “defective” ballots that had not yet been returned.

B. Ballot Tracking and Election Services Software

In many jurisdictions, voters were able to track the status of their general election ballot through online ballot tracking systems. While these tracking systems were particularly useful for voters using mail ballots, some states enabled voters who cast a ballot at the polls to similarly track the status of their ballot online. Many states used third-party ballot tracking systems, such as [Ballot Scout](#) or [BallotTrax](#), whereas other states offered ballot tracking software through governmental sites, most commonly the secretary of state's website. [Only six states](#) did not offer comprehensive ballot tracking software: Illinois, Missouri, New York, Texas and Wyoming provided ballot tracking software only for military and overseas voters, while Mississippi provided no ballot tracking software.

Ballot tracking software is included in this discussion for three reasons: Ballot tracking software can flag certain supply chain breakdowns for election officials and voters, such as glitches in voter services platforms and delays in the U.S. Postal Service; ballot tracking software offers voters in some states the opportunity to correct certain errors, which can in turn prevent further supply chain breakdowns; and ballot tracking software offers an accountability mechanism, providing voters with visibility into the status of their ballot and a glimpse at the efficacy of the election supply chain.

Some states encountered glitches in the ballot tracking system, causing frustration and confusion to their voters. The primary issues in ballot tracking software that were reported in 2020 included technological glitches, software delays in updating ballot status, software crashes, and delays in USPS scanning and tracking as needed to update ballot status.

Comprehensive information on ballot tracking systems provided within each state and further information on USPS performance in the 2020 election can be found here:

- [How to Track Your Ballot in Each State](#)
- [USPS Performance Reports and Election Statements](#) (USPS.com)
- [USPS and the 2020 Elections](#)

a. Ballot Tracking Software

Ballot tracking services typically track the unique identifying numbers or barcodes given to each ballot. These barcodes are scanned by USPS during delivery to the voter and on return to election officials. The scans in turn trigger messages to the voter on the tracking software letting them know if their ballot is in transit or has arrived. Concerns about postal delays during the pandemic drove voter interest in ballot tracking during the 2020 elections cycle.

There were some issues with ballot tracking software leading up to the general election. Inconsistencies in Pennsylvania's [ballot tracking software](#) concerned voters and drew criticism from Philadelphia City Commissioner Al Schmidt. In October, Virginia voters reported a [variety of issues with Virginia's ballot tracking software](#), Ballot Scout. Officials substantiated such reports and assured voters they could check the status of their ballot through the Virginia Department of Elections voter portal. Additionally, some Florida counties [did not provide](#) voters with a means to check whether their mail ballot had been counted, despite the availability of statewide ballot tracking services.

Following Election Day in Oklahoma, [delays in ballot tracking software](#) caused concern among voters who were concerned that the tracking had yet to indicate their ballots had been received and counted. State officials said voters' concerns were caused by delays in officials' ability to input data into the ballot tracking and did not reflect a problem in the processing or counting of ballots.

b. Election Services Software

Software-related issues are not unique to ballot tracking systems, as some states also faced problems with software used to operate voting machines, register voters, document who had cast ballots, and provide voter information for ballot printing and processing. Software used for these purposes is known as "election services software."

Crashes in election services software typically occur because of system overload or technological errors, and often cause voter confusion and concern. Several hours before the

deadline to register for the general election, [Florida's online voter registration system](#) was down because of the system's inability to handle the traffic load at the deadline. The state extended the deadline to midnight to remedy the lost time and quell voter concern. Pennsylvania's [voter services website also crashed](#) for 40 hours the weekend of October 4, causing concern among voters as ballot deadlines loomed. On the last day to register to vote in the state, Virginia's [voter system crashed](#) but was [restored](#) by late afternoon.

Glitches in election services software also affected in-person voting and processing. At the polls, they caused delays for voters during check ins and delays for poll workers counting votes. In Park County, Wyoming, voting machines suffered a software [glitch](#) because of a failure to program an automatic time-change for Daylight Savings Time on November 1. In Georgia, a record voter turnout overloaded [the electronic pollbook system](#) and caused delays during early voting, while on Election Day, software issues in Gwinnett County slowed the [Georgia ballot count](#). Similarly, in Christian County, Missouri, [issues with electronic poll books](#) used to sign in voters caused delays and long lines at the beginning of Election Day, though the software problem was fixed within an hour. In New Jersey, electronic signatures made with styluses did not match voters' names, forcing affected ballots to be cured and causing counting delays. In Rhode Island, some precincts experienced [syncing issues](#) with their poll pads, because of the high volume in-person absentee ballots—which Rhode Island refers to as “[emergency mail ballots](#).” In Riverside County, California, voters experienced delays because of a [computer glitch](#) spanning some of the county's 130 polling sites in October. On Election Day in Ohio, Franklin County switched from electronic to [paper pollbooks](#) because of problems uploading voter data the day before. The switch, combined with higher than expected voter turnout in the county, caused some delays and confusion at Franklin County polling sites. Similarly, in Michigan, an issue with an e-poll registration system caused some delays and long lines, though the glitch was resolved. Additionally, initial reports of software issues in Michigan's Antrim County on Election Day were incorrect; [delays in counting were actually caused by human error](#), which resulted in ballots being counted by hand.

Texas faced a variety of technical glitches. In Dallas County, at least two voters found that someone else had voted using their names because of a [pollbook system error](#). The issue prompted an [investigation and swift resolution](#). On Election Day, Comal County election officials received three reports of [local races missing from electronic ballots](#), prompting an investigation into the technological issue. In Hidalgo County, new laptops resulted in a [technical glitch](#) that delayed voting by 90 minutes; affected polling sites remained open for an extra hour to make up for the delays.

Because some states' ballot tracking software is integrated with its election services software, a glitch could create widespread issues. In Minnesota, on October 31, a website hosting both

ballot tracking and voter registration went down for an hour, causing delays in early voting. The issue was caused by [hardware problems](#) and, while the database was restored in part, delays continued throughout the afternoon until the site was fully restored. Additionally, New Jersey poll workers experienced issues with the Motor Vehicle Commission [voter registration system](#) blinking in and out of operation on November 3 during counting.

C. Polling Place Equipment

Once ballots are cast, precincts must process, scan, and tabulate all voted ballots through polling place equipment. Mail ballots are [processed](#) through state-required steps, including verifying signatures and removing ballots from envelopes. Mail ballots are then [scanned](#) by a scanner that stores information on a memory card, and votes are then [tabulated](#) by machine. In-person voters either vote on paper or use a voting machine to mark their ballots. Their votes are later tabulated either by the same machine or through a tabulator. Equipment, procedures, and regulations vary widely by state; more detailed information can be found in the following external resources:

- [Voting Methods and Equipment By State](#) (Ballotpedia.org)
- [Registered Voting System Manufacturers](#) (Election Assistance Commission)
- [When States Can Begin Processing and Counting Absentee/mail Ballots, 2020](#) (Ballotpedia.org)

Common supply chain issues concerning ballot processing, scanning, and tabulating in the 2020 election typically stemmed from equipment glitches or malfunctions. In some cases, these issues were promptly resolved with the original equipment; in other cases, the malfunctioning equipment was entirely replaced.

Minor glitches or malfunctions in polling place equipment were not unique to the 2020 election; while such issues cause temporary frustrations, they are typically isolated incidents. For example, in Nevada County, Nevada, voting in the 2020 general election went smoothly and [only small routine technical issues](#) came up, such as printers needing their settings readjusted. A few [minor voting machine issues](#) occurred throughout the state of Virginia, but all were resolved. Below are reports of polling place equipment issues concerning voting machines, scanners, tabulators, and other items:

a. Voting Machines

Voting machine issues often arise from technological glitches or human errors (such as poll workers not plugging the machines in correctly or placing ballots into the machine incorrectly). In precincts in which voting machine glitches occurred, reports indicated that election officials resolved issues promptly. For example, on Election Day in Florida, Lake County reported [a minor glitch in voting computers](#) shortly after polls opened. Alan Hays, supervisor of elections, said “the problem was isolated immediately, and corrective action was initiated.” Similarly, in Maine, Secretary of State Matt Dunlap reported a [few minor voting machine glitches](#) that were quickly fixed by technicians. When counting votes, Joe Gloria, Registrar of Voters in Nevada’s Clark County, said [voting machines had some issues](#) “centered around connectivity to our poll books” and “a small number of issues with the functionality of signing in our poll books” but, overall, the issues “were very small.” Clark County was able to respond to all issues and continue counting ballots.

Georgia faced a number of technical issues on Election Day. A [voting machine glitch](#) slowed the [Georgia ballot count](#). Spalding County experienced countywide voting machine shutdowns because of [incorrect information loaded](#) into the machines. The issue was resolved before 10 a.m. on Election Day. Four of seven polling sites in Georgia’s Morgan County experienced [technical difficulties](#), though all were resolved by afternoon. At Morris Brandon Elementary School in Atlanta, voters initially had to cast [paper ballots instead of voting by machines](#) because of technical difficulties, though the machines were fixed later that day.

Other reports reflected broken voting machines or errors affecting voting machines. Days before the election, West Virginia’s Cabell County reported [problems with several voting machines](#). Because candidates on the affected ballots were running unopposed, county officials [opted not to fix](#) the machines rather than delay the election. On Election Day in New York, there were a few reports of [broken or locked voting machines](#) in New York City and Flatbush. Meanwhile in Franklin County, Ohio, some [voting machines](#) at a polling site at Maranatha Baptist Church [stopped working](#), forcing some voters to use provisional ballots; additionally, voting machines at Thomas Worthington High School were [down for 30 minutes](#) at some point in the day. And in Wisconsin’s Milwaukee County, officials [found 65 missing ballots](#) in a voting machine in late November during the state recount.

b. Scanners

Similar to voting machines, scanners are vulnerable to technological glitches and breakdowns. In Mississippi, a polling place in Pisgah had long delays because [a vote scanner stopped working](#). In West Virginia, a [broken scanner](#) at Greenmont Elementary School in Wood County

was quickly replaced. Meanwhile, a [broken scanner](#) in Westmoreland County, Pennsylvania, temporarily delayed some voters who opted to wait for the machine to be fixed rather than leave their ballots in a secure lockbox; the scanner was fixed by election technicians around 10 a.m. In Texas's Travis County, four polling sites—Austin Oaks Church, George Morales Dove Springs Recreation Center, South Austin Recreation Center, and Virginia Brown Recreation Center—experienced [malfunctioning ballot scanners](#). The issue did not prevent voting and was [quickly resolved](#).

A Cranston, Rhode Island, [scanner failed](#) to count 9,000 emergency ballots, prompting a hand-count by election officials; Cranston was the only city among Rhode Island's 39 cities and towns to [not digitally transmit](#) election results on election night. At Rhode Island's Knights of Columbus Hall in Central Falls, a scanner [rejected ballots](#) on election night. The machine was one of three that had been delivered to the polling site to [replace other broken scanners](#). Ballots rejected by the machine were placed in an auxiliary ballot box to be hand-counted. Similarly, in Oklahoma City, the Church of the Redeemer's only voting booth rejected poorly and/or partially marked ballots on several occasions, prompting poll workers to [reset the machine](#) multiple times. And on Election Day in Arkansas, a DS200 scanner was [unable to read absentee ballots](#) from a new printer in Carroll County, leading election workers to spend Wednesday "putting information from 1,843 absentee ballots into voting machines so new ballots could be printed out and then run through a tabulator to be counted."

Another common issue among scanners concerned jammed ballots, which temporarily delayed scanning processes. In Tennessee, a few unnamed precincts reported [ballots stuck](#) in voting machines, though the cause was unclear; all issues were promptly resolved by election officials over the phone. At the Expo Center in Texas's Orange County, a [voting box jammed](#) temporarily. In Hennepin, Minnesota, jammed ballot machines caused [some minor delays](#); one machine was replaced, and the other was promptly fixed.

Some issues were unique to an election held in the midst of a pandemic. [Hand sanitizer rubbing off voters' hands and onto ballots jammed scanners](#) in Des Moines, Iowa, and [Derry, New Hampshire](#). The broken machine in Des Moines was fixed within the hour. To address this unique issue, Des Moines poll workers moved the "sanitizing station farther back in the line so voters' hands would be dry when they first touched the ballots."

c. Tabulators

When tabulating votes, many precincts experienced glitches in machinery, resulting in minor delays in reporting election results. There were [delays in reporting votes](#) from Maryland's five largest jurisdictions because of technical issues with ballot scanners and their thumb drives.

The delays were due in part to voters' ability to vote in any precinct, requiring election officials to "answer a set of repetitive questions for every thumb drive they import into the state's vote tallies." On November 4, Nikki Charlson, deputy administrator of the Maryland State Board of Elections, said that the State Board of Elections aimed to [fix the issue](#) and finish reporting within a few days.

In Michigan, some [scanners caused delays in Wayne County](#), all of which were quickly resolved. When counting votes in New Hampshire, election officials in Londonderry had to run 16,000 votes through the counting machine a second time because of [a technical issue with the SIM card](#). In North Carolina's Washington County, [outdated machinery duplicated ballots](#) during tabulation and, in one Robeson County precinct, results from an early voting site were mistakenly not uploaded. Both errors were corrected during North Carolina's 10-day election audit. On Election Day in Oregon, a [tabulation machine error](#) required retabulation of ballots in Ogle County, delaying county results. In Milwaukee, Wisconsin, a tabulator flash drive was [mistakenly left](#) in a voting machine when poll workers delivered flash drives to the Milwaukee County Election Commission for counting. The flash drive was [quickly retrieved](#) by another poll worker and delivered by police. Meanwhile, in Clay County, Missouri, a [programming error in tabulation machines](#) resulted in incomplete election results on Tuesday night; the affected votes were recounted on Thursday.

Some precincts experienced problems with multiple types of polling place equipment, such as in Connecticut, where Fairfield, Wallingford, and Branford counties reported several broken [polling and tabulating machines](#) on Election Day, all of which were quickly fixed. On Election Day in North Carolina, three precincts in Sampson County, three in Warren County, and one in Cabarrus County were flagged by election officials because of "a range of issues, from [tabulators not accepting ballots to printers not working](#) and poll workers not being able to log in to machines." In Texas's Upshur County, [technical difficulties with polling equipment](#) at St. James Baptist Church and Big Sandy School required extended voting hours.

d. Unspecified Equipment Issues

In Alabama, some polling locations reported [machine crashes and shortages](#), including at Jefferson County Courthouse and polling sites in Pleasant Grove, Bessemer, and [Baldwin County](#). On Election Day in Arizona, Mesa Community College [reported a broken machine](#), causing delays and frustrations among voters in line. During Texas early voting, [glitches](#) in Fort Bend County voting machines resulted in hours-long delays and calls for an investigation. [Similar issues](#) were reported at Four Corners Recreation Center and Smart Financial Centre, though issues were quickly resolved in both precincts. Similarly in Massachusetts, a few broken machines were [fixed within the hour](#).

e. Lack of Necessary Equipment

Though some precincts faced frustrating machine glitches and breakdowns, some precincts lacked the appropriate machinery altogether. In Indiana, Madison County reported [needing twice the number of voting machines](#) it originally had (originally 170 machines) to accommodate the voters that showed up on Election Day, causing long lines and delays. Rhode Island's Warwick, Cranston, and Providence communities received [incorrect voting machines](#), which were quickly replaced by correct machines. At VanDevender Middle School in Wood County, West Virginia, [missing election equipment](#) caused a short delay until found.

f. Misc. Equipment Issues

While voting machines encompass the majority of polling place equipment issues, the Port Arthur Sub-Courthouse in Jefferson County, Alabama, reported a [malfunctioning judge booth controller](#), which connects all voting machines together electronically, which caused voting delays.

D. Ballot Storage

Potential ballot storage issues included supplies necessary to transport and store ballots, including warehouses, trucks, containers, and methods of securing ballots in storage. Because the 2020 election utilized far greater quantities of absentee ballots than past elections, concerns prior to the general election included a [need for more physical space](#) to store ballots. Despite concerns that higher quantities of absentee ballots required more physical space, there were no reports of ballot storage issues impacting the general election.

E. Ballot Drop Boxes

Because of the increased use of absentee ballots, many states and jurisdictions opted to provide or expand throughout voter precincts the number of ballot drop boxes into which voters could drop off their ballots. There were few reports of supply chain issues related to ballot drop boxes, though issues and challenges concerning the implementation of ballot drop boxes occurred for reasons unrelated to the supply chain. Please refer to our prior reports, [The Use of Ballot Drop Boxes During COVID-19](#), [Ballot Drop-Off Options in All 50 States](#), and [Ballot Drop Boxes in the 2020 Elections](#) for more detailed information on ballot drop box regulations in each state.

The use and implementation of ballot drop boxes varied widely by state, as did reports concerning ballot drop box supply chain issues. In October, California Republicans placed [unofficial drop boxes](#) falsely labeled as “official” throughout Los Angeles, Orange, and Fresno counties, causing voter confusion and concern for election security in the state. Additionally, in Wisconsin, election officials reported voters dropping off their ballots in the [drop boxes](#) outside their voting jurisdiction. All ballots dropped off at incorrect ballot drop boxes were mailed to the correct jurisdiction by county officials. Potential supply chain issues regarding ballot drop boxes also concerned [supervision](#), whether by a 24-hour camera or a specified individual, if required by state law. The fulfillment of state regulations that required such supervision posed challenges for some precinct officials, most notably in Florida, where [stricter regulations prompted concern](#) among voting rights activists.

F. Polling Place Safety

Personal protective equipment (PPE) and other safety supplies constituted perhaps the most notable supply chain concern unique to the November 2020 election. Running an election during a pandemic of a serious respiratory illness with high transmission rates put pressure on state governments and precincts. Jurisdictions needed to protect poll workers and voters with the limited financial and medical resources available. [Potential supply chain concerns](#) included challenges estimating the necessary quantities of PPE for each precinct, determining who was responsible for purchasing and distributing PPE, and coordinating distribution of PPE to all polling sites.

While [mask requirements](#) varied widely by state, general precautions included providing personal protective equipment for poll workers, sanitizing voting materials (such as pens, styluses, voting booths); maintaining social distancing; and preserving the right to vote for those who had contracted COVID-19, the respiratory disease caused by the coronavirus. The primary limiting factors in implementing such precautions were obtaining funds to provide and distribute PPE and obtaining the PPE itself, as PPE supply chains were [severely strained](#) at various times in 2020.

Election officials forged creative partnerships to procure hand sanitizer for the 2020 elections. In Wisconsin, [officials partnered](#) with [local distillers](#) to procure hand sanitizer for the state’s April primary. Nationally, the National Association of State Election Directors (NASED), the National Association of Secretaries of State (NASS), and the Cybersecurity and Infrastructure Security Agency (CISA) partnered with [Anheuser-Busch](#) in August 2020 to distribute hand sanitizer to state election offices for the general election. The company donated more than eight million ounces of hand sanitizer to officials as part of its “Brew Democracy” initiative.

Despite concerns regarding the funding and procurement of PPE for polling sites, there were few reports of PPE supply chain issues and none that caused significant delay in election procedure. On Election Day in California, a few voters [refused to wear masks](#) at a Sacramento polling place, prompting poll workers to create a secluded voting booth to maintain polling place safety. Similarly, on Election Day in Utah, some voters reported poll workers [not wearing masks](#), though all reported issues were [investigated and resolved](#) by county officials. In Clarksdale, Mississippi, [record voter turnout and long lines](#) resulted in reports of limited space for social distancing as voters waited for just six voting machines at a polling place. Similar reports in New Hampshire of [insufficient social distancing](#) at some crowded polling places did not appear to impede voting.

G. Polling Place Locations

Polling place locations posed unique challenges to election officials as unintended delays arose from polling site relocations, staffing shortages, inadequate signage, voting hour extensions, and polling site reductions. This category encompasses polling place location issues reflective of supply chain gaps but does not provide detailed information on [poll worker recruitment](#) or shortages.

Most common among polling place location issues were unanticipated delays or the need to extend voting hours due to various polling site issues. In Georgia, a Spalding County glitch prompted [extended voting hours](#) in at least one polling place in Cherokee, Cobb, DeKalb, Fulton, Gwinnett, and Houston counties. Similarly, in North Carolina, a range of machine errors in Sampson, Warren, and Cabarrus counties resulted in the [delayed opening](#) of some precincts and the [extension of voting hours](#) in others. A [technical glitch](#) in Texas's Hidalgo County prompted polling sites to remain open for an extra hour to make up for delays.

Some polling sites faced delayed openings, such as in Nevada, where several [Clark County polling places opened late because of technical issues](#). At Birchwood Middle School in North Providence, Rhode Island, poll workers [did not show up](#) for their shifts, delaying precinct opening until 7:20 a.m. On the first day of Texas early voting, the Euless Senior Center in Tarrant County remained [unopened](#) because a poll worker had recently been exposed to the coronavirus. Poll workers in the same training class were directed to [stay home](#), affecting Keller Town Hall and the Villages of Woodland Springs precincts, though both were still able to open.

While some polling locations faced delayed openings, others had to be combined with functioning polling locations, moved to new locations, or shut down as a result of various

precinct issues. In Illinois's Cook County, a [polling place had to be moved](#) upon the building owner's request. In a polling place located in [a Chicago-area school](#), the sprinklers went off unexpectedly, dousing poll workers and voters and forcing officials to redirect voters to another nearby polling place. Similarly, in West Virginia's Kanawha County, a [relocated polling place](#) confused some voters. On Election Day in Oklahoma, a [polling site in Noble expanded](#) from four voting booths to 11 after moving to a larger room around 2 p.m., reducing wait times by half. South Dakota poll worker shortages resulted in some [precincts being combined](#), leading to longer lines on Election Day. Similarly, a coronavirus outbreak forced the Western Wyoming College election center to [reduce capacity](#) by half. In late October, the Nitro Police Department in West Virginia [shut down](#) because of a poll worker testing positive for the coronavirus; meanwhile, some poll workers [called in sick](#) across Wood County, though the absences did not prevent the continuation of standard election procedures.

Other polling place location issues varied widely. In Alaska, for example, [logistical challenges](#) related to geographic barriers (namely that some polling locations are not accessible by road) caused delays in vote counts. Such issues—when combined with Alaska's [unique vote counting system](#) that delays the counting of absentee ballots until a week after the election—are not unique to the 2020 election, but rather a recurring issue in Alaskan elections. In Florida, some relocated polling place locations were [not updated](#) on the state website, frustrating voters. An Orlando polling site [shut down temporarily](#) because of a nearby SWAT raid. In California's Orange County, activists reported a [fake polling site](#), confusing voters. On Election Day, a voting rights group, Civic Nebraska, ["reported a lack of adequate signage"](#) at a handful of polling places in Lincoln and Omaha and brief difficulty with special-needs access at a north-central Lincoln polling site, which eventually was corrected." The League of Women Voters of Ohio reported similar [complaints](#) with curbside voting access and signage in Worthington, Grove City, and Blacklick, though county officials did not substantiate these concerns.

H. Miscellaneous Supply Chain Issues

All other supply chain issues related to miscellaneous voting supplies are included in this category. For example, a handful of southern states had to acquire generators for polling places that lost power during Hurricane Zeta. Alabama faced [power outages](#) at polling locations in several counties; however, Secretary of State John Merrill reported that all 1,980 polling locations would have power on Election Day, either through restored electrical grids or generators. Meanwhile, in Georgia, two or three polling places faced [power outages](#) on the Monday before the election, according to statewide voting system implementation manager, Gabriel Sterling. Hurricane Zeta also caused [power outages at polling places](#) across Louisiana. Where power was unable to be restored, officials either relocated the polling place to a building

with power or supplied [generators to polling places without power](#). Mississippi polling places experienced similar [power outages](#); polling place locations where power was unable to be restored by Election Day ran on generators.

In unrelated incidents, a number of states reported minor power outages at some precincts. On Election Day in central Florida, construction workers accidentally severed cables to a polling site in Kissimmee, causing an [internet outage](#) and delaying election results from Osceola County. In Idaho, officials reported a [minutes-long power outage](#) at a polling site. Similarly, a [blown transformer](#) at a voting site in Linden, Ohio, temporarily knocked out power. Meanwhile, at a polling site in Oklahoma City's Church of Christ, a three-hour [power outage](#) prompted the use of emergency ballot storage until power was restored around 10:30 a.m. via a power generator. Similarly, [intermittent power outages](#) at Oklahoma's Mayflower Congregational Church-UCC caused some delays, though voting continued uninterrupted. A [power outage](#) temporarily delayed voting at some Richland County precincts in South Carolina. In Sissonville, West Virginia, a [power outage](#) was quickly fixed before the voting machines ran out of battery power and a Raleigh County polling place used a generator to continue election procedures following a [power outage](#).

Issues not related to power outages affected some polling stations across the country. For example, a broken water pipe in Fulton County's State Farm Arena slowed the [Georgia ballot count](#). In Illinois, [fire sprinklers went off](#) at the Otis School in Cook County, though no ballots were damaged. The Kansas secretary of state's office received [reports of robocalls](#) encouraging voters to stay home. In response, the secretary of state publicly reiterated voters' right to vote before poll closure. Meanwhile, in Montana, [Flathead County experienced vote counting delays](#) because of WiFi delays and machines counting ballots more slowly than expected. Montana officials provided a final tally in the afternoon of November 4. At Maranatha Baptist Church in Franklin County, Ohio, poll workers [misplaced the key to voting materials](#), delaying the start to Election Day. A Franklin County election official arrived around 7:20 a.m. with a spare key, enabling the polling site to open. In Portsmouth, Rhode Island, a supply box was delivered to the [wrong precinct](#). And in Iowa, a vote counting error [put a Democratic candidate ahead](#) in the Iowa U.S. House Race, though the mistake was corrected.

Following the election, a DeKalb County, Georgia, elections manager [was fired](#) after a series of errors as a county-run "state-ordered audit of ballots cast in the presidential race" found that the VRE manager "failed to follow [...] established protocols and blatantly disregarded the required processes [utilized] to account for and record all legal and verified ballots." Similarly in Oregon, Elections Director Stephen Trout was [fired by text](#) after pointing out the state's outdated election technology, shocking many in the agency.

III. Funding for Election Materials and Procedures

Many states relied on additional funding from government and private entities to operate a safe election during the coronavirus pandemic. Coronavirus-related expenses included PPE for poll workers; postage, envelopes, and drop-boxes for mail voting; sanitation for polling places; drive-through voting set-ups; additional training for poll workers; and increased pay to attract and retain more poll workers. These expenses were in addition to ordinary election-related expenses and system upgrades, such as new voting machines and software.

A. HAVA Funding

In early 2020, Congress authorized [\\$425 million in Help America Vote Act \(HAVA\) funds](#) to be used for [election security purposes](#) throughout 2020. States could apply for and use 2020 HAVA funds for [coronavirus-related expenses](#), such as “the protection of the health and safety of poll workers, staff, and voters during federal elections as well as those resulting from unanticipated increased demand for vote-by-mail costs (e.g. printing ballots, postage, etc.), equipment, temporary staff, and similar costs.” Participating states sent request letters early in the year, detailing the anticipated amount of HAVA funds needed to operate a successful election. Each state was required to match 20% of the federal aid awarded.

For further information regarding HAVA funding by state, please refer to the following resources:

- [Breakdown of HAVA Fund Awards by State](#) (Politico)
- [Election Security Funds](#) (EAC.gov)

B. CTCL and CEIR Grants

[Some states still struggled to meet the costs](#) of administering a safe election. To help relieve cost burdens, the nonprofits [Center for Tech and Civic Life \(CTCL\)](#) and [The Center for Election Innovation and Research \(CEIR\)](#), after receiving a \$300 million donation from Priscilla Chan and Mark Zuckerberg among other donors, offered grants to states, cities, and counties for coronavirus-related election expenses. CTCL allocated some of these funds toward a [rural grant program](#). About [half the states applied for CEIR grants](#), and about 10 percent of local election agencies applied for CTCL grants. Some conservative organizations, such as the Thomas More Society, took [legal action to block the grants](#) in some local jurisdictions. They claimed that allocation of private money towards an election could [create partisan disparities](#) in voting opportunities between different jurisdictions. For example, in a Wisconsin case, plaintiffs

requested an order restricting use of CTCL funding by the Wisconsin Election Commission under Wisconsin Statute 12.11 which prohibits election bribery that induces a voter to refrain from voting. [Judges did not issue injunctions](#) in any of these cases. Further details of cases challenging CTCL funding can be found through the [Healthy Elections COVID Election Litigation Tracker](#).

C. HAVA and CTCL Funding by State

The following table indicates the amount of HAVA funding awarded to each state—not including the 20% state match—and the intended use of such funding if provided by state documentation. Awarded funds may be used for election purposes throughout the year—including the 2020 primaries, run-offs, and general election—thus, the amount indicated in the table is reflective of the amount awarded for the 2020 year. The table also includes the amount of CTCL funding awarded to each city, county, or state as applicable as reported in October 2020:

State	HAVA Funding	Intended Use	CTCL Funding
Alabama	\$6.5 million	Upgrade voting equipment, electronic poll books, and GIS software for service voter geographic ID	Montgomery County : \$534,489 grant for a high-count vote tabulator machine, touch screen voting machines, and a new cargo van
Alaska	\$3 million	Enhance election security, advance voter registration anomaly detection, and improve election system controls	N/A
Arizona	\$7.8 million	Increase election security at the state, county, and local level	Navajo County : \$615,000 grant to expand early voting opportunities, including more polling places, ballot drop-boxes, drive-through voting, PPE, and translation services
Arkansas	\$4.7 million	Equipment purchases, cybersecurity measures, training, connectivity/communications, and voter registration”	Craighead County : \$59,856 grant for hiring and training poll workers and setting up a drive-through ballot drop-off site

California	\$36.3 million	“ Technical and security enhancements, security training, infrastructure needs, equipment costs, polling place administration, auditing, and improving the administration of elections” at the state and local level	N/A
Colorado	\$6.7 million	Not Specified	N/A
Connecticut	\$5.4 million	Enhance election security via local voting systems and training programs	Hartford : \$350,000 grant for “additional scanners, printers, and ballot workers needed for absentee ballot process, personal protective equipment and hazard pay for poll workers and extra ballot counters.”
Delaware	\$3 million	Improve security at all offices and warehouses, improve cyber security, and continue funding security enhancements for new voting system	N/A
Florida	\$20.1 million	Not Specified	N/A
Georgia	\$10.8 million	Not Specified	Cobb County : \$5.6 million for partitioned voting system carriers, hazard pay for poll workers, ballot mailing, PPE, and sanitation. Dougherty County : \$300,000 for installing and monitoring ballot drop-boxes Fulton County : \$6 million for staff and ballot postage Gwinnett County : \$4.2 million for technological support and PPE Macon-Bibb County : \$557,000
Hawaii	\$3.3 million	Not Specified	N/A
Idaho	\$3.4 million	Not Specified	N/A

Illinois	\$13.9 million	Not Specified	Law County : \$885,475, about half of which was used to sanitize polling places (including misting the air prior to Election Day) through a contract with Purcell Facilities Management.
Indiana	\$8 million	Purchase "voter-verifiable paper audit trail voting equipment" and "voter-verifiable paper audit trail retrofit equipment"	N/A
Iowa	\$4.8 million	Not Specified	Woodbury County : \$155,000 to help provide PPE for poll workers
Kansas	\$4.6 million	Not Specified	Sedgwick County : \$800,000 for election purposes, including cleaning polling places, ballot drop box installation, and voting material in other languages Johnson County : \$856,000 , including \$130,000 for a mail Ballot Verifier System from Election Systems & Software
Kentucky	\$6.1 million	Not Specified	N/A
Louisiana	\$6.2 million	Not Specified	N/A
Maine	\$3.3 million	Not Specified	Bangor, Augusta, Union, Scarborough , and the Town of Brunswick all received grants. Bangor : \$272,000 for COVID-19-related supplies such as solo voting booths and sanitation Town of Brunswick : \$200,000 for supplies such as PPE, postage for absentee ballots, and a \$500 ballot drop box

Maryland	\$7.4 million	Replace and upgrade voting equipment, election auditing, voting registration systems, cyber vulnerabilities and communication program categories	N/A
Massachusetts	\$8.3 million	Not Specified	N/A
Michigan	\$11.2 million	Not Specified	Various cities in Michigan received grants for administration costs including new ballot drop boxes, envelopes, postage, and a vote tabulator. Ann Arbor : \$417,000 Flint : \$475,625 Pontiac : \$405,564 Muskegon : \$433,580
Minnesota	\$6.9 million	Not Specified	N/A
Mississippi	\$4.7 million	Not Specified	Hinds County : \$1.5 million to buy PPE equipment, extra voting machines, and electronic poll books
Missouri	\$7.6 million	Not Specified	St. Louis County : \$2 million
Montana	\$3 million	Not Specified	Lewis and Clark County : \$215,000 for election worker PPE, ballot drop boxes, and a drive-through ballot drop-off site Cascade County: \$294,128 for running a secure election, including buying PPE and sanitizing polling locations Glacier County : \$263,830 for PPE and drive-through voting locations
Nebraska	\$3.7 million	Not Specified	N/A
Nevada	\$4.5 million	Execute top-down voter registration system	N/A
New Hampshire	\$3.3 million	Not Specified	N/A

New Jersey	\$10.3 million	Not Specified	Burlington County : \$2.9 million to cover vote-by-mail costs, including new computers, scanners, printers, envelopes, and postage Atlantic County : received \$150,000 for administering a largely vote-by-mail election
New Mexico	\$3.9 million	Not Specified	Doña Ana County : \$206,000
New York	\$20.5 million	Not Specified	Onondaga County : \$280,000 to buy postage and a new van to transport items between polling places Cortland County : \$37,500 Cayuga County : \$37,500
North Carolina	\$10.9 million	Not Specified	N/A
North Dakota	\$3 million	Not Specified	N/A
Ohio	\$12.8 million	Not Specified	N/A
Oklahoma	\$5.5 million	Not Specified	N/A
Oregon	\$3.3 million	Assist in essential election systems availability, system security and capacity, and ballot tracking	N/A
Pennsylvania	\$14.2 million	Not Specified	Delaware County : \$2.2 million grant for administering a safe election, including hiring poll workers and providing ballot drop boxes
Rhode Island	\$3 million	Not Specified	N/A
South Carolina	\$6.3 million	Assist in securing the state election infrastructure and improving election administration	N/A
South Dakota	\$3 million	Not Specified	N/A
Tennessee	\$7.9 million	Not Specified	N/A

Texas	\$24.4 million	Not Specified	Dallas County : \$15 million grant for additional ballot sorting equipment, more early voting locations, PPE, and sanitation for voting equipment. Harris County : \$9.6 million Hays County : \$298,000 Hopkins County : \$19,952
Utah	\$4. million	Provide "additional security measures for both the counties and the state [...], security training for both the counties and the state [...], and improved audit procedures."	N/A
Vermont	\$3 million	Not Specified	N/A
Virginia	\$9.5 million	Not Specified	N/A
Washington	\$8.3 million	Not Specified	N/A
West Virginia	\$3.8 million	Improve "cyber and physical security" and upgrade "voting equipment including epollbooks"	N/A
Wisconsin	\$7.3 million	Not Specified	Milwaukee, Madison, Green Bay, Racine and Kenosha counties : \$6.3 million altogether to pay for "ballot drop boxes with security cameras, high-speed tabulators, and more workers to count mail ballots, as well as masks, gloves, face shields, disinfectant and other supplies"
Wyoming	\$3 million	Not Specified	N/A

IV. Conclusion

Remarkably, supply chain interruptions and challenges were limited to relatively isolated incidents during the 2020 general election. The sudden spread of the coronavirus pandemic in early 2020 initially prompted deep concerns regarding election safety, accessibility, and administration, but election officials and other stakeholders worked diligently to resolve most pipeline issues before November. Printing errors and other issues surrounding ballot packages were largely resolved ahead of the election and resulted in minimal disruptions for voters. Equipment issues, while leading to isolated delays, were either fixed quickly or resolved through a fallback method such as hand-counting. And states and precincts were able to access additional public and private funding to improve outstanding challenges. Despite record turnout and an overwhelming shift towards mail ballots in many states, the supply chain effectively scaled up before the election to meet the unique demands of a pandemic election.

Poll Worker Recruitment in the 2020 General Election

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- [“Poll Worker Recruitment,”](#) Adam Smith, Christopher Wan, Jae Yoo, Aaron Bray, Colette Mayer, and Jacob McCall (October 26, 2020).

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I. Introduction

Recruiting sufficient numbers of poll workers has presented a challenge for election administrators for several years. The 2020 coronavirus pandemic exacerbated the problem by shrinking the reliable pool of veteran poll workers who, on average, were over 60 years of age and at greater risk of suffering serious health complications from COVID-19. In several of the 2020 primaries, states experienced poll worker shortages sufficient to prevent opening many of their polling places or operating their existing polling places at full capacity. In response, states, local governments, and nonprofits launched a massive effort to recruit a new crop of poll workers for the general election. This report looks into some of the strategies and techniques employed to recruit over 700,000 potential new poll workers for the 2020 general election.

II. Recent History of Poll Worker Shortages

Prior to the coronavirus pandemic, election officials in many jurisdictions faced shortages of poll workers. Data from all 50 states submitted to the U.S. Election Assistance Commission (EAC) indicated that election officials in [more than two-thirds](#) of the 6,459 jurisdictions around the country had found it “very difficult” or “somewhat difficult” to obtain a sufficient number of poll workers for the general election in November 2018. Only 15% of the jurisdictions indicated it had been “somewhat easy” or “very easy” to obtain a sufficient number of poll workers. According to a 2018 [New York Times article](#), roughly 70% of potential poll workers for Manhattan dropped out between recruitment and the mandatory training session prior to the election, and as many as 15% of poll workers failed to show up for duty on Election Day.

Results of the EAC biennial surveys on election administration and voting suggest that the shortage of poll workers has been getting worse. In [2016](#), 64.6% of responding jurisdictions reported having a “somewhat difficult” or “very difficult” time recruiting poll workers; in [2018](#), that figure increased to 68.2%. In 2016, just over 30% of responding jurisdictions reported having a somewhat easy or very easy time; in 2018, that number dropped to 15%.

The difficulty in obtaining a sufficient number of poll workers has persisted despite a [continued decrease](#) in the number of physical polling places to staff and an increase in the use of alternative options to voting in person on Election Day, such as early in-person voting, mail voting, and dropping off absentee ballots at drop boxes. According to state responses to the EAC survey, in the last [three midterm elections](#) the total number of poll workers dropped from around 770,000 in 2010 to just under 640,000 in 2018.

The EAC [noted](#) that more populous jurisdictions have experienced greater challenges in recruiting poll workers. Of the 50 jurisdictions with the highest number of registered voters in 2016, 88% reported that it was “very difficult” or “somewhat difficult” to obtain a sufficient number of poll workers, significantly higher than the national average. Only 12% of these 50 largest jurisdictions reported that it was “somewhat easy” or “very easy.” Just one week away from the 2018 primary, the [Board of Elections of New York](#) still needed to fill about 6,400 vacancies (out of approximately 34,000 poll workers needed).

III. The Pandemic’s Impact on Poll Worker Recruitment

The pandemic exacerbated the poll worker shortages that typically confront election officials. The threat of contracting or transmitting the coronavirus prompted many of the traditional pool of poll workers, especially older poll workers, and members of other vulnerable populations, to stay home.

A. COVID-19 Risks Were Higher for the Senior-Aged Poll Worker

As the coronavirus pandemic unfolded, it became increasingly apparent that older adults were especially vulnerable to developing severe complications with COVID-19. The U.S. Centers for Disease Control and Prevention (CDC) found that [8 in 10](#) coronavirus deaths in the U.S. were individuals over age 65, and people aged 65 to 74 were 90 times more likely to die and five times more likely to be hospitalized with COVID-19 than 18-to-29-year-olds.

Traditionally, most poll workers were over age 60. According to an [EAC report](#), almost 60% of poll workers were over age 61 in 2018, with just over a quarter of the total poll workers were over the age of 70. Those percentages were fairly consistent between [2016](#) and 2018. In some states, the proportion of poll workers who were 61 or older was [even greater](#). For example, in Maine, Montana, Oklahoma, and Alabama, around two-thirds or more of poll workers in 2016 were 61 or older. In [Oklahoma](#), the average age of poll workers was 70 in 2016.

Poll workers under the age of 26 accounted for just under [10%](#) of poll workers nationwide in 2016, and under 8% in 2018. In 2016, only five states exceeded the national average for poll workers 25 and younger: in California, roughly 25% of poll workers were 25 and younger, and in Delaware, Michigan, Ohio, and Washington, D.C., between 10% and 14% of poll workers were 25 and younger.

B. Prospective Poll Workers Were Concerned About Safety

Poll workers said they were more likely to volunteer during the pandemic if they knew that robust safety measures were in place. Professor Bob Stein of Rice University conducted a [survey](#) of respondents in Texas related to poll worker recruitment. The survey asked respondents about their willingness to serve under the various conditions and safety protocols. It found that approximately 85% of 1,800 respondents said they would be “very or somewhat likely” to serve if the polling station provided personal protective equipment (PPE), installed plexiglass screens, or imposed social distancing requirements. Approximately 70% of survey respondents said they would be very or somewhat likely to serve if the polling station was drive-thru, was outdoors, or restricted voting to one person at a time. Only about 50% of respondents said they would be very or somewhat likely to serve if the polling station used pre-coronavirus voting protocols.

Proper safety procedures can be effective in limiting the spread of the coronavirus and the risk that poll workers contract the virus. In [South Korea’s](#) April parliamentary election, for instance, the country instituted mandatory policies for social distancing and the use of masks, plastic gloves, and disinfectants in polling places. The country announced that not one case of coronavirus infection related to the election was reported during the 14-day incubation period, despite 29 million voters (including [those in quarantine](#)) having participated in the election.

C. Many Veteran Poll Workers Opted to Stay Home During the 2020 Elections

The heightened risks associated with COVID-19 for older individuals had a substantial impact on poll worker recruitment in the 2020 election cycle. As shown in Table 1, only 38% of voters over 65 years old said they would be willing to work the polls under “normal polling conditions” (meaning pre-pandemic precinct conditions with no PPE or distancing requirements), compared to 54% of those under 65 years old who said they would be willing to work under those same conditions.

As a result, many states suffered from poll worker shortages during their primaries and, in the [17 states](#) that held primary and runoff elections in August, poll worker shortages were the most common challenge for the administration of in-person voting. Below are examples of states and counties that faced shortages before or during their primaries:

- **Alaska:** The director of elections in Alaska announced on the eve of the state’s August primary that [six polling locations](#) would not open because of inadequate staffing, forcing residents to vote at different locations or absentee at the last minute.
- **Arizona:** [Mohave County](#) officials had to staff 37 polling locations in August with only “[skeleton crews](#)” of around 60% the typical number of poll workers.
- **Florida:** 8% of poll workers in Miami-Dade County declined to work in [Florida’s March primary](#), near the beginning of the pandemic.
 - **Pasco County:** Pasco County which had 1,043 workers for the 2018 general election, saw a “[hemorrhaging](#)” of poll workers, as [150](#) workers dropped out within a week after the first case of COVID-19 was reported in the county.
 - **Pinellas County:** Pinellas County [faced a shortage](#) after more than 260 of its approximately 1,700 poll workers withdrew.
- **Kansas:** A shortage of poll workers caused closures during the August primary that [forced some voters to travel further](#) to vote.
- **Kentucky:** Three days before the June primary, only 24 people had volunteered to work the polls in [Warren County](#), compared to the usual 400 poll workers (The average age of a poll worker in Warren County pre-pandemic was 72.)
- **Illinois:** On the day before the March primary, Cook County [still had only about 5,600](#) workers—down significantly from the usual 8,000.
- **Michigan:** [In Michigan’s](#) August primary, some [Detroit](#) polling places opened late because of poll worker no-shows, a development election officials attributed to pandemic safety concerns.
- **New York:** [New York](#) suffered a shortage of poll workers in its June primary, as [large numbers](#) of its elderly poll workers declined to work. [Thousands](#) also declined to work the polls for the November general election.
- **Ohio:** Officials in [Ohio](#) reported that for every poll worker the state signed up for its March primary, it had lost three poll workers due to concerns over public health.
- **Pennsylvania:** [Pennsylvania](#) saw massive poll worker shortages across the state for its June primary.
 - **Allegheny County:** [85%](#) of polling places in Allegheny County closed because of poll worker shortages.
 - **Philadelphia County:** [75%](#) of polling places in Philadelphia County closed because of poll worker shortages.
- **Wisconsin:** During Wisconsin’s April primary, shortly after the initial pandemic surge in the U.S., Milwaukee was relying on just under 30% of its typical number of poll workers—[400 of 1,400](#). Milwaukee’s shortage was so severe that, out of its usual 180 polling places, [only five remained open](#) for in-person voting for the April primary.

IV. Approaches to Poll Worker Recruitment

As a result of these staffing shortages during the primaries, jurisdictions were tasked with mobilizing quickly to recruit younger poll workers and first-time poll workers to fill the gaps in advance of the general election. Municipalities, nonprofits, schools, businesses, and other organizations created innovative ways to help election officials recruit poll workers during the coronavirus pandemic. Some organizations, such as [Power the Polls](#) and [Poll Hero](#), emerged specifically to recruit poll workers nationwide for the 2020 election. Many existing groups that had been focused on youth voting and civic engagement—[Campus Vote Project](#), [Campus Compact](#), and [Students Learn Students Vote Coalition](#)—expanded their work to include recruiting student poll workers. States and localities created and mobilized new marketing strategies, and some increased hazard pay. Secretaries of state and other election officials also worked with businesses to recruit poll workers, including by paying their employees to serve as poll workers or by “adopting” an entire polling place.

A. Nationwide Efforts

i. United States Election Assistance Commission

In response to the critical poll worker shortages caused by the pandemic, the United States Election Assistance Commission (EAC), on August 10, announced the designation of September 1, 2020, as “[National Poll Worker Recruitment Day](#).” The aim was to encourage more people to sign up to become election workers for the November election. The goal of the day was to raise awareness about the benefits and importance of poll working and inspire more Americans to volunteer. The EAC created a [toolkit](#), with resources, graphics, and sample social media posts, and [encouraged](#) organizations and companies to support National Poll Worker Recruitment Day by spreading the word, recruiting employees to participate, and offering employees time off to volunteer as poll workers. Participating municipalities and organizations received additional resources for messaging, social media guidance, and ideas for activities to help raise awareness in their communities.

ii. Nonprofit Organizations

After poll worker shortages “wreaked havoc” on spring primary elections, [Power the Polls](#) (PTP) emerged as a major force for poll worker recruitment. PTP formed around a mission of recruiting hundreds of thousands of poll workers across the country to help alleviate poll worker shortages. PTP used information from [WorkElections.com](#) to connect potential poll workers to election officials in over 4,000 jurisdictions nationwide via a single portal. Through

PTP, applicants were connected to their specific jurisdiction, with follow-up emails containing [information](#) on poll worker compensation, hours, training and eligibility requirements, and how to apply.. PTP also partnered with secretary of state offices, local election officials, and statewide non-governmental organizations to keep applicants up to date on training requirements and timing.

Power the Polls created a heavy presence on [social media](#), such as Instagram, Snapchat, and Tiktok, to recruit younger poll workers and publicize endorsements from major [influencers](#). Comedians on traditional media also promoted PTP, including [The Daily Show with Trevor Noah](#) and [Full Frontal with Samantha Bee](#). The organization had hundreds of national and local [partners](#) recruiting among their workforces. By November, PTP had recruited over [700,000 poll workers](#) for the general election, far exceeding their original goal of 250,000 poll workers.

Power the Polls went beyond recruitment, helping to [ensure](#) that volunteers were in the right place at the right time on Election Day and that back-up volunteers could be easily contacted if needed. PTP kept track of their recruits who were placed, as well as those who were officially waitlisted with their jurisdiction, and sent a number of reminders and confirmation communications to them via text, email, and voicemail to make sure that every recruit showed up to their shift on Election Day and every back-up recruit was ready to be deployed for any last-minute emergencies. To further these efforts, PTP created an “[Election Administrator Hotline](#),” open from Saturday, October 31, through Tuesday, November 3, for administrators to call PTP for reinforcements, if they faced a last-minute volunteer shortage.

Power the Polls partnered with local and state nonprofits groups in many jurisdictions across the country to assist with recruitment and placement in precincts. In battleground states, these partnerships included:

- Arizona: Arizona Advocacy Network
- Florida: America Votes, Florida Voices
- Georgia: ProGeorgia, Fair Fight, ACLU Georgia
- Maine: Maine Votes, Maine Voices, Democracy Maine, League of Women Voters
- Michigan: League of Conservation Voters Michigan, ACLU Michigan
- Nevada: Silver State Voices
- New Hampshire: America Votes
- North Carolina: Democracy North Carolina
- Pennsylvania: The Voter Project
- Wisconsin: Wisconsin Voices

A number of other groups, such as [The Poll Hero Project](#), [Campus Vote Project](#), [Campus Compact](#), and the [Students Learn Students Vote Coalition](#), focused their recruitment efforts on high school and college students to serve as poll workers in the 2020 election.

[The Poll Hero Project](#) is a student-led and student-focused organization founded in early 2020. Students at Princeton University, Denver East High School, and Chicago Booth School of Business saw the issues caused by staffing shortages in the spring primaries and focused on recruiting young poll workers. The project consisted of about 100 high school and college students who recruited through [social media](#) campaigns and individual outreach to their peers. Though the project was initially targeted towards specific cities where they saw the most need for poll workers—Philadelphia, Detroit, Milwaukee, and Phoenix—their success and reach grew until they had teams nationwide. Poll Hero’s co-founder, Ella Gantman, explained to [The Daily Princetonian](#) that the group motivated its participants “first and foremost, by focusing on the election and for democracy, but we also want to give them another incentive if they choose to volunteer.” These “incentives” included everything from creating an easy-to-use volunteer checklist called “The Journey” to teaming up with different organizations to co-host Zoom calls with celebrities and giving out prizes. Poll Hero ultimately signed up over 37,000 poll workers (approximately [two-thirds](#) of them high school students), with a budget of just \$1,000.

Campus Compact’s [Safe Election Project](#) also targeted students, in partnership with Power the Polls. Campus Compact (a national coalition of colleges and universities dedicated to campus-based civic engagement) enlisted, trained, and paid “Student Recruiters” on college campuses to work virtually over the course of three weeks to educate their peers about the need for poll workers, how to help, and where to sign up. These recruiters went on to enlist over 4,700 of their fellow students to serve as poll workers for the November 2020 election.

iii. National Corporations

Civic Alliance, a nonpartisan coalition of businesses, [partnered](#) with Power the Polls and [announced](#) in August 2020 that more than 60 of its “member companies”—including Starbucks, Old Navy, Target, and Microsoft—would work to encourage their employees and consumers to serve as poll workers. Old Navy announced on September 1 that its employees would receive a day’s worth of pay if they signed up to work at the polls, in addition to any compensation they received from their local jurisdiction. Target, Warby Parker, and D.C.-based coffee chain Compass Coffee also gave workers paid time off to serve as election workers. Starbucks, Twitter, PayPal, Walmart, and Uber gave workers time off to vote—some offering as few as three hours of paid leave, while others giving employees Election Day off. Civic Alliance also [connected](#) companies with the appropriate election officials in order to offer publicly accessible spaces for voting, when traditional venues, such as senior centers and schools, were not

available for polling. Through a partnership with Mission for Masks and the C19 Coalition, Civic Alliance also helped match election officials in need of PPE with corporate suppliers of masks, face shields, and disposable gloves.

iv. National Reports and Resources

The Center for American Progress [published](#) a report providing recommendations for recruiting and retaining poll workers amidst the coronavirus pandemic. The report included general recommendations as well as separate recommendations for individuals, state and local governments, professional associations, political parties, high schools, colleges and universities, nonprofits and philanthropic organizations, and religious communities. The general recommendations included relaxing or eliminating requirements that would prevent otherwise qualified individuals from filling poll worker shortages. The report also recommended offering employees paid time off for serving as poll workers and exploring the feasibility of offering free child care services for poll workers.

The Center for Tech and Civic Life collected recruitment success stories from various jurisdictions and [published](#) them in a report entitled “50 Ideas for Recruiting and Retaining Election Workers.” These ideas included how to recruit specific pools of people—such as high school students, bilingual populations, and lawyers—and how to implement strategies, such as making online sign-ups easy or focusing on underserved areas. CTCL also provided tips for effective messaging and retaining election workers. Separately, CTCL [compiled](#) a list of “27 Ideas for Encouraging Youth Participation in Elections,” including poll worker recruitment.

In May 2020, a team of designers from the Design School at Stanford University (“d.school”) [launched](#) an effort to use human-centered design to contribute to protecting voter participation in the November election. The d.school focused its research on how to reduce the health risks and stress associated with voting during a global pandemic. Many of the d.school’s resulting publications were tailored to poll workers and poll worker recruiters, such as “[Is It Safe To Be A Poll Worker?](#),” a series of one-page handouts designed to be used by election administrators to share information about the safety of serving as a poll worker and spending time inside a polling place. The d. School also published “[Working Elections During Coronavirus](#),” a ready-to-use training module for poll workers on how to keep themselves and voters safe from coronavirus infection, meant to augment existing poll worker training; and a “[Framework to Understand and Respond to Possible Disruptions at the Polls](#),” a template for election administrators to use to help poll workers—especially first-time poll workers—understand the possible disruptions that might arise and how to respond. The d.school also made videos to “Ask an Election Expert” about various election topics, including “[What to Expect: Working the](#)

[Polls During coronavirus.](#)” The d.school’s work was [used](#) in jurisdictions such as Michigan, Pennsylvania, and Florida to help train volunteers.

B. State and Local Government Efforts

States and localities came up with innovative ways to make up for their last-minute poll worker shortages through creative partnerships with businesses, nonprofits, and schools, as well as monetary incentives. These efforts began early in the summer, and some states with primaries later in the summer were able to implement changes in policies and programs to combat poll worker shortages in time for their primaries. For example, Tennessee [launched](#) a recruitment campaign in June and, by July, [recruited](#) nearly 3,000 poll workers, sufficient to staff all polling sites in time for the August 6 primary.

None of [Alaska’s](#) districts had enough election workers two months prior to its August primary, and 27 out of the state’s 40 districts were less than 50% staffed. To address the shortage, the state turned to local nonprofits and its own employees. Under Alaska’s new “Adopt-A-Precinct” program, nonprofit organizations could sign up to staff a polling station, and the state would pay that nonprofit instead of the volunteers. The state also asked its employees to help. Any state worker could ask to work a polling place on Election Day and would receive their regular salary for the day. The Alaska Division of Elections also [increased](#) election workers’ hourly pay by \$3—from \$12 to \$15. Just over a week before the primary election, a few small communities in [western Alaska](#) still did not have any poll workers signed up, and the state Division of Elections [closed](#) six polling places for the primary. However, by November 2, the Division of Elections [reported](#) that it had overcome any concerns about a shortage of poll workers in most places across Alaska.

A number of other states and localities instituted similar “adopt-a-polling-place” programs for the 2020 election. These programs involved local election boards providing nonprofits, companies, and other groups with poll worker training and resources in exchange for supplying adequate staff for a particular precinct. Some jurisdictions offered additional incentives for adopting a polling place. In [Solano County](#), California, for example, the county offered compensation to groups that adopted a polling place, as well as the option to display the group’s name outside the polling place and to the county’s community partners list, highlighted on the county website and mentioned during a county board of supervisors meeting. Groups were also given Election Day shirts to wear while working. The [City of Milwaukee](#) Election Commission instituted a similar program, “Adopt-A-Voting-Site,” promising participants that the commission would “recognize all voting site sponsors through a number of opportunities, including website recognition, signage at the voting site, and press release mentions.” The

[Sumter County, Florida](#), Supervisor of Elections promoted an “Adopt-a-Precinct” program by asserting that it would be “an excellent way to raise funds for your organization or charity to help reach your goals and objectives.” Organizations in Sumter could potentially earn up to \$2,200 per precinct adopted (including time spent in training).

Several jurisdictions found that increasing the pay for poll workers increased the number of people willing to work elections. Poll workers in [Milwaukee](#) were given \$100 in hazard pay for both the August primary and the general election. [Philadelphia](#) raised poll worker pay as well, which may have been partially responsible for the [increase](#) in poll worker recruitment it saw between the primary and general election. Like Alaska, some states offered additional payment statewide to help attract poll workers. [In Alabama](#), for example, state officials used emergency federal money allocated to pay poll workers an additional \$25 per day for working during the U.S. Senate runoff election in July, as well as the general election in November. The Center for Tech and Civic Life (CTCL) [provided](#) additional resources to jurisdictions across the country to “administer a voting process that is more safe and secure for their communities.” Out of 2,500 election offices who received [preliminary](#) funding, approximately 1,800 indicated they would spend some of the money on poll workers.

Two months before the general election, Ohio was still 4,000 poll workers short of the minimum number of poll workers it needed. The secretary of state’s office spearheaded numerous initiatives to bolster recruitment. The office created a [poll worker recruitment tracker](#), which included a breakdown of poll workers still needed in each county as determined by each county’s board of elections. It also kept a column with the target number of poll workers counties should recruit in order to compensate for any cancellations or no-shows. This was the first time the state had collected and shared broadly such information before an election. The office also targeted high schoolers through a “[Youth at the Booth](#)” program, which recruited students 17 years and older to serve as poll workers, and veterans through a “[Call to Duty](#)” initiative. Another program, “Heroes for Democracy,” encouraged businesses to offer employees a paid day off to work at the polls. The state also released a video [public service announcement](#), with former Republican Governor Bob Taft and Democratic U.S. Senator Sherrod Brown, which used humor between old foes and a bipartisan message to encourage people to work the polls.

Individual counties in Ohio also stepped up their local recruiting efforts. For example, in Cuyahoga County, the state’s most populous county, the County Council [voted](#) in August to allow county employees to receive paid leave in order to serve as poll workers. Franklin County implemented a “Champions of Democracy” [program](#) that recruited new poll workers from local businesses. Its “Champions” included seven of central Ohio’s 30 largest employers and four Fortune 500 companies. Hamilton County, Ohio, also instituted a new program called “[Partners](#)

[in Democracy](#)” to engage local businesses and agencies. The largest privately held business in Hamilton County was its inaugural corporate partner, and nine separate county government agencies also signed onto the effort. By October 30, Secretary of State Frank LaRose [announced](#) that a record 56,789 Ohioans were trained and ready to serve as poll workers. This far [surpassed](#) the minimum number required—37,057—as well as surpassing Secretary LaRose’s goal of 55,588.

Michigan [partnered](#) with the Detroit Pistons basketball team to increase civic engagement and inspire voter participation for both the August primary and the general election. The Pistons’ partnership included:

- Partnering with the Detroit City Clerk’s office and the Michigan Department of State to designate Henry Ford Detroit Pistons Performance Center as a voting “Satellite Center” for the general election, enabling people to register and vote on site.
- Coordinating the Pistons’ program to have Piston employees volunteer to work the polls in concert with the Detroit City Clerk’s office, for both the August 4 and November 3 elections.
- Partnering with the Michigan Secretary of State’s office on a series of PSA videos utilizing Pistons players, coaches, and personalities to educate voters about registering to vote by mail, as well as “How To” videos to ensure ballots are filled out correctly and returned properly.
- Building a voter registration page into the Pistons.com website that integrated directly with the Michigan Bureau of Elections, so that individuals could register to vote online and submit their applications to vote by mail.
- Hosting live voter registration and education events with nonpartisan community organizations which featured information on how to register for and complete and return ballots.

Michigan Secretary of State Jocelyn Benson also started an online “[Democracy MVP](#)” campaign to attract election workers to help process absentee ballots and perform other tasks. This campaign used YouTube videos and Twitter and Facebook posts to spread the word. Over [1,600](#) people applied to participate in the program within the first 10 days of the campaign’s launch. By November 3, these initiatives had helped recruit more than [30,000 election workers](#) across Michigan. Around 1,500 of these recruits were part of a “[reserve pool](#)” to be deployed across the state in the event of last-minute worker changes or shortages, and this pool was utilized when some poll workers were exposed to the coronavirus and had to quarantine on Election Day.

In Wake County, North Carolina, the Election Board [conducted](#) a mail campaign to implement its “Vote to Volunteer” Program. The board mailed a “Vote to Volunteer” buck slip to all registered voters at a cost of \$0.025 per slip, asking them to work the polls. Wake County also collaborated with the Wake County Revenue Department to include the buck slip in the revenue department’s annual tax revenue mailing, sent to each Wake County resident. By the end of September, Wake County had [doubled](#) the number of poll worker applicants necessary to sufficiently staff its precincts. The Wake County Board of Elections reported that, while they typically have five teenaged poll workers, in 2020, they had 300.

Some localities worked in close collaboration with local high schools and colleges to recruit additional poll workers. For example, Martin County, Florida, [developed](#) a “Work the Polls” video, which election officials then pushed out to various colleges to display on their websites and distribute to their students. The program coordinators [reached out](#) to various college professors, too, asking them to help recruit students. The effort involved sending emails and text messages to all eligible students, holding voter registration drives on school campuses, and visiting classrooms to present information and answer questions about working the polls.

Election officials in a few states worked with state bar associations to provide CLE credits for attorneys who agreed to serve as poll workers. Lawyers in [South Carolina](#), [Ohio](#), [Virginia](#), and [Indiana](#), for example, were allowed to put their hours worked as a poll worker towards CLE requirements.

Individual college administrations granted excused absences or course credit, or even [canceled classes](#) to increase civic participation and service. Several law schools, including [Stanford Law School](#) and [Northwestern Law School](#), canceled classes. The Political Science Department at the University of Delaware offered an independent study course in the fall that allowed students to [earn course credit](#) for working at the polls in November.

C. State-Nonprofit Partnerships

State-level nonprofits also played a major role in some places. For example, after Georgia’s June 9 primary election was plagued with long lines, major delays, equipment malfunctions, and a shortage of well-trained poll workers, the [ACLU of Georgia](#) launched a Poll Worker Recruitment Program in early July. The program collaborated with local election officials as well as Power the Polls and other civic organizations to ensure the November election would run smoothly. The program focused on recruiting younger Georgians, lawyers who understood the ins and outs of election law and administration, and tech-savvy Georgians to help keep the voting machines running. In addition to recruiting poll workers, the program assisted civic organizations in

adopting polling precincts. The ACLU of Georgia set out to recruit at least 1,000 poll workers in the state's four largest counties: Cobb, Gwinnett, Fulton, and Dekalb, and aimed to recruit 2,000 poll workers in total across the state. By November 3, the program had recruited over 2,700 poll workers, including over 1,500 in the four largest counties.

The ACLU of Georgia [recruited](#) over 300 lawyers to serve at the polls during the general election as special "On-Site Fulton County Deputy Registrars." One lawyer was stationed at each of the 255 polling sites in Fulton County, to cancel absentee ballots for voters who had requested them but instead wanted to legally vote in person on Election Day. This initiative removed the need for poll managers to call a central county office for absentee ballot cancellation, a process which caused significant wait times during the June 9 primary election. It also resulted in shortened wait times for voters and allowed the poll managers to focus on other necessary aspects of running their polling places.

In addition to its on-the-ground recruitment work, the ACLU of Georgia surveyed veteran poll workers to develop a [set of recommendations](#) for county election officials on how to resolve obstructions to the voting process. This effort resulted in the following six overarching recommendations:

1. Simplify the application process and adopt shorter shifts to encourage more people to become poll workers.
2. Organize training materials in an easily digestible format to increase awareness on the nuances of election procedure.
3. Implement dry runs and personnel/equipment contingency plans to preempt common Election Day challenges faced by poll workers.
4. Simplify the absentee ballot cancellation process to reduce wait times.
5. Expand channels for feedback from poll workers to allow for continuous improvement of the elections process.
6. Adopt CDC guidelines for protecting the health of poll workers and voters.

These recommendations included 17 targeted improvements, including adopting shorter shifts (both to relieve poll workers and to encourage more applicant to participate), scheduling a number of poll workers to be "floaters" to be available to travel to any location in need of additional assistance on Election Day, and ensuring poll workers are trained on the implementation of proper social distancing guidelines.

In West Virginia, many counties experienced poll workers [dropping out](#) at the last minute because of coronavirus fears during the primary election. In response, the secretary of state's office [mounted a campaign](#) to ensure that there would be at least 9,000 poll workers to serve at

1,700 precincts during the general election. The office partnered with the [United Way of West Virginia](#) for National Poll Worker Recruitment Day on September 1 to encourage registered voters to sign up to work the polls. The United Way assisted in the initiative by helping identify eligible citizens willing to serve as alternate poll workers. By September 7, Matt Gallagher, program coordinator for the secretary's office, [reported](#) that a sufficient number of volunteers had been recruited, as well as 1,000 alternates.

V. Results of Recruitment Efforts

Though some jurisdictions still faced poll worker shortages and staff challenges during the November 2020 election, the success of recruitment strategies mitigated the feared shortages.

Many localities experienced such a surge of volunteers they were able to hire more poll workers than in typical years. This was the case in Alexandria, Virginia, where election officials reported [doubling](#) the number of poll workers usually hired. Some counties experienced such a surge of volunteers that they had to turn people down. For example, Maricopa County, Arizona, [received](#) 20,000 requests to fill 1,800 poll worker positions. Milwaukee also easily met poll worker demand, despite a dire picture during the primaries; election officials closed the poll worker application two weeks before the election because they had [received](#) the necessary number—4,000 applications, enough to run 175 locations. In Maryland, there was enormous fear over the summer about an expected shortage, after thousands of poll workers dropped out during the primaries. However, Montgomery County, the state's most populated locality, saw [nearly double](#) the applicants it needed to fill the 4,300 spots. And after [massive delays](#) occurred for voters during the primary, Georgia saw huge poll worker volunteer numbers for the general election. In [Athens](#), one of the state's largest metropolitan areas, election officials reported a worker surplus, with a buffer of dozens of volunteers being placed "on call" in case hired workers got sick or backed out.

Precincts with sufficient volunteers were better equipped when faced with issues that required troubleshooting on Election Day. For example, a small misprint on about 13,000 ballots in Outagamie County, Wisconsin, required poll workers to [make a duplicate](#) of each misprinted ballot received by transferring all of the votes on the ballot submitted onto a new ballot. Before the election, Outagamie County Clerk Lori O'Bright [estimated](#) that this process would take about four minutes per ballot and would "slow things down." However, after the election, O'Bright [stated](#) that the precincts with the most misprinted ballots had enough poll workers to handle the workload, which prevented delays.

In other jurisdictions, however, poll worker challenges persisted. Erie County, Pennsylvania, [experienced delays](#) on Election Day because of last-minute poll worker cancellations. There were [reports](#) in Luzerne County, Pennsylvania, of slow starts at polling stations because of “technical issues” or confusion among poll workers. In Newark, New Jersey, outside observers called for [more poll workers](#) in future elections, after a lack of signage caused confusion for voters at the polls. Additional problems in New Jersey were connected to the [delayed](#) polling place openings and incorrect information being [provided](#) by some of the poll workers to voters.

Overall, disruptions across the country were “isolated and sporadic,” [according to](#) Kristen Clarke, president of the Lawyers Committee for Civil Rights Under Law. Secretaries of state in Michigan, Georgia, and Florida [echoed](#) the sentiment, citing calmness in the polling places and lack of security problems.

Another view of the results of these recruitment efforts came from the recruited poll workers themselves. After the election, Power the Polls sent a [survey](#) to its entire email list, asking those who signed up to share their experiences. Over 20,000 people responded, half of whom had served as poll workers during early voting or on Election Day. The vast majority of respondents had never served as a poll worker prior to the 2020 elections, and fewer than 3% indicated that they had regularly served as a poll worker in the past. While the survey showed that some states prepared and trained their volunteers better than others, and many states did not contact applicants until a week or just days before the general election, when asked “Would you be interested in serving as a poll worker in future elections?” 95% of all respondents, including those who did not serve in fall 2020, indicated they would be interested in serving again.

VI. Conclusion

From secretaries of state to national corporations and nonprofits, to college and high school students, the crisis of the coronavirus pandemic and its impact on the spring primaries spurred Americans into action to ensure that the democratic process ran smoothly in 2020. Because the vast majority of precincts had sufficient volunteers to serve as poll workers, voters had more conveniently located polling places, and fewer voting-related inconveniences than many expected at the beginning of the pandemic. These efforts contributed in no small part to the [“remarkable success”](#) of the 2020 election’s administration. Although the United States may not face these same circumstances again, the successful recruitment of a new pool of volunteers, including many young people, during the 2020 election cycle may pay dividends well into the future.

Early In-Person Voting in the 2020 General Election

March 10, 2021

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I. Introduction

Many voters in 2020 chose to cast their ballots during “early voting”—voting before Election Day. One of the factors unique to the 2020 election that drove voters to cast early ballots was the rapid spread of the novel coronavirus, an airborne virus spread by both asymptomatic and symptomatic carriers that causes serious respiratory illness. Because the coronavirus easily spread in crowded places, many voters sought to avoid Election Day crowds and cast their ballots by mail, at ballot drop off locations, or through early in-person voting.

The surge in early voting in 2020 was historic. According to the United States Elections Project, [101,453,111](#) votes were cast early, comprising a staggering 63.6% of the total vote count ([159,690,457 total votes](#)). More than twice the number of people voted early in 2020 than in the 2016 election (during which [47,015,596](#) counted votes were cast early). Early voting in Texas, Washington, Montana, and Hawaii shattered records, as their *early* vote counts alone exceeded their *total* vote count from the 2016 election. On the whole, the 2020 early voting breakdown skewed more toward mail voting than early in-person voting; [35,811,062](#) (35.2%) early votes were cast in-person while 65,642,049 (64.8%) were mail (also known as “absentee”) ballots.

When voters vote in person at an early voting center, they indicate their choices (either on a paper ballot or electronic vote machine) and scan the ballot into a machine. In most states offering early in-person voting systems, once the polls close on Election Day, votes that were cast during the early in-person time period are electronically merged with votes cast in-person on Election Day. The process for early mail voting is [longer and more cumbersome](#) and requires verifying signatures, sorting ballots by precinct, and scanning ballots into a machine. Some states also offer in-person absentee voting, in which the voter fills out an absentee request form in person (often at a local elections office), is approved on the spot, and votes that same day; these ballots are typically tabulated with other mail/absentee ballots.

The party registration of early voters during the 2020 general election was reported by only 20 states. But within those states, the breakdown of early voting data revealed partisan patterns. More Democrats than Republicans voted early, especially by mail. Of those who voted early (by any method) in the 20 states that reported party registration, [22,250,979](#) (or 44.8%) were Democrats, while 15,168,587 (or 30.5%) were Republicans. Of those early votes, Democrats returned far more of their ballots by mail, casting [17,992,444](#) ballots by mail compared to Republicans’ [10,174,747](#). Meanwhile, Republicans cast more of their early ballots through in-person voting, with [4,993,840](#) votes to Democrats’ [4,258,535](#), among states that tracked party affiliation.

This memorandum provides examples of how different states approached early in-person voting. To provide fuller context for early in-person vote figures and patterns, this report also identifies the states using “universal vote-by-mail systems” (where vote-by-mail is essentially the only option for voters) and states providing mail voting as an option, to varying other degrees. For a full analysis of mail balloting during the 2020 general election, please see Chapter IV: Mail Voting in our final report.

States generally fit into one of four categories:

- **Restricted early in-person voting with universal vote-by-mail.** The presence of a universal vote-by-mail system provides crucial context for analyzing a state’s in-person early voting figures. Voters in states with universal vote-by-mail systems cast very few early in-person ballots.
- **No early in-person voting with some vote-by-mail options.** This category gives examples of states that did not provide early in-person options and did not have an automatic, universal vote-by-mail system in place. Most voters in these states cast votes on Election Day or, where available, by requesting mail ballots.
- **Early in-person voting linked to absentee/mail-in systems.** This approach links early in-person voting to a state’s mail/absentee voting system. It typically requires voters to fill out request forms for absentee ballots at local election offices and other locations, where officials reviewed applications on the spot. Eligible voters could then vote in-person that same day. Laws governing the use of mail ballots, including whether a state requires an approved excuse to vote by mail, dictated voter eligibility for in-person absentee voting.
- **Stand-alone system for early in-person voting.** Some states offered early in-person voting that functioned independently from any absentee or vote-by-mail option. Voters in these states could vote early in-person without requesting approval for an absentee or mail-in ballot.

II. Restricted Early In-Person Voting with Universal Mail Voting

A handful of states conducted universal mail voting, meaning that they automatically sent mail ballots to every registered voter in the state and provided very restricted, if any, options for in-person voting, either before or on Election Day. These states—which included Colorado, Hawaii, Oregon, Utah, and Washington—typically allowed early in-person voting only for very restricted reasons, such disability-related concerns.

[Oregon](#) has conducted its statewide elections entirely by mail [since 1993](#), with [no in-person](#) voting option available (except for voters with disabilities). With 2.9 million [registered voters](#), the state received over [2.1 million](#) mail ballots for the November 2020 general election. By contrast, Colorado, Hawaii, Utah, and Washington all provided some in-person services at voting centers throughout the states. For instance, [Utah](#) strongly encouraged its voters to vote by mail in the general election because of the pandemic, but it offered voting centers for voters who did not receive a ballot by mail. Similarly, [Washington](#) has provided vote-by-mail for every election and at least one voting center in each county, open beginning 18 days before the election and closing at 8 p.m. on Election Day. Washington's system produced a high ballot return rate, with over [3.5 million](#) early ballots cast in the general election. [Hawaii](#) similarly allowed voters to return ballots by mail or in person, and it opened voter service centers from October 20 through November 2, offering accessible voting and same-day registration. [Colorado](#) allowed voters to cast ballots by mail or in person at early vote centers and was the only state of the five that distinguished between its mail and in-person ballots in reporting its results. Only [78,121](#) (2.7%) Colorado residents voted early in person, compared to over 2.8 million who cast ballots by mail.

Each of these five states were among the top eight states in terms of [2020 early voting turnout compared to 2016](#). Their universal mail systems posed virtually no risk of spreading the coronavirus and, as such, these states did not have to make major changes to adapt the 2020 election over pandemic concerns. Other states, including [California](#), [Nevada](#), [New Jersey](#), and [Vermont](#), adopted universal mail systems temporarily, sending absentee ballots to all registered voters for the 2020 general election in an effort to reduce the spread of the virus.

III. No Early In-Person Voting

There were [several states](#) that did not offer early in-person voting, namely Connecticut, Delaware, Mississippi, Missouri, New Hampshire, and New Jersey. Unlike the states with universal mail voting and restricted in-person options, these states did not have universal mail voting systems *and* did not have designated early-in person options. Most voters in these states had to cast their votes on Election Day or request mail ballots, where available.

Early in-person voting was viewed by many election and public health officials as an [important tool](#) toward reducing the spread of the coronavirus. It did so by dispersing voters across a longer period of time and thinning out lines, which was particularly important in a presidential contest that inspired high turnout. Thus, lawmakers in states that did *not* allow for early

in-person voting had to find other ways to help manage the influx of voters at polling places on Election Day. Each of these states instituted policy [changes](#) for the 2020 election: [Connecticut](#) and [Delaware](#) sent mail ballot applications to all registered voters. New Jersey automatically sent mail ballots to all eligible voters. And Mississippi, Missouri, and New Hampshire expanded eligibility for absentee/mail voting and extended related deadlines.

Many of these states saw an increase in mail ballot voting in 2020, likely because voters were responding to the widely publicized dangers of the coronavirus pandemic. In Missouri and Mississippi, for example, mail ballot voting increased almost 15-fold and 17-fold, respectively.

State	2016 Mail Ballot Voting	2020 Mail Ballot Voting
Connecticut	<u>133,247</u>	<u>636,000</u>
Delaware	<u>22,387</u>	<u>148,424</u>
Mississippi	<u>13,834</u>	<u>231,031</u>
Missouri	<u>55,503</u>	<u>827,978</u>
New Hampshire	<u>25,809</u>	<u>235,834</u>
New Jersey	<u>251,981</u>	<u>3,658,460</u>

IV. In-Person Absentee Voting

Many states, including the battleground states of [Pennsylvania](#), [Wisconsin](#), and [Michigan](#), took an intermediate approach to early voting. None of these three battleground states had an official early in-person voting system, but all allowed voters to cast absentee ballots early in-person at official locations. These battleground states allowed *any* registered voter to request a mail ballot without needing an excuse to do so; thus all registered voters were eligible to vote their absentee ballots in person.

A. Pennsylvania

In Pennsylvania, a state law known as [Act 77](#)—the same legislative act that established mail voting in the state in 2019—included an option for voters to cast mail ballots early in person at county election offices or similar locations. The combination of these two absentee voting options—by mail and early in person for any registered voter—is credited with increasing early voting in 2020 in Pennsylvania by more than 12-fold compared to the 2016 general election. In 2020, [2,629,672](#) absentee ballots were returned (compared to [209,431](#) returned in 2016). All early ballots in Pennsylvania are considered “absentee ballots” and, in reporting election results, the state made no distinction between absentee ballots mailed in and those cast in-person. Though Pennsylvania voters cast early ballots in unprecedented numbers in 2020, state law still barred the processing of such votes until [Election Day](#). Individual counties in Pennsylvania also handled ballot processing [differently](#) from one another. Some moved to count early votes as soon as possible, while others chose to count in-person Election Day votes first.

B. Wisconsin

[Wisconsin](#) allowed voters to cast absentee ballots by mail or early in person at a local municipal clerk’s office. Wisconsin saw a more modest increase in early voting, up [151%](#) from 2016. Wisconsin differentiated between the types of early voting, with [649,819](#) absentee ballots cast in person, compared to 1,275,019 returned by mail in 2020.

C. Michigan

[Michigan](#) offered early in-person absentee voting and ballot drop-off at clerk’s offices in 2020. Two years earlier, in 2018, Michiganders had passed a state constitutional amendment that implemented [no-reason absentee voting](#), making it easier to obtain an absentee ballot and automatically registering to vote Michigan residents who had business (such as renewing driver’s licenses) with the secretary of state’s office. In May 2020, the state sent all registered voters an application to request [absentee ballots](#). Voters could also pick applications up from their local clerk’s office and could cast their absentee ballots beginning 45 days before the election. These absentee ballots could be [returned](#) to a designated drop box, by mail, or in person to a city or township clerk’s office. Michigan also offered same-day [in-person absentee voting](#); voters could pick up an absentee ballot, vote, and submit their ballot in a single trip at any clerk’s office.

Michigan's [rules](#) do not allow processing of mail ballots until Election Day and, because such ballots take longer to process than in-person votes, that can lead to delays in the counting and reporting of the results. Likely attributable in part to the coronavirus pandemic, voting through Michigan's absentee mail ballot system more than doubled, from [1,116,233](#) ballots returned in 2016 to [2,841,696](#) in 2020.

V. Designated Early In-Person Voting Systems

Many states offered early in-person voting options that were administered independently of any mail/absentee vote system. In many of these states, early in-person voting played a major role in addressing the increased voter turnout, though high turnout during the early voting period often resulted in long lines and wait times. In some states with stand-alone early in-person voting systems, more voters utilized early in-person than mail voting; in others, mail voting remained dominant.

A. States with substantial use of early in-person voting

State	Early In-Person Votes	Mail Votes Returned and Accepted	Notes
Texas	8,745,958	973,143	Early in-person voting extended by a week
North Carolina	3,620,531	977,186	COVID-19 precautions added to one-stop early voting
New York	2,507,341	1,236,404	First presidential election with early in-person voting
Georgia	2,694,763	1,307,403	No changes made to mail voting

Texas

Early voting skyrocketed in Texas in 2020, and [around 93%](#) of early votes were cast through in-person early voting. Overall, [8,745,958](#) Texas voters cast ballots early in person in the general election, compared to only 973,143 who voted by mail. The early in-person total for 2020 was a third more than the [6,564,197](#) who voted early in-person and by mail in 2016. In fact, the total *early* vote count for 2020 represented over [108%](#) of the *entire* Texas voter turnout [in 2016](#). The skew toward early in-person, rather than mail voting, was largely due to the voting system in the state. In Texas, any registered voter can [vote early](#) in person at any early voting location in their county of registration. By contrast, for an absentee mail ballot, voters need a [specific excuse](#), such as absence from the country, sickness or disability, incarceration, or being at least 65 years old. Unlike many states, Texas did not alter this requirement in response to the coronavirus pandemic. It did, however, extend its [early voting period](#) by a week, beginning on October 13 and ending on October 30, 2020. Even with this added time, thousands of voters still faced [long lines](#) and hours-long wait times during early voting. The combination of high voter turnout, restricted mail voting, and concern about crowded Election Day polls sent millions of Texas voters to early voting centers.

North Carolina

In North Carolina, early voting has historically been an important part of the election process in the state, with over [60%](#) of the [4.77 million](#) ballots cast in the 2016 general election cast through early voting. The 4.6 million voters who cast ballots before Election Day 2020 in North Carolina nearly amounted to the total of all votes cast in 2016. . More than [3.6 million of the early votes](#) were cast early in person. Only about 977,000 were returned and accepted by mail (and almost 8,000 mail ballots were rejected).

North Carolina's high early vote numbers can be attributed largely to the comprehensive "[one-stop early voting](#)" system established in the state. The system allows any registered voter to cast an absentee ballot in person during the period of early voting, which ran from October 15 to October 31, 2020, for the general election. Unregistered voters could register and vote on the same day and, unlike on Election Day when voters are assigned to specific polling places, early voters could cast their ballots at any early voting site in their county. Finally, voters who received an absentee ballot by mail could deliver their ballot to election officials in person at a one-stop early voting site. The [secretary of state](#) asserted that this system created more flexible voting hours, increased options for voter registration, and reduced the incidence of long lines.

North Carolina also offered no-excuse [absentee mail voting](#), which was the [preferred voting method](#) of many people at a higher risk of severe COVID-19 complications, as well as voters

who wanted to avoid long lines. Nevertheless, early in-person voting remained dominant in the state. To combat the pandemic, North Carolina introduced additional [safety precautions](#) at its early voting sites, including social distancing protocols, hand sanitizer and masks for voters and poll workers, barriers between poll workers and voters, single-use pens for paper ballots, and frequent cleaning. The state also allowed [curbside voting](#) for voters unable to enter the voting place without assistance, due to age or disability, including agoraphobia, increased risk of severe COVID-19 disease, COVID-19 symptoms, or medical conditions that prevented the voter from wearing a mask. Despite these added precautions and options, many North Carolina voters also faced [long lines](#) during early voting, and those lines tended to [increase](#) closer to Election Day.

New York

The New York State Legislature [approved early in-person voting](#) in 2019, making the 2020 general election the [first presidential election](#) and [third election](#) of any kind to utilize early voting in the state. This novelty led to some issues during the nine-day early voting period. [Tens of thousands](#) of New Yorkers flooded polling places on the first day of early voting, waiting in lines up to five hours; New York City [Mayor Bill de Blasio](#) waited for three hours to cast his vote. Just [88 polling sites](#) were available in New York City during the early voting period, and those polling sites were unevenly distributed across the five boroughs. Unlike voters in the rest of New York and in many other states, [New York City residents](#) were allowed to vote early only at their assigned locations, and poll hours were reportedly [inconsistent](#). The city did, however, make some [improvements on the fly](#), adding an 89th early voting site and expanding voting hours in some locations.

Ultimately, many New Yorkers [persevered](#) through long lines to cast their votes. In fact, though [no-excuse mail/absentee](#) voting was offered in the state, more than twice as many voters cast early in-person ballots as mail ballots: [2,507,341](#) early in-person votes were cast, compared to 1,236,404 cast by mail. Many [early voters](#) cited concerns about mail voting reliability as their primary reason for voting in person. These concerns may have been driven in part by a [snafu](#) that caused as many as 100,000 Brooklyn voters to receive absentee ballots with incorrect names or addresses. Despite road bumps in both mail and early in-person voting, New Yorkers showed up early in [record numbers](#) to vote in the 2020 general election.

Georgia

Georgia also saw higher use of early in-person voting than mail votes. Of the 4,014,917 total early votes cast in the 2020 general election, [2,694,763](#) were cast in person, while 1,320,154 were mailed in. This marked a sharp increase from the early vote count in 2016: only [2,381,782](#)

total early votes, composed of 2,200,467 in-person votes and 181,315 mail ballot votes. The state saw a large jump in mail ballot use from 2016 to 2020, increasing over seven-fold, but nevertheless twice as many people voted in person early as voted by mail ballots in 2020.

Interviews with voters [indicated](#) that part of this disparity between in-person and mail ballot voting may have been caused by voter distrust in the postal service or skepticism about their mail votes being counted. The heightened skepticism about mail ballots was exemplified in the change in voting method that many voters made throughout the election timeline. On October 12 alone, about [25,000](#) of the 128,000 voters who voted early in person simultaneously signed affidavits to cancel their mail ballots, which they had requested in the first place.

B. States with substantial use of mail voting

Although the rules of different states and preferences of voters meant different distributions between early in-person and mail ballot voting, mail voting was, overall, the primary [mechanism](#) of early voting in the 2020 general election. Nationwide, mail ballots represented [65,642,049](#) (65%) of the 101,453,111 early votes cast.¹ Even states that expanded early in-person voting for 2020, like the battlegrounds of Florida, and Nevada, saw mail voting numbers which exceeded early in-person vote totals. Arizona, another battleground state that expanded early in-person voting, does not distinguish between mail votes and early in-person votes in its reported totals.

¹ Most states did not separate in-person absentee ballots from mail ballots. These figures thus include any in-person absentee ballots cast within those states.

State	Early In-Person Votes	Mail Votes Returned and Accepted	Notes
Florida	<u>4,332,221</u>	<u>4,737,540</u>	Expanded early in-person voting to 12 full days for most counties; already had robust mail voting
Arizona*		<u>2,986,962</u>	Maricopa County changed to vote center model and expanded early voting
Nevada	<u>578,482</u>	<u>690,548</u>	Changed to hybrid system that sent voters mail ballots but allowed them to retain the option to vote in person

* Arizona does not distinguish between mail and early in-person votes

Florida

Florida [expanded](#) its early voting system for the 2020 general election. Historically, Florida had significant [experience](#) with mail ballot voting and already had procedures in place to process ballots and conduct the 2020 election effectively. Nearly every county offered a full 14 days of [early in-person voting](#), during which voters could go to any regional site in their county of residence to vote; on Election Day, voters were required to vote in their particular neighborhood polling location.

Nonetheless, the dangers presented by the coronavirus pandemic appeared to push more voters toward mail ballot voting than early in-person voting. Voters cast [4,332,221](#) early in-person ballots, while 4,855,677 voters returned mail ballots. For context, in 2016, voters cast [3,874,929](#) early in-person ballots and 2,732,075 mail ballots. Florida, thus, saw a huge increase in total early voting, but early in-person voting increased by a modest 12% while mail ballot voting rose by 77%, largely responsible for the total increase. There was also partisan preference evident in early vote method: Florida Democrats cast far more mail votes ([2,146,654](#)) than Republicans ([1,472,826](#)), and Republicans cast more early in-person votes ([1,959,870](#)) than Democrats ([1,401,458](#)).

Arizona

Like Florida, Arizona had used mail voting (which it refers to as “early voting”) on a large scale for years but still made efforts to [expand](#) early in-person voting before the 2020 election. The changes cost millions of dollars and included more staff and new tabulation machines. Some critical reforms were made in Maricopa County, the state’s most populous county. There, the most pivotal change was replacing the county’s assigned-precinct [model](#) with a new model with 170 “vote centers” where any eligible county resident could cast a ballot. The changes also included plenty of time for in-person early voting, beginning [27 days before the election](#) and running until the Friday before Election Day.

The result was an increase in early votes, from [1,661,874](#) in 2016 to [2,986,962](#) in 2020. In its official reporting, Arizona does not distinguish between early in-person voting and mail ballot voting. However, in [Maricopa County](#), after 1.2 million early votes had been tabulated, the county reported that only 80,000 of those were in-person votes, suggesting that the vast majority of early voting was done by mail.

Nevada

Like many other states, Nevada offered voters early in-person voting, mail voting, and Election Day voting. Early voting is an ingrained element of Nevada elections. The [Nevada secretary of state](#) emphasized the availability of early voting to all eligible voters and highlighted the benefits, including accessibility, increased voter participation, and greater efficiency in ballot counting. Early in-person voting was the most popular option for the [2016 general election](#), with 702,387 votes cast early in-person, compared to 344,470 votes cast on Election Day, and 78,572 cast as absentee or mail votes. In the [2020 general election](#), the state saw an increase of almost 300,000 ballots cast compared to [2016](#), and the distribution of these votes across the various voting methods shifted notably.

As noted above, Nevada was one of several states to change its [election structure](#) temporarily in response to the coronavirus pandemic, instituting a hybrid system. Under this system, the state sent a mail ballot to all active, registered voters, which was not the case in 2016. As in previous elections, voters still had the option to vote in person, either through early voting or on Election Day. Additionally, voters could drop off their mail ballots at [early voting sites](#), rather than returning them by mail. The increased options for mail voting, along with the coronavirus pandemic, likely contributed to the increased use of mail ballots: Nevadans cast [690,548 mail ballots](#) in 2020, a more than eight-fold increase from 2016. Returned mail ballots accounted for around 48% of the total vote in 2020, while early in-person voting comprised around 40%.

Nevada was among the last of the battleground states to [report full results](#). Nevada law allowed for absentee ballots to be [processed upon receipt](#), but early vote counting boards could not convene or begin to count more than one day before Election Day. And the state had a record-high number of mail ballots to process and count. Furthermore, ballots postmarked by Election Day could be counted if they arrived within [seven days](#) of Election Day. Thus, counting could not be completed until these eligible ballots were received and tabulated.

VI. Conclusion

The 2020 general election saw an historic surge in early voting. More than 101 million votes, or over 63% of the total national vote count, were cast before Election Day. Early voting in 2020 was significantly higher than in the 2016 election, during which only about [40%](#) of the vote was cast early. In six states, the early vote count was greater than the total vote count had been in those states for the 2016 general election. Both increased enthusiasm for the election, as well as fears surrounding the coronavirus pandemic, likely [drove](#) early vote numbers up. Because the pandemic increased demand for contact-free voting, much of the early voting effort focused on mail votes. However, early in-person voting played a major role in the election, particularly in [states](#) with limited access to absentee voting and among voters who worried about the reliability of postal service delivery of mail ballots.

States took a variety of approaches to early in-person voting. Several did not offer early in-person voting at all, but several had already established universal mail voting or adopted it specifically for the 2020 election. Others allowed voters to cast mail ballots in person at designated locations, all under the umbrella of [absentee](#) voting. Finally, many states had separate, and in some cases [expanded](#), early in-person voting procedures.

Further, the preferred voting method tended to differ among the two [major political parties](#), with Democrats dominating [early voting](#) overall and leading in mail votes in particular, and Republicans favoring Election Day voting. This trend may have been caused in part by repeated public comments by Republican President Trump's [claims of fraud](#) in the mail voting system, comments which may have influenced his supporters to favor in-person voting. Ultimately, the 2020 election was dominated by voters from both parties submitting their ballots early, both through the mail and through significant reliance on early in-person voting.

Polling Place Management in the 2020 General Election

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- [“Mask Rules for In-Person Voting,”](#) Ann Bancho, Lane Corrigan, Evie Freeman, Mikaela Pyatt, Brooke Bumpers, Craig Smith, Tom Beimers, Kathleen Peterson, Christopher Schott, Olivia Molodanof, Stephanie Biggs, Sheree Kanner, Helen Trilling, James Deal, Mahmud Brifkani, Boyd Jackson (October 25, 2020).
- [“Vote Intention in November: Evidence from an Early September Survey,”](#) Charles Stewart III (September 20, 2020)

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I. Introduction

The onset of the coronavirus pandemic in March 2020 sent states scrambling to address concerns surrounding in-person voting safety during the primary elections. Across the country, states [struggled](#) with closed polling places, poll worker shortages, long lines at the polls and surges in mail ballot requests. In light of these challenges during the primaries and an escalating public health crisis, many voters and officials expressed concerns over polling place administration and safety for the 2020 general election. Media coverage throughout the summer foretold an uphill battle, with some predicting voting during the general election could lead to a [“November nightmare,”](#) [“chaos and distrust,”](#) [“catastrophe,”](#) or a [“meltdown.”](#)

Most jurisdictions [effectively scaled up](#) mail voting, but [millions](#) of voters were, nevertheless, expected to cast their ballots in-person for the November general election. These expectations proved accurate: Fears of [postal delays](#), as well as other factors, such as [habit and convenience](#), prompted over 90 million Americans to cast their ballots in-person, either on Election Day or during early voting.

A salient concern leading up to the November election was the safety of voters and poll workers. States had vastly [different](#) coronavirus protocols, but faced a universal challenge: safely administering in-person voting as cases [surged](#) nationwide. Most states developed new guidelines for in-person voting, to protect voters and staff alike from contracting the coronavirus. It was a tricky task, as public health officials learned early on that [people without any symptoms](#) can spread the virus. Many jurisdictions had to locate long-standing polling places to new locations that would be large enough to allow for social distancing. Others had to develop training protocols for how poll workers should handle coronavirus-related incidents (such as a voter refusing to comply with mask mandates or voter lapses in social distancing while waiting in lines). Still, other stakeholders feared that protocols to protect voters from the pandemic could discourage voter turnout, exacerbate long lines, or place other burdens on voters.

Provisional ballots also posed a potential concern at polling places. During the months preceding the November election, [false information circulated](#) about the mail-voting process, which in turn spurred fear that many voters would [abandon](#) their mail ballots and vote in-person, triggering a potential surge in provisional ballots. (In many states, if a voter requests an absentee ballot but later decides to vote in-person, the voter must relinquish their original ballot or vote provisionally, sometimes both.) For nearly two decades, provisional ballots [have been](#) a source of confusion and mistrust, given their relative newness in elections. Thus,

because of their potential for delaying a final vote count or spurring post-election litigation, provisional ballots could have been a source of controversy in 2020 elections. The considerable variations among states on the legal rules around when and how to use provisional ballots only furthered such agitation.

Despite the ample potential for disaster, in-person polling proved to be primarily a source of triumph. Most jurisdictions exceeded safety expectations and effectively managed provisional voters, ensuring that the November general election proceeded safely and securely.

II. Safety Issues and Incidents

As coronavirus cases increased through the fall, election officials had to stretch limited resources to conduct the November election effectively and safely. [Experts](#) were clear that no vaccine would be approved and available prior to November 3, and [fears](#) mounted that in-person voting could not be conducted safely given the ferocity of the pandemic. Activists were [concerned](#) that fear of getting sick from in-person voting could drive down voter turnout and that long lines or the reduced number of polling places in some jurisdictions could make voting less accessible. There were also concerns that a [lack of social distancing](#) and/or inadequate protective equipment at polls could lead to outbreaks of coronavirus cases. But such fears were largely unrealized, though there were some reports of poll workers contracting coronavirus infection after staffing polling locations.

A. Turnout

Despite the immense challenges of conducting an election during a pandemic, safety obstacles did not significantly hamper turnout, nor did it deter most voters from voting in-person. [Data](#) from the Pew Research Center indicated that roughly a quarter of voters cited catching or spreading the coronavirus as a major influence on how they chose to cast their ballots. The same study indicated that convenience, habit, and level of trust in mail voting were stronger influences on what method of casting a ballot voters chose to use. Among voters who chose to vote in-person on Election Day, 76% said that they did so because that was the way they had always voted. Among in-person *early* voters, 72% cited convenience as having a major influence on their choice. Furthermore, over half of in-person voters—both early (53%) and Election Day (52%)—cited concerns about voting by mail as fueling their decisions to vote in-person. A Stanford-MIT Healthy Elections Project [survey of the battleground states](#) (Arizona, Florida,

Michigan, North Carolina, Ohio, Pennsylvania, and Wisconsin) conducted in September 2020 indicated that party affiliation also influenced perception and selection of different voting methods.

Whatever methods they chose, voters indicated that they encountered few problems casting a ballot. [Pew Research data](#) showed that 94% of voters who cast ballots in the November 2020 election said that voting was somewhat or very easy for them, while just 6% of voters said that they encountered difficulties. Of those 6%, 51% cited logistical concerns, such as long lines or coronavirus safety concerns at polls, as making voting difficult.

The total turnout in the 2020 general election hit a record high. According to the United States Elections Project, [159,690,457](#) total votes were cast during the 2020 general election. Voters cast [65,642,049](#) mail ballots (41.1%). The majority of voters (94,048,408, or 58.9%) cast their ballots in-person—35,811,062 voted early in-person (22.4%), with the remaining 58,237,346 ballots cast on Election Day (36.5%).

B. Polling Place Consolidation

Polling place availability posed another [challenge](#) to officials administering an election during the coronavirus pandemic. Many traditional polling places, such as nursing homes and schools, could no longer serve as polling locations. Nursing homes were at the epicenter of outbreaks and their residents among the most vulnerable to COVID-19. Many schools holding in-person classes restricted public access in order to keep students safe. Other small community buildings that served as polling places under normal conditions did not offer sufficient square footage for social distancing during a pandemic. Poll worker shortages during the primaries also forced [polling place closures](#), and many feared similar closures might have been warranted in November.

Election officials had to rapidly acquire new spaces and reconfigure layouts for in-person voting, while communicating changes to voters. In March, the Wisconsin Elections Commission granted localities more [flexibility](#) to find polling places, allowing them to relocate voting locations away from nursing homes and other facilities. In Maricopa County, Arizona, election officials [surveyed](#) polling places in March and found that much of the county's 500 voting locations were too small to allow for adequate social distancing. For the November election, Maricopa switched to a "vote center" model, in which 175 voting centers—hosted in large spaces, such as convention centers and shopping malls—replaced traditional polling locations. Around 80 were open for the 27-day early voting period and provided convenience for voters:

Vote centers were open to any voter within the county, whereas traditional polling places had served only voters within their specific precinct. All told, 17 states utilized [vote centers](#) during the 2020 election. And to avoid voter confusion on Election Day, some states, such as Pennsylvania, aimed to have counties [notify](#) voters of final polling locations no less than two weeks before the election.

Through these adaptations, election officials were largely able to avoid the mass consolidations and closures seen during the 2020 primaries for the November general election. However, there were still nearly [21,000](#) fewer polling places in the United States in the 2020 general election than the 2016 general election—a 20% decrease. While such consolidation may have been driven in large part by the pandemic, the trend is not new: There were [3,000](#) fewer polling places in 2016 than 2012. And while the impact of these consolidations may have been offset by innovations in election infrastructure, such as universal mail voting or vote center models, advocates [urged](#) against consolidation. They said consolidation could [disproportionately impact](#) low income and minority communities. For example, in the key swing state of Georgia, 10% of polling places were [closed](#), affecting mostly communities of color.

C. Voting Lines

Long lines posed an obstacle to social distancing in several jurisdictions during the November election. The longest lines were largely in densely populated cities, such as Atlanta, New York City, and Chicago. Election officials attributed these long lines to three main causes: record turnout overwhelming state election infrastructure, an insufficient number of polling places, and problems with voting equipment at polling sites.

Early voter turnout exceeded expected numbers in many states around the country, contributing to long lines in some jurisdictions. For example, in Fairfax County, Virginia, long lines were [reported](#) outside of the Fairfax County Government Center on the first Saturday of early voting. The precinct experienced a higher turnout that Saturday than on any individual day of early voting in 2016; the milestone was reached in early October and was particularly significant given that early voting numbers had swelled closer to Election Day in 2016. Similar turnout records were observed in Georgia, with nearly 130,000 voters [showing up to cast ballots](#) on Monday, October 12, the first day of early voting for the general election. The surge of early voters led to wait times as long as five to 11 hours. Georgia election officials suggested that the long lines could also be explained by [equipment problems at some polling sites](#) and an [insufficient number of polling sites](#), in addition to high turnout. Polling places in Chicago, Illinois, also experienced long lines because of equipment problems, with one voter [reporting](#)

only six of nine voting machines working at her polling site when she went to vote. Coronavirus safety regulations also [limited the capacity](#) inside many polling places in Chicago and other states around the country, contributing to longer wait times.

Some Election Day voters also experienced long wait times, despite the large turnout for early voting and the increased use of mail voting nationwide. [Cities across the country](#), which historically have more racially diverse populations, were epicenters for long lines. In densely populated areas, such as [San Bernardino County, California](#); [Polk County, Florida](#); and [Pittsburgh, Pennsylvania](#), voters reported lines that were longer than usual for these areas. Long lines were also reported in other [cities](#), including Albuquerque, New Mexico, Chattanooga, Tennessee, Sarasota, Florida, Atlanta and Marietta, Georgia, and Columbus, Ohio. In many cases, [long lines](#) were caused by increased voter turnout, technical difficulties at the polls, and too few polling places.

Notably, in some smaller counties, such as [Council Bluffs, Iowa](#); [Madison County, Indiana](#); and [Hartford, Connecticut](#), some Election Day voters waited two hours or more to cast a ballot. But longer wait times were not a universal experience. Some states, like Georgia, saw considerably [more manageable lines](#) and wait times on Election Day, compared to the lines during early voting or the primaries. The decrease in wait times in Georgia can largely be explained by high rates of early voting and mail voting: Nearly four million of the five million Georgians who voted in the 2020 election [had cast](#) their ballots before Election Day.

Nationally, most voters (62%) reported waiting in line for [10 minutes](#) or less. For comparison, the average wait time for voters across the nation in 2016 was [11 minutes](#). Still, for the 2020 general election, 16% of in-person voters waited in line for more than [30 minutes](#) and 6% were in line for more than an hour.

D. Social Distancing at Polling Places

During the height of the coronavirus pandemic, including the 2020 election cycle, the [U.S. Centers for Disease Control and Prevention \(CDC\)](#) recommended that people keep at least six feet of distance between themselves and people from different households. To conduct safe in-person voting during the pandemic, election officials had to adjust polling place locations to maintain that spacing. Many reconfigured polling places and used polling place [signage](#) to maintain social distancing inside and in line.

In order to allow for [social distancing](#), some cities converted professional sports arenas and stadiums, convention centers, and large hotels into polling places. These spaces were already designed to handle large crowds, and their size and layouts enabled [tens of thousands](#) of people to vote safely. In the State Farm Arena in Atlanta, home of the Atlanta Hawks, officials [installed](#) voting machines throughout the 100 levels of concourse and on the arena floor. Atlanta officials also divided the arena into three “[voting districts](#)”—one for voters who drove, one for voters with disabilities, and one for voters who took public transportation. Employees of the Atlanta Hawks [assisted](#) with the voting process. Other sports teams offered their employees and their arenas and stadiums to [assist](#) with voting. These voting “[super centers](#)” were available in many of the country's more densely populated areas, where they contributed to maintaining voting accessibility, voter and worker safety, and reduced crowds and wait times.

Despite the reconfiguration of voting locations for the November election, several poll workers reported being unable to maintain the recommended six feet of social distancing between themselves and voters or other poll workers. In [Visalia, California](#), a poll worker reported that she was “shocked” to be stationed next to another poll worker back-to-back, but was otherwise comfortable with the safety precautions, including plexiglass barriers. Nevertheless, a poll worker stationed at that same polling location tested as “presumptive positive” on a rapid coronavirus test after the election. Similarly, in [Richmond, Virginia](#) and suburban Henrico County, the health director “consistently heard stories” that people were unable to maintain six feet of distancing from other people within the polls. After the election, over 90 percent of the Richmond registrar’s office was under quarantine for possible coronavirus exposure.

Some voters also found themselves unable to socially distance in polling places. Across [New Hampshire](#), voters reported long lines and a complete lack of social distancing at the polls on Election Day. More than a week after the election, New Hampshire Governor Chris Sununu recommended that anyone who waited in line at the polls on Election Day monitor themselves for symptoms of coronavirus, regardless of their polling location within the state. And, in the first few days of early voting, voters in Marion County—Indiana’s largest county—reportedly could not stand more than two feet apart from one another once inside the county’s [only open polling place](#).

E. Mask Protocol Observance

Compliance with mask mandates was generally high in states where voters were required to wear masks. Few incidents related to mask wearing were reported during the general election

overall, but many complaints that did arise came from Texas and Pennsylvania—both of which were states that exempted voters from wearing masks.

In Texas, Governor Greg Abbott issued an order requiring masks in most public locations but [exempting](#) voters, poll workers, and election officials at voting sites. On Election Day, there were complaints that an election judge in Dallas [refused to wear a mask](#) inside the polling place, and an election director in Howard County [observed that just half of all voters](#) and poll workers were wearing masks. Likewise, in Northampton County, Pennsylvania, voters and poll workers [were reportedly not wearing masks](#) on Election Day.

In states that mandated masks in polling places, cases of noncompliance occurred but were exceedingly rare. One of the few reported cases resulted in a man [arrested in Maryland](#) for trespassing—after he repeatedly refused election officials’ requests to wear a mask (provided to him by officials) and subsequently refused to vote in a designated area for those who did not comply with mask requirements. These designated areas were utilized in many other states as well, but most voters who refused to wear masks were amenable to voting in separate areas.

F. Coronavirus Cases Among Election Workers

Through the November election and the weeks that followed, some election workers tested positive for coronavirus infection. However, in most cases, it was hard to confirm whether the election workers had become infected before working the polls, while working the polls, or in the days after.

During early voting in [Okaloosa County](#), Florida, the supervisor of elections and at least one other election worker tested positive for coronavirus infection. In a news release, the county [announced](#) it would close one of its election offices “out of an abundance of caution and concern for public safety,” and directed voters to other early voting locations in the county. At the time of the office closure, the deadline to request a mail ballot in Florida had not yet passed; the news release also stressed mail ballot drop off options.

In Virginia, two poll workers in [Carroll County](#) tested positive after working the polls on Election Day. In [Richmond City and suburban Henrico County, Virginia](#), 16 poll workers tested [positive](#) for coronavirus after Election Day. Though poll workers were wearing masks, as was highly recommended but not mandated by the state, the head of the Richmond and Henrico Health Department believed a lack of sufficient physical distancing may have been responsible for [those cases](#). Local election officials, however, cited the protocols to prevent community spread

at the polling stations. Chief Elections Officer Brooks Braun, [elaborating on the safety practices](#), said, “we were taking ballots using gloves and changing gloves, sanitizing our hands and we had protective screens up so that we weren’t sharing direct air with voters.”

Polling locations across New York also reported coronavirus cases among poll workers, in [Putnam County](#), [Suffolk County](#), and [Dutchess County](#). In Pennsylvania, a local election office in Greene County [declined](#) to release the information to voters, “citing medical privacy laws,” despite four out of five poll workers at one precinct testing positive after Election Day. The infected poll workers were in contact with the Pennsylvania Department of Health, and at least one poll worker [posted](#) information on social media about infections. Multiple poll workers in [Crawford County](#), Pennsylvania; [Cleveland](#), Ohio; and [Marion County](#), Arkansas, tested positive for coronavirus infection after the election. A poll worker in [Visalia, California](#), tested “presumptive positive” after a rapid coronavirus test but refused to cooperate with county officials and confirm the diagnosis via a more accurate laboratory test. In Midland County, Texas, two poll workers from different polling locations [tested positive](#) after Election Day. Neither of the workers showed symptoms on November 3. A [Sarpy County](#), Nebraska, poll worker believed he was infected with coronavirus while working the polls on Election Day. In [Scott County](#), Iowa, a poll worker was hospitalized with COVID-19.

A poll worker in St. Charles County, Missouri, [tested positive](#) on October 30, less than a week before the election. She decided to break the [county-mandated](#) quarantine to work the general election, without notifying her co-workers or the election officials. She died from complications of COVID-19 on November 4, the day after working the election. St. Charles County Board of Elections Director Kurt Bahr made a [statement](#) after the worker died, assuring the public that masks and face shields had been mandatory for all election workers.

III. Provisional Ballots

Some elections experts expressed [concerns](#) before the election that the rapid expanse of absentee and mail ballot requests could lead to a surge in provisional ballots at the polls. States had different rules governing whether voters who requested mail ballots but later decided to vote in person were required to cast provisional ballots in the 2020 election. Provisional ballots are a relatively new voting method—the federal government [first required](#) states to offer provisional ballots in 2002. Provisional ballots are generally counted last in most jurisdictions, both because they are more labor-intensive to process and because counting them last acts as a safeguard for catching attempts to double vote. Because of their relative newness and the

special processing procedures they require, a large number of provisional ballots could have delayed final election results or spurred post-election litigation and other challenges. However, for the most part, provisional ballots were smoothly and swiftly handled by states.

A. General Election

In 2020, the number of provisional ballots rose in some states but fell in others. Large increases in the number of provisional ballots were sometimes driven by new mail-voting procedures. For example, in [New Jersey](#), all registered voters were sent mail ballots; thus, because of state law, *all* in-person votes had to be treated as provisional ballots because all voters had received absentee ballots. About [300,000 votes, or 6% of total votes](#), were cast in-person using provisional ballots. New Jersey's statewide races were [called on election night](#), but the results of a close U.S. House race and local races were delayed, in part, because of the high number of provisional ballots. In [Pennsylvania](#), confusion surrounding state policy on absentee ballot requests and provisional ballots contributed to nearly 100,000 votes being cast provisionally.

Other states saw a decrease in the number of provisional ballots, though the cause of the decrease varied by state. [California](#) processed one-third the number of provisional ballots in 2020 compared to 2016. Officials [attributed](#) the decrease in provisional ballots to increased usage of vote centers, which allowed voters to vote at any location in their county rather than having to vote in their precinct specifically. Under a precinct model, voters who arrive at the wrong location to vote must cast provisional ballots; the greater flexibility afforded by vote centers thus also reduced a major cause of provisional votes. North Carolina also saw a decrease in provisional ballots, from approximately [60,000](#) in 2016 to more than [40,000](#) in 2020, [potentially due to expanded online registration options and increased early voting](#).

In general, vote tallies were not significantly delayed by provisional ballots. However, in Pennsylvania, the large number of provisional ballots may have [further delayed the announcement](#) of final election results. A state court ruling November 6 in [Hamm v. Boockvar](#) required that provisional ballots cast on Election Day be separated from other provisional ballots, though this was already common practice throughout much of the state.

B. Litigation

Cases specifically litigating provisional ballots were primarily concentrated in Pennsylvania. In addition to *Hamm v. Boockvar*, there were two lawsuits related to provisional ballots, both filed

by a candidate for the Pennsylvania state senate, Nicole Zicarelli. [*Zicarelli v. Westmoreland County Board of Elections*](#) and [*Zicarelli v. Allegheny County Board of Elections II*](#) were filed to challenge county board certification of a small number of provisional ballots (roughly 250 in each of the two counties) on the basis of administrative or voter error. *Zicarelli v. Westmoreland County* resulted in 204 provisional ballots invalidated. In *Zicarelli v. Allegheny*, plaintiffs won on appeal, with the state appellate court ruling that 270 provisional ballots (which had one rather than the required two signatures) could not be counted. However, these invalidated ballots were not enough to change the ultimate victor of the state senate race.

Other lawsuits included allegations regarding provisional ballots, but the ballots were not the primary focus of the suits. For example, plaintiffs in the Nevada case [*Law v. Whitmer*](#) alleged that the consequences of a provisional vote were not fully explained to voters, but most of the complaints in the suit were unrelated to provisional ballots. *Law v. Whitmer* alleged illegal voting behavior, including claims that 1) out-of-state voters were allowed to vote illegally; 2) voting drives were held in Nevada depicting Biden-Harris promotional material and encouraging Native Americans to vote; and 3) that certain electronic voting machines had malfunctioned. All allegations, both those relating to provisional ballots and other topics, were dismissed.

All told, fears of potential issues surrounding provisional ballots did not materialize: Preparation by election officials, coupled with voting innovations (such as vote centers and extended early voting), resulted in few challenges. And provisional ballots were not at the center of post-election controversy: The few legal challenges pertaining to provisional ballots resulted in a change of only a few hundred votes and did not affect the results of the presidential contest or pertinent state senate race.

IV. Conclusion

The coronavirus pandemic posed polling place challenges for election officials, state leaders, advocates, and campaigns, as they sought to promote safety *and* turnout in the November election. Officials had to procure larger and new spaces to accommodate social distancing. They also had to navigate mask protocols and compliance and anticipate potential provisional ballot surges depending on relevant laws in their state. In addition to these safety concerns, they also had to communicate changes to voters and respond to long lines and delays. Yet election officials across the country were largely able to overcome these challenges. To be sure, in-person voting in the general election faced some tumult—primarily marked by long lines in urban areas and nationwide spikes in coronavirus infections. Yet on the whole, in-person

polling was marked by innovative polling place adjustments and limited controversy surrounding provisional ballot use. In-person voting was, on the whole, successful and healthy, and contributed to achieving the [highest](#) voter turnout in modern American history.

Election Observer Rules and Litigation in the 2020 General Election

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Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“Election Observation: Rules and Laws,”](#) Jacob McCall, Haley Schwab, and Mat Simkovits (October 9, 2020)

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I. Background

Many states allow poll watchers to observe the entire voting process—from voters casting their ballots to election officials counting the votes. While overseeing the election, poll watchers can report discrepancies in procedure and violations of rules to their respective boards of elections depending on state law. These reports of rule violations can include accusations of on-site electioneering (in which a person attempts to politically campaign at a polling station) and identification issues concerning voters. In some states, poll watchers can even challenge the identity and eligibility of any voter and seek verification of the voter's identity before the individual is allowed to cast a ballot.

After voting has ended, many states allow election observers to watch and report on the tabulation and counting process. This oversight promotes transparency in the election process and trust that is integral to the democratic system. In most election cycles, election observation typically does not result in litigation or accusations of fraud, even where observers are appointed by a political party. The 2020 election cycle was different, with lawsuits across the country alleging issues of inadequate access to the ballot counting process or outright fraud and misconduct.

Key battleground states were the epicenter of election observer lawsuits. These lawsuits mostly concerned access issues, with election observers, alongside President Trump and the Republican Party, arguing that observers did not have full access to the vote tabulation process. For the most part, these lawsuits ended unfavorably for the plaintiffs.

II. Election Observation Across the Battleground States

Allegations of problems with election observation centered around six battleground states that President Trump lost: Pennsylvania, Michigan, Wisconsin, Georgia, Arizona, and Nevada. The allegations fell largely into two categories: allegations of insufficient access to vote centers and allegations that coronavirus pandemic restrictions put too much distance between observers and the counters.

Much of the litigation concerning election observers alleged insufficient access to the vote tabulation process. Republican-appointed election observers alleged in several complaints that they were denied access to vote centers and polling places and were, therefore, unable to

observe vote counts. These allegations proved largely either false or misrepresented, and were dismissed by courts for lack of evidence and refuted by reputable fact-checking agencies.

Some allegations focused on social distancing protocols in the vote count areas. In several suits, election observers argued that they should be allowed to be closer to officials conducting the count. They argued that, because they were put several feet away from the ballots, they were not given “meaningful access” to observe the election. Judges dismissed these allegations because the distances did not violate state election law and were reasonable measures under the circumstances.

A. Arizona

There was one major lawsuit in Arizona that dealt with election observers, [Ward v. Jackson](#). Kelli Ward, chairperson of the Arizona Republican Party, [alleged](#) that election observers were not allowed to be close enough to the ballots to be able to read the signatures on the mail-in ballots. The [complaint](#), filed in Arizona state court, asserted that, once election observers complained to officials about the distance between observers and the ballots, election officials provided the election observers with binoculars. But for a variety of reasons, the litigation contended, binoculars did not solve the issue, and many election observers still could not see the signatures on the mail-in ballots.

Under [Arizona state law](#), election observers are appointed by the county chairs of each political party. These election observers are then allowed to [observe](#) “[a]ll proceedings at the counting center” which, according to the secretary of state’s Elections Procedures Manual, includes “[o]pening the voting location, [v]oting at the voting location (but may not observe in the voting booth or otherwise impede voters’ ability to maintain a secret ballot), [c]losing the voting location, [t]ransport of ballots from the voting location to a receiving site (using a separate vehicle), and/or [a]ny other significant voting or processing activities at the voting location provided that it does not interfere with or impede the election procedures or staff.” Ward argued that being kept [10 to 12 feet](#) away from the ballots violated state law because election observers were unable to fully observe a part of the “processing activities.”

Arizona Superior Court Judge Randall Warner disagreed, [dismissing](#) the allegations surrounding the election observers’ access to the mail-in ballots and other claims in the lawsuit. According to the judge’s [decision](#), the plaintiffs failed to show that there was any fraud, misconduct, illegal votes cast, or an erroneous vote count.

B. Georgia

In an unprecedented move, the Texas attorney general, Ken Paxton, filed a motion directly to the U.S. Supreme Court, challenging the validity of the electoral outcome in several states, including Georgia. This lawsuit, [Texas v. Pennsylvania](#), argued, among other things, that election officials in Georgia and other states blocked election observers from entering vote counting centers. It further alleged that Georgia officials told observers to leave for the day and, after the election observers departed, officials took out “suitcases full of ballots” in order to count more votes in secret.

According to [Georgia state law](#), political parties may appoint two election observers per precinct and may also appoint up to 25 statewide election observers to observe any precinct of their choosing. These election observers are also allowed to observe “the counting and recording of votes” and, as such, are allowed to access the area where the ballots are counted and observe both the counting and recording of these ballots. Denying election observers access to the count would be a serious violation of state law.

There was no evidence to support the claim that observers in Georgia were asked to leave or were not provided meaningful access. The suitcase allegations arose from a [video](#) and were disproven. According to PolitiFact, the non-partisan fact-checking website run by the Poynter Institute, the video does not show suitcases of fraudulently cast ballots. Rather, it shows standard ballot containers full of legitimate ballots waiting to be counted. Georgia election officials also stated that election officials never told observers to leave. The U.S. Supreme Court, in a [7-2 decision](#), denied leave for Texas to file its motion. The brief order said Texas lacked standing to sue Georgia, Michigan, Pennsylvania, or Wisconsin. According to the Supreme Court’s ruling, Texas does not have a “judicially cognizable interest” in how another state conducts its own elections. The two dissenters, Justices Clarence Thomas and Samuel Alito, disagreed, saying they believed they could not dismiss a case that falls under their original jurisdiction, but they added that they “would not grant other relief.” In a similar lawsuit, [Favorito v. Cooney](#), a Fulton County election observer alleged voter fraud involving election workers bringing out cases of ballots to tilt the state towards a Biden victory; the case remains pending as of March 2021.

C. Michigan

There were several election observer-related lawsuits in Michigan. The first lawsuit, [Trump v. Benson](#), was a federal suit filed in the U.S. District Court for the Western District of Michigan. In this lawsuit, the Trump campaign alleged that election observers were forced to stand six feet

away from election officials and, thus, were unable to properly observe the counting and tabulating of ballots. The campaign also alleged that election officials allowed more Democrat-appointed challengers while refusing to admit more Republican-appointed challengers. Further, the lawsuit alleged that election observers and poll challengers were barred from accessing vote centers, with barriers being put up to prevent them from viewing the count. For context, Michigan [created](#) poll challengers to observe election-related activity “as a safeguard against election fraud.” Poll challengers are appointed by state-recognized political parties, incorporated organizations, and political committees formed for the purpose of advocating for a particular ballot measure. They may observe voting precincts and absentee ballot counting precincts, and they may examine voting equipment, pollbooks, and other materials before and after polls are open. Poll watchers may also challenge the voting rights of any voter and challenge an improperly performed election procedure.

The allegations in the lawsuit, however, were largely false. According to election officials, poll watchers and poll challengers were [allowed](#) into the vote centers, but each party was capped at 134 challengers in the vote center at one time. Both parties exceeded 200 poll challengers, so election officials prevented others from entering until the numbers dipped below 134. Election officials did put up posters on the windows to prevent people outside the vote centers from recording what was going on inside the vote centers, which is [not allowed](#). But these barriers did not prevent poll watchers or poll challengers already inside the vote centers from being able to observe the count. The campaign [withdrew](#) the lawsuit in mid-November.

In the second lawsuit, [Trump v. Benson](#), filed in the Michigan Court of Claims, the Trump campaign sought injunctive relief to stop the counting of absentee ballots in the state until the court allowed for more poll challengers to observe the count. However, Judge Cynthia Diane Stephens [denied](#) the request for injunctive relief on the grounds that “evidence” to support the claims were “inadmissible hearsay within hearsay.” Furthermore, Judge Stephens also denied the request on the grounds of [mootness](#), after finding that “the votes had largely been counted” by the time the Plaintiffs filed their complaint.

In the third lawsuit, [Stoddard v. City Election Commission](#), an election challenger requested an injunction to stop the ballot tabulation process, alleging that vote centers in Detroit did not have at least one election observer from each political party present. However, this request for injunctive relief was [denied](#) because the plaintiff failed to provide evidence of the allegations.

Finally, the fourth lawsuit, [King v. Whitmer](#), involved a group of election observers who alleged that they were denied a meaningful opportunity to observe the ballot tabulation process. The court ruled against the plaintiffs, arguing that not only was the case moot (the plaintiffs filed on November 25) but that the Eleventh Amendment barred this lawsuit from progressing forward.

D. Nevada

There were two main lawsuits in Nevada pertaining to election observation: *Stokke v. Cegavske* and *Kraus v. Cegavske*. The first lawsuit, *Stokke v. Cegavske*, filed in the U.S. District Court of Nevada, [asked](#) the court to allow election observers within six feet of the vote tabulation process and alleged that, otherwise, election observers would lack “meaningful access” to the vote tabulation process. The judge [dismissed](#) the lawsuit, holding that the state legislature was more equipped to handle these access issues. Under [Nevada state law](#), any member of the public can be a poll watcher and observe election-related activities. However, this general rule does not apply to the press or any person who gathers information in order to distribute it to the public. This carve-out for media affiliates became particularly relevant here because one of the parties in *Stokke v. Cegavske*, [Chris Prudhome](#), was a member of the media who attempted to observe the vote tabulation process.

The Trump campaign filed the other [lawsuit](#), *Kraus v. Cegavske*, in state court, seeking injunctive relief to stop the count in Clark County, which encompasses Las Vegas and its suburbs. The lawsuit was initially dismissed by Judge James Wilson after the judge found there was no evidence of irregularities, fraud, or improper access for election observers. The campaign [appealed](#) to the Nevada Supreme Court, but dropped the appeal after reaching a [settlement](#) with the Clark County Registrar of Voters to increase the number of election observers at vote centers.

E. Pennsylvania

In [In re: Canvassing Observation](#), filed in Pennsylvania state court, the Trump campaign [alleged](#) that its election observers were being kept too far away from the actual tabulation of the vote to be able to observe the process properly. Election observers were kept at least 15 feet away to comply with social distancing measures necessitated by the coronavirus pandemic. Under [Pennsylvania state law](#), each candidate for office is entitled to two poll watchers in each precinct in which the candidate is on the ballot. Each political party is also entitled to three additional poll watchers in each precinct. In its [finding](#), the Pennsylvania Supreme Court (which ultimately found that the main complainant did not present himself to officials as an observer) noted that the Philadelphia Board of Elections did not violate Pennsylvania law by maintaining distance between the election observers and the vote counters, because “the Election Code does not specify minimum distance parameters for the location of such representatives” and because “the Board’s regulations as applied herein were reasonable in that they allowed

candidate representatives to observe the Board conducting its activities as prescribed under the Election Code.”

The Trump campaign filed a second lawsuit in Pennsylvania, this one [filed](#) in federal court, [Donald J. Trump for President, Inc., v. Philadelphia County Board of Elections](#). The lawsuit sought injunctive relief to stop the counting of mail-in ballots, alleging that Philadelphia election officials denied Republican-appointed election observers access to the vote tabulation process. Judge Paul Diamond, a U.S. District Court judge for the Eastern District of Pennsylvania, oversaw an [agreement](#) between the parties to increase the number of observers in the convention center from [at least 19](#) Republican-appointed observers to no more than 60 from each party. Judge Diamond also pushed the plaintiff’s attorney to admit that there was a “[non-zero number](#)” of election observers in the room, thereby undercutting President Trump’s public claim that election officials had refused to allow access to “[any representatives and poll watchers for President Trump and the Republican Party](#).”

Trump v. Philadelphia was the biggest win for President Trump, as it did expand the number of election observers in one polling location. It was the Trump campaign’s only victory in election observer-related litigation across all the states. Yet, even still, *Trump v. Philadelphia* failed to unearth any evidence of fraud or misconduct by election officials. The court found that election observers were not denied access to the count and did not have sufficient evidence to prove fraud.

F. Wisconsin

There was one major lawsuit in Wisconsin concerning access for election observers or distance between the election observers and ballots. Further, Wisconsin was not free of other isolated observer-related issues, including mask compliance issues, excessive challenges by certain observers, and one incident of pushing an election official.

The lawsuit, [Trump v. Wisconsin Elections Commission](#), Trump alleged, among other things, that the Wisconsin Elections Commission failed to provide adequate access to election observers. However, the court [ruled](#) that Trump had failed to prove that the Wisconsin Elections Commission violated any of his rights, and dismissed the case.

Unlike other battleground states, [Wisconsin](#) allows for any member of the public to be present at any polling place for the purpose of observing an election, with the exception of a candidate appearing on the ballot. To that end, the [public](#) may observe all aspects of the election process, including the counting of mail-in ballots, signature verification, and vote tabulation.

Even though any member of the public can serve as an election observer, many do so on [behalf of political campaigns](#). Wisconsin, like many other states, allows political parties to appoint individuals to serve as election observers on behalf of the party. In 2020, there were numerous [reports](#) by Wisconsin election officials that election observers associated with the Trump campaign were slowing down the tabulation process and even attempting to obstruct the count of the votes. [According to election officials](#), one election observer associated with the Trump campaign asserted a challenge to every ballot from a bag—without accusations of fraud or misconduct—simply because the ballots were folded. All mail-in ballots must be [folded](#) to fit into the official return envelope, so the sole fact of a ballot being folded is not indicative of fraud. Two election observers associated with the Trump campaign had to be [escorted out](#) of their vote centers—one for pushing an election official and the other for refusing to wear a mask. Tim Posnanski, a Milwaukee County election commissioner, [called](#) these actions “prima facie evidence of bad faith by the Trump campaign.” In a state with such a tight margin of victory, where a small number of successfully challenged ballots could swing the results, election observers wielded substantial influence over the potential outcome.

III. Conclusion

Much of the post-election litigation in the battleground states centered on election observation. Most of this litigation dealt with access issues to vote centers and limits on proximity to the count amid coronavirus pandemic restrictions. With one exception, these lawsuits were unsuccessful, with judges dismissing the lawsuits because of lack of evidence or because the restrictions were reasonable in light of the pandemic. The Trump campaign scored a modest victory in Pennsylvania, with *Donald J. Trump for President, Inc., v. Philadelphia County Board of Elections*, which allowed both the Democratic and Republican parties to add more election observers in vote centers. But these election observer lawsuits were unsuccessful at demonstrating fraud, misconduct, or any other form of impropriety. While election observation lawsuits were fairly common in the battleground states, they rarely resulted in any form of relief and did not alter the results of the election.

Appendix A: Election Observation Rules and Laws

This appendix was excerpted from a memorandum originally published on the Healthy Elections Project website on October 9, 2020, and reflects the laws and rules governing election observation in the November 3, 2020, general election. The full report can be found [here](#).

Authors: Jacob McCall, Haley Schwab, Mat Simkovits

Summary

The responsibilities of election observers and the manner in which they are selected varies across states. Many states allow poll watchers to observe the entire voting process, from voters casting ballots to election officials counting those ballots. And, poll watchers can report discrepancies in procedure or rule violations to their respective boards of elections. Reports of rule violations can include a variety of accusations, including on-site electioneering or voter identification issues. In some states, poll watchers can challenge the authenticity of any voter and seek verification before that voter casts a ballot. In some states, the political parties appoint people to observe the process on the party's behalf. In others, any member of the public, regardless of party, may observe the way ballots are cast and counted. The rules that govern election observation are created at the state level. However, some counties have power over how these rules are implemented, with some states allowing county committees or county political parties to nominate poll watchers.

Rules for Observers in Battleground States

States have different rules for observing in-person voting, signature matching and mail ballot verification, and ballot counting. This excerpt covers the battleground states of Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin.

Election observers of in-person voting generally fall into one of two categories: party-appointed or public. Arizona, Georgia, and Pennsylvania require poll observers to be appointed or nominated by a county or state party chair. Wisconsin permits any member of the public to observe elections. Michigan has party-appointed poll challengers but poll watchers can be any member of the public. Whether party-appointed or public, election observers cannot promote candidates on the ballots, as that would violate state electioneering laws.

States also have differing requirements for observation of the signature matching and ballot verification processes. Some states appoint observers for these processes through political parties, others allow any member of the public to observe the process, and a few allow both public and party oversight. Regardless of the appointment process, the power of observers in each state varies greatly, from being able to challenge individual ballots to being permitted only to observe signature and mail ballot verification.

Likewise, the battleground states have different policies governing oversight of the ballot counting process. Some states (such as Arizona and Georgia) employ an oversight process by which poll watchers nominated by political parties can see the tabulation of ballots. Other states (such as Michigan, Pennsylvania, and Wisconsin) use a public oversight process, in which any person can witness the tabulation of the ballots. Overall, states do not allow poll watchers to interfere with the process; they can only observe.

Arizona

In [Arizona](#), political party observers are nominated by the county chair of each party and are approved by the county recorder to [observe](#) (1) specific voting locations on Election Day, (2) a central counting place, or (3) multiple voting locations. Parties may agree to the same number of observers at each voting place; but, if an agreement cannot be reached, the parties are limited to one observer at each location.

Political party observers may observe (1) the opening of polling places, (2) voting at polling places (although, to uphold the integrity of the secret ballot, observers must maintain distance between themselves and the voter), (3) the closing of polling places, (4) the transport of ballots from polling places to a specified receiving site, and/or (5) any other significant voting or processing activity, including vote counting.

Counties are charged with signature matching under the supervision of the county recorder. During the signature verification process, the county recorder or other election officer will compare the signatures on the affidavit with the voter's signature on their voter registration form. Up to two party observers, one from each party, may watch over "any significant voting or processing activities," including the signature verification process. In addition, some counties, including the state's most populous (Maricopa County), have discretion to allow up to two members of the public to observe the process. During ballot counting, poll watchers can observe every stage of the ballot counting process, from inspecting ballots to tabulating ballots to reviewing ballots.

Georgia

In [Georgia](#), each political party may appoint two poll watchers per precinct. Each independent or nonpartisan candidate may also appoint one poll watcher. All poll watchers must be nominated at least seven days prior to the election and will be appointed to serve in the locations designated by the superintendent within the tabulating center. Designated locations where watchers can legally observe include the voter check-in area, computer room, duplication area, and other areas as the superintendent may deem necessary to assure fair and honest procedures in the tabulating center, which includes the counting and recording of votes. Similarly, at least seven days prior to the start of early voting, political parties or candidates must nominate poll watchers for early voting sites.

At least 14 days prior to the election, parties, political bodies, and independent candidates may designate up to 25 statewide poll watchers and submit their names to the State Election Board. Statewide observers may observe in any precinct and can move around to other precincts throughout Election Day, but they are otherwise subject to all limitations as precinct-nominated poll watchers. Further, no more than two poll watchers from each political party, political body, or independent candidate may be at the same precinct at the same time.

Poll watchers may also observe “the counting and recording of votes.” They may not directly challenge observed irregularities or infractions or file complaints with the poll managers. However, they may report any observed issues to the election superintendent. Further, poll watchers are allowed to access the area where the ballots are counted and can observe both the counting and recording of these ballots.

Michigan

Michigan designates [two entirely different positions](#)—poll watchers and poll challengers—with different rights and responsibilities. Poll challengers have more rights than poll watchers. Challengers are appointed by state-recognized political parties, incorporated organizations, and political committees formed for the purpose of advocating for a particular ballot measure. Poll challengers, however, cannot be appointed by a candidate or group affiliated with a candidate. There can be no more than two challengers per precinct. Poll challengers must be registered voters in the state of Michigan and carry identification cards.

As noted, these challengers have significant latitude in their operation. They may observe at voting precincts and at absentee voter counting board precincts. They can examine voting equipment before and after polls are open. They may observe the checking in of voters; inspect

the pollbooks, registration lists, or other materials; and they can remain in the precinct until the precinct board completes its work. Poll challengers may challenge, with good reason, any person's right to vote in the precinct, and they may also challenge the actions of election inspectors serving in the precinct. They may report any instances of alleged improper handling of a ballot by a voter or a precinct official, and they may challenge any voter that was issued an absentee ballot who shows up to vote in person on Election Day. That said, challengers are prohibited from "[disorderly conduct](#)" in the precinct, including drinking alcohol, and may not speak to voters or use recording devices or in any way touch the voting equipment.

Poll watchers comprise a different group of poll observers. Watchers can be any interested non-candidate person who wishes to observe the integrity of the election. Distinctions between poll watchers and challengers include the provision that watchers do not need to be registered to vote in Michigan, are not permitted to challenge a person's right to vote or the actions of the board, and are permitted only to observe until the polls close at 8 p.m.

Michigan also provides for the observation of mail-in ballot counting. One appointed election challenger per eligible group may observe the conduct of the "absent voter counting board." If a challenger believes an absentee ballot was submitted by a person unqualified to vote in their precinct, they may challenge that ballot. Additionally, members of the public may also observe the conduct of the board. However, unlike election challengers, who may come and go as they please, if a member of the public wishes to observe, that person must remain in the room in which the board is working until close of the polls.

[Michigan](#) also allows any member of the public to watch the ballot tabulation process. Essentially, any person with a desire to oversee this process can do so, including any party-appointed poll watchers.

Pennsylvania

In [Pennsylvania](#), each candidate for office is entitled to two poll watchers in each precinct in which the candidate is on the ballot. Political parties are also entitled to three additional poll watchers in each precinct. Poll watchers must be registered to vote in the county in which they serve and can serve in only one precinct in that county. As made clear in a [lawsuit](#), Board of Elections offices, where voters can request and submit ballots, do not constitute precincts, and so poll watchers are not allowed in these areas.

Poll watchers can challenge the authenticity of any voter and request the voter produce the proper documentation before casting a ballot. Watchers can be paid but only by the party or

candidate that appointed them to the position, and payment may not exceed \$120 for the entire day. [Nonpartisan](#) election observers are not permitted in Pennsylvania.

Poll watchers from both parties serve on the boards which conduct mail-in ballot verification. However, as of September 15, 2020, signature mismatch is no longer a reason to reject ballots in Pennsylvania, limiting the power of poll watchers on those boards to challenge mail-in ballots. [Pennsylvania](#) allows any member of the public to watch the ballot tabulation process.

Wisconsin

In [Wisconsin](#), any member of the public may be present at any polling place for the purpose of observing an election, with the exception of a candidate who appears on the ballot. Election observers must sign a log book at the polling place and must remain in the clearly marked, designated observation area between three to eight feet from the voter check-in table, though they may, within these restrictions, position themselves so as to observe all public aspects of the voting process. The chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe at the same time.

The public may [observe all aspects](#) of the election process, including the counting of mail-in ballots and signature verification. Further, [Wisconsin](#) allows any member of the public to watch the ballot tabulation process. Essentially, any person with a desire to oversee this process can do so.

Violence and the 2020 General Election

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Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“Defining Voter Intimidation: Six Battleground States,”](#) Mathew Simkovits, Amanda Zerbe, Adriana Stephan, Krithika Iyer, Tom Westphal (October 8, 2020)
- [“Electoral Violence in 2020: Prevention and Potential Remedies,”](#) Krithika Iyer, Christopher Meyer, Adriana Stephan, Tom Westphal (October 8, 2020)

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I. Introduction

Violence has not been a feature of recent American elections. Americans typically vote peacefully, and political parties and candidates accept the results of the democratic process without resorting to extralegal means. Even the disputed 2000 presidential election between Al Gore and George W. Bush—famous for its wrangling over “hanging chads” and an eleventh-hour U.S. Supreme Court decision—was resolved without partisan violence.

The 2020 presidential election was different, as various factors began to sow the seeds of mistrust in the electoral process, and that mistrust contributed to a risk of violence higher than for any election in recent memory. Campaign rhetoric became supercharged as the election approached, threatening to [normalize](#) the idea that violence would be a legitimate response to losing. In the runup to Election Day, over 40% of both Democrats and Republicans believed that violence would be at least “[a little justified](#)” if the other party were to win the 2020 election.

As key leaders used rhetoric to inflame tensions and cast doubt on the validity of the electoral process, partisan animosity and fears of political disenfranchisement escalated. Widely propagated disinformation campaigns went viral on social media platforms, and there was partisan distrust of mainstream media coverage. Meanwhile, the coronavirus pandemic disrupted both the economy (with sudden rising unemployment) and election administration. And there was a looming concern over the likelihood of [foreign interference in the electoral process](#). All these factors exacerbated a [dangerous situation](#).

Given these factors, [many expected](#) partisan violence would mar the American democratic process, with tragic consequences. Experts marked electoral violence as a [clear and present danger](#) ahead of the November 2020 election. [Localized clashes and protests](#) during early voting could have sparked election disruption and violence in other parts of the country or interfered with Americans’ right to vote. The consequences could have been disastrous. Even apart from the obvious cost in human suffering, election-related violence could have undermined the democratic process by feeding into claims made by the losing campaign that the election was illegitimate and unreflective of the “true” will of the voters. In turn, an election disrupted by violence could have created political cover for extraordinary actions testing the boundaries of the nation’s constitutional system, such as [state legislators setting aside their state’s popular vote and choosing electors directly](#).

These expectations of widespread voter intimidation and violence did not materialize initially. Early voting and Election Day passed peacefully. Sporadic incidents were handled quickly and

adeptly by local authorities. The Electoral College's [December 14 vote](#) in favor of Biden for president unfolded without incident.

But losing candidate, incumbent President Trump, spread unfounded conspiracy theories and disinformation that the election had been “stolen” from him. He disputed the election results, using social media and a [barrage of lawsuits](#), even as court after court ruled against him.

And even before the election, incidents of intimidation and threats of violence occurred in parts of the country. Election officials in several states were subjected to [death threats and threats of violence](#). In Michigan, authorities foiled a [plot by a militia to storm the state capitol](#) in October and kidnap several officials, including the governor. After the election, armed [protestors descended on the home](#) of Michigan Secretary of State Jocelyn Benson, targeting her as the state's chief elections officer.

For the entire nation, the semblance of peace was definitively broken on January 6. As Congress met to confirm the Electoral College vote for Biden, President Trump addressed his supporters at a rally in front of the White House. In a speech filled [with violent imagery](#), he urged his supporters to “show strength,” “fight much harder” against “bad people,” and to “stop the steal.” He went as far as to say that, if his supporters did not “fight like hell, you’re not going to have a country anymore.” After rhetorically targeting Vice President Mike Pence, Trump then instructed supporters to march on the Capitol: “...we’re going to walk down, and I’ll be there with you...We are going to the Capitol...” Leaving the rally, hundreds of Trump supporters marched on the U.S. Capitol, many chanting “Hang Mike Pence.” The attackers breached police barricades and stormed into the building itself, crashing through its doors and windows. Once inside, the mob damaged the building and clashed with Capitol Police guarding the legislative chambers and patrolling the halls. The attackers eventually broke into the legislative chambers (shots were fired and glass broken) and the offices of key leaders. Lawmakers fled, were taken to “safe rooms,” or evacuated by Capitol security. The chaos temporarily disrupted the Electoral College confirmation and left four protesters and one Capitol police officer dead. President Trump, meanwhile, watched the attack unfold from the White House.

The mob attack on the Capitol shocked the nation and precipitated a swift backlash. Congress reconvened later that evening and confirmed President-elect Biden's Electoral College victory. Law enforcement—initially unprepared for the assault—commenced a nationwide hunt for the perpetrators. Social media companies booted hundreds of individuals and organizations associated with the incident off their networks, including President Trump himself. The U.S. House voted to impeach President Trump for his role in inciting the January 6 attack, making him the first U.S. President in history to be impeached twice. Security forces swarmed Washington, D.C., and were on high alert across the country in anticipation of further violence.

Further violence did not come. On January 20, President Trump vacated office and President-Elect Biden was inaugurated without incident or disruption. The 2020 election had ended with the duly elected candidate, Biden, assuming political power as the constitution stipulates.

The 2020 election presented a puzzling case study in political violence. The January 6 storming of the Capitol demonstrated the tremendous potential for violence throughout the election cycle. And yet—for all its symbolic power—it stood as an isolated, last-ditch atrocity that sparked widespread outrage and backlash but not further violence. Despite volatile conditions, rising partisan animosity, and President Trump’s willingness to sacrifice democratic norms and institutions for his personal political gain, America escaped widespread partisan violence. Why?

This report analyzes the role of violence before, during, and after the 2020 election, cataloging the isolated occurrences of voter intimidation and violence. A brief conclusion offers possible explanations of why the election proved largely peaceful and explores its potential legacy.

II. Pre-Election Day: Growing Fears

As early voting began across the country, Americans were experiencing a crisis of confidence in their democratic institutions. A [YouGov/Yahoo survey](#) from mid-September found that only 22% of Americans believed the election would be “free and fair.” President Trump’s [continuous](#) and [baseless](#) claims that the 2020 election was “[rigged](#)” against him further undermined public trust in the process—claims he had also voiced [prior to the 2016 presidential race](#), which he won. Many observers feared that violence was the inevitable result of this broad public doubt in the integrity of the election process. Former Vice President Biden gave a speech October 7, [acknowledging](#) the “country is in a dangerous place” and calling for national unity.

Fears of voter intimidation were also [prevalent](#), in part because of Trump’s directive to his supporters to “[go into the polls and watch very carefully](#).” Many prominent state officials, such as [Nevada’s attorney general](#), warned that such activities could constitute voter intimidation. The Healthy Elections Project’s [voter intimidation explainer](#) details the federal and state legal definitions for “voter intimidation.”

Limited, scattered incidents of voter intimidation *did* occur during the early voting period of the general election. On October 1, 2020, Michigan’s attorney general [charged](#) two political operatives with voter intimidation for orchestrating a series of robocalls aimed at suppressing

the vote in the November general election. These robocalls presented false and misleading information about mail-in voting, including [claims](#) that personal information submitted on mail-in ballots could be used to execute outstanding arrest warrants against voters or to collect unpaid debts. Other examples of potential intimidation during the early voting period included:

- [A Miami police officer](#) was disciplined for wearing a “Trump 2020” face mask in uniform and carrying a gun in a polling place during early voting.
- The Trump campaign [videotaped voters](#) dropping ballots off at vote-by-mail dropboxes in Philadelphia. The Pennsylvania attorney general warned that such behavior could violate the state’s voter intimidation laws.
- Republican partisans “[created a commotion](#)” at an early voting site in Fairfax County, Virginia, by waving flags, chanting partisan slogans, and making it difficult for voters to enter the polling place. Some voters reported [feeling intimidated](#) by the behavior, but the incident was ultimately resolved by the actions of local election officials. The Virginia GOP dismissed the incident, responding: “[Quick! Someone call the waaaambulance!](#)”
- Police stationed at early voting sites in Tucson, Arizona, [were removed](#) after voters complained their presence was intimidating.
- Voters in Bernalillo County, New Mexico, [complained](#) of a “Trump Train” vehicle convoy disrupting access to an early voting site. Similar events were reported in [Temecula](#), California.
- Police officers were [stationed outside early voting stations](#) in Laredo, Texas, after pro-Trump supporters were accused of harassing Democratic Party volunteers near a polling place.
- Some Florida and Alaska voters [received threatening emails](#), warning them to “Vote for Trump or else!” Many of these emails claimed to be from far-right militia group The Proud Boys, but the Department of Homeland Security pinned the emails on [Iranian interference](#).
- Minnesota Attorney General Keith Ellison [prevented a private security company](#) from sending private “security guards” to polling places throughout the state, announcing it would have violated state and federal voter intimidation laws.
- In Yolo, California, one voter received a [threatening note](#) left on their doorstep, warning them to cancel their voter registration.

Though such instances were troubling, they were [extremely rare and often quickly addressed](#) by local officials.

There were also limited instances of violent disruption to campaigning and the electoral process. In an incident that was videotaped and reported by national media in late October, a caravan of [pro-Trump supporters](#) surrounded and impeded the movement of a Biden

campaign bus as it was traveling down a highway in Texas. The Republican Party of Virginia's headquarters was vandalized in mid-September in what the party called "[a clear attempt to induce a sense of terror in Virginia Republicans.](#)" A North Dakota man was [arrested](#) for threatening to blow up a polling place. And in Boston, a vote-by-mail dropbox was [set on fire](#) by an arsonist, destroying dozens of ballots. But again, such incidents were rare, and early voting progressed without major disruption across the country.

III. Election Day: Calm Prevails

Despite the relative calm during the early voting period, as Election Day neared, election officials, observers, and the public became increasingly concerned about the possibility of violence. On October 28, the International Crisis Group, an organization that provides early warnings to countries in danger of falling into violent conflict, [warned](#) that the United States was at risk for political violence. A YouGov poll just before the election indicated that [56% of voters anticipated an increase in violence](#) because of the election. In late October, the *Washington Post* [reported survey data](#) showing that 15% of Republicans and 20% of Democrats said the "country would be better off if large numbers of people on the other side 'just died.'" The same [survey](#) showed 18% of Democrats and 13% of Republicans believed violence would be an acceptable response if their side lost the presidential election, and 40% of Americans saw their political opponents as "truly evil."

Fears heightened as leaders of armed right-wing organizations in Georgia [announced](#) they had "troops" ready to intervene at polling places in response to reports of election fraud. Two groups which track extremist organizations in the United States—the Armed Conflict Location and Event Data Project (ACLED) and MilitiaWatch—[issued a warning](#) in late October that right-wing groups posed a "serious threat to the safety and security of American voters." ACLED experts cautioned that right-wing extremist groups had become "[more assertive](#)" in the runup to Election Day and were well-positioned to disrupt voting in key battleground states, such as Georgia, Michigan, Pennsylvania, Wisconsin, and Oregon. The ACLED pre-election [report](#) further detailed this concern.

The prospects for intimidation and violence prompted state and local officials to take unusual steps to head off Election Day violence. In Michigan, for example, the secretary of state [announced](#) a ban on openly carrying firearms at polling places. The move prompted [a backlash](#) by some Michigan county sheriffs, who challenged the secretary of state's authority to impose the ban and refused to enforce it. A [Michigan state court judge](#) subsequently struck down the ban. Police departments in New York, Chicago, Los Angeles, and other cities around the country

mobilized [additional officers](#) and [prepared special contingency plans](#) to respond to election-related unrest. Philadelphia released an [anti-voter intimidation plan](#) and deployed a special task force of attorneys and detectives to follow up on voter intimidation issues. In Portland, Oregon, city officials [discussed](#) the logistics of imposing a curfew if Election Day turned violent.

Civil society groups also mobilized to prevent violence. In Cincinnati, for example, local religious leaders and social workers [participated in an effort](#) to provide trained “peacekeepers” to de-escalate polling place violence. Academic institutions also played a role: In partnership with the [Healthy Elections Project](#), the [Stanford University D. School](#) produced [resources](#) to help election workers prepare for and respond to polling place disruptions.

By Election Day, partisan tension, concerns about voter intimidation, and fears of political violence reached a fever pitch. Happily, [violence was virtually nonexistent, and reports of voter intimidation were few and far between](#). Voting progressed without significant disruption. International observers [declared](#) Election Day to be “orderly,” describing the atmosphere as “peaceful” and “without unrest or intimidation.” The Lawyers’ Committee for Civil Rights Under Law, which runs a prominent national voting complaint hotline, [reported](#) that complaints of voter intimidation were “very isolated and sporadic,” and it is unclear how many of these complaints were substantiated. Some examples of incidents are collected below

:

- In Surprise, Arizona, a man [repeatedly drove past](#) a polling place holding a sign saying, “Bidens Shot” [sic] in an apparent attempt to discourage and confuse voters.
- Officials in Michigan, Iowa, Ohio, Kansas, Nebraska, and New York [reported](#) that some voters received robocalls spreading misinformation about voting, including a false claim that voting had been extended into Wednesday because of long lines at the polls.
- In West Boca Raton, Florida, a poll worker [alleged](#) that pro-Trump supporters “threatened, harrassed, taunted, harangued and even physically assaulted” poll workers, turning the polling place into a “war zone.” He further alleged that police efforts were “cursory” and failed to curb the potentially intimidating behavior.

ProPublica published in-depth [reporting](#) that substantiated a handful of other voter intimidation instances. Though such reports are troubling, these events were extremely rare. Despite all warnings and fears of violence, Election Day was peaceful and orderly across the country.

IV. Post-Election Day: The Capitol Riot

In the election's aftermath, President Trump repeatedly questioned its legitimacy, while President-Elect Biden called for calm and national unity. Trump's actions encouraged his supporters to resist Biden's victory, raising the possibility of partisan violence. Pro-Trump supporters mobbed ballot counting centers, staged small-scale protests in major U.S. cities, and issued numerous death threats to election officials. Their activities culminated in the January 6 storming of the U.S. Capitol, which—though horrific—ultimately failed to disrupt the transfer of power and President Biden's inauguration. This section examines the role of violence in the post-election period.

In the days immediately following the election, while votes were still being counted in some key states, pro-Trump crowds [gathered](#) outside of ballot counting facilities in swing jurisdictions. Though many of these gatherings were acrimonious, there was no evidence they had any meaningful impact on the counting process, and they were largely non-violent. For example, in Maricopa County, Arizona, Trump supporters—including some carrying [semiautomatic rifles](#)—gathered outside a [ballot-counting facility](#), prompting the county to shut down access to the building while officials continued to count ballots inside. Similar scenes unfolded in [Las Vegas](#) and [Philadelphia](#). On November 6, police [arrested and charged](#) two armed men in Philadelphia after being tipped off that the individuals were preparing to disrupt vote counting. In Detroit, a pro-Trump crowd [briefly became](#) chaotic after election officials informed dozens of poll watchers that they could not reenter the tally room because of room capacity constraints. Those denied access began pounding on the doors and windows of the center, shouting “Let us in” and “Stop the count.” Though the gatherings outside ballot counting centers were unusual compared to previous years, they did not significantly disrupt the vote counting process.

The gatherings at vote counting centers were accompanied by relatively [small protests and counter-protests](#) around the country, including in the cities of Los Angeles, New York, Houston, Pittsburgh, Minneapolis, and San Diego. In most cases, they proceeded without major incident, though some protests devolved into chaos. In Portland, Oregon, the governor [called in the National Guard](#) to control protesters and counter-protesters who destroyed property and looted businesses.

One of the largest [pro-Trump rallies](#)—labeled the “Million MAGA March” by its organizers—occurred in Washington, D.C., on the weekend of November 14. [Several thousand supporters attended](#), including conspiracy devotees and participants from well-organized far-right extremist groups. Though largely peaceful during the day, Trump supporters clashed with

counter-protesters throughout the night near the White House. At least [one person was stabbed](#), and two police officers were injured.

Prominent Republican leaders encouraged the protesters with [violent, warlike rhetoric](#). Former National Security Advisor Michael Flynn told pro-Trump supporters in D.C. that Republicans were “[waging a battle across America](#).” The Arizona Republican Party [retweeted a right-wing activist’s promise](#) to die for Trump and challenged other Arizona Republicans to make a similar pledge. A Washington State representative called on Republicans to “[prepare for war](#),” describing President-Elect Biden’s election victory as a “coup.” Democrats—including the Biden campaign itself, which continuously described the election as a “[battle for the soul of the nation](#)”—deployed rhetoric, but its use was also tempered by calls for unity and calm, particularly during the post-election period.

As the protests unfolded, media reported a large increase in [death threats directed at election officials](#), a phenomenon that became common in jurisdictions around the country. The threats targeted officials from both parties. Some of these incidents are described below:

- Pro-Trump protesters [harassed](#) Arizona Secretary of State Katie Hobbs outside her home, chanting, “We are watching you” and threatening to kill the Democrat’s family.
- Georgia’s Republican Secretary of State Brad Raffensperger and his wife [received threats](#), saying he “deserved to face a firing squad” and warning him: “You better not botch this recount. Your life depends on it.” About 200 pro-Trump protesters also staged a protest [rally](#) outside his home.
- In Gwinnett County, Georgia, a 20-year-old voting machine technician [received death threats](#) after someone posted a video of him on the internet that showed him conducting a routine procedure but claimed it showed him manipulating recount data. Similar threats were directed at an [Atlanta ballot processing worker](#) who was captured on video discarding an instruction sheet that a voter had mistakenly returned with their absentee ballot. Someone posted the video on Twitter and purported that it showed the worker destroying ballots. Georgia election officials have since confirmed that the posted video depicted legal and routine behavior related to the recount.
- The Vermont secretary of state’s office received [threatening calls](#), warning they would be executed by a firing squad.
- The Washington State elections director Lori Augino’s [picture appeared on a “kill list”](#) website, along with her home address, a photo of her house, and her email address. Augino and her family [went into hiding](#). The FBI later [announced](#) that the website was created by Iranian-linked entities attempting to incite violence against U.S. officials.
- In Michigan, the Republican chairperson of the Wayne County Board of Canvassers [received threatening emails](#), after she initially refused to certify the election’s results.

The emails contained images of dead women and included threats against her daughter.

- Armed protesters [chanted obscenities](#) outside the home of Michigan Secretary of State Jocelyn Benson.
- Employees of Dominion Voting Systems, the provider of voting machines for many jurisdictions throughout the country, went [into hiding](#) after receiving countless death threats. The threats repeated conspiracy theories that Dominion's machines were part of a plot to throw the election to Biden. Dominion voting machines were used in [28 states](#), including the key swing states of Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin.
- [Unspecified threats](#) to Michigan's presidential electors for Biden prompted Michigan to close public access to the state Capitol building on November 14.

As of January 20, no election officials had been physically harmed. But the threats are a concerning development that underscores the growing volatility of the election process in some parts of the country and that may [portend future violence](#).

[Small-scale, pro-Trump protests continued](#) through December, with the defeated president's supporters vowing not to recognize President-Elect Biden's legitimacy. While these protests were largely peaceful, they occasionally lapsed into localized violence. Over the weekend of December 12, for example, pro-Trump supporters—including sizeable contingents from extremist groups like the “Proud Boys” and QAnon conspiracy believers—[gathered in Washington D.C.](#) Clashes between those supporters and counter-protesters left four people with stab wounds and eight police officers injured. D.C. Police Chief Peter Newsham [reported](#) that it appeared protesters from both sides were responsible for instigating some portion of the clashes. Police launched an investigation into pro-Trump supporters for [hate crimes and vandalism](#) directed against historically black churches in the District. D.C. Mayor Muriel Bowser [described the violence](#) as a “symptom of this hateful rhetoric” from “people who refuse to accept the results of a fair American election.”

Pro-Trump protest rallies culminated on January 6, when thousands of President Trump's supporters, many armed with weapons, stormed the U.S. Capitol building in an attempt to halt Congress' certification of the Electoral College vote for Biden. The hours-long siege stunned the nation and the world, as detailed media coverage captured the attack as it unfolded:

- The full text of President Trump's rally speech to supporters, beckoning them to march on the Capitol and “fight like hell,” is available [here](#).
- [NPR's event timeline](#).

- *Washington Post's* [multimedia presentation](#) incorporating photographs and video of the incident.
- *New York Times'* [event timeline](#).
- ProPublica's [library of over 500 images and videos](#) from the attack.
- [The New Yorker's coverage](#) from a reporter inside the Capitol at the time of the attack.

The attack resulted in five deaths, [including that of a Capitol police officer](#). The pro-Trump mob did not stop Congress' certification of the election results; Congress reconvened after the building was secured and swiftly confirmed President-Elect Biden's victory. Over 100 Republican lawmakers voted against certification.

[Evidence and witness testimony](#) presented in February during Congressional hearings about the January 6 attack suggested that the attackers included a large number of people from white supremacist groups. It also indicated the attacks were inspired and encouraged by Republican political leaders, ranging from state house representatives to President Trump himself. The extent to which Republican leaders played a role in its organization remains unclear. Emerging evidence shows that [multiple people connected to the Trump campaign](#) helped procure the rally's permits and organize the event. Some U.S. House Democrats called for [an investigation into "suspicious" Capitol tours](#) given in the days preceding the attack. They theorized that Republican lawmakers and/or staffers may have actually been leading "reconnaissance tours" for those later involved in the attack—suggesting that the attack was premeditated and facilitated by some Republican leaders.

The Capitol attack largely overshadowed several related incidents on January 6. Also in Washington, D.C., on January 6, [pipe bombs were discovered and dismantled](#) at the headquarters of both the Republican and Democratic national committees. In more than a [dozen state capitals](#), pro-Trump protesters gathered to denounce the Electoral College results and threaten state officials. In Washington State, protesters—some armed—[stormed the exterior gates of the governor's mansion](#) but did not make it inside the building itself. Trump supporters in Oregon [burned an effigy of Democratic Governor Kate Brown](#), and Oregon state troopers arrested a man for attempting to enter the state capitol with a firearm. In Arizona, about 1,000 Trump supporters [erected a guillotine](#) outside the state capitol. Government complexes in [Utah, New Mexico, Texas, and Georgia closed](#) in response to protests.

The consequences of the attacks have been dramatic and varied and have included the following:

- Federal officials launched a massive law enforcement manhunt to find and arrest participants of the January 6 attack on the U.S. Capitol. [Some of the perpetrators were](#)

[quickly](#) and easily identified because of their unique attire and frequent appearances on videos taken by other participants and security cameras. As of March 2021, over 300 participants in the attack had been arrested and federally charged, [and there were 540 open investigations](#).

- Following the breach of The Capitol by rioters, over [25,000 National Guard soldiers](#) were placed around the Capitol building and in the surrounding downtown areas. The security precautions helped prevent further violence and led to multiple arrests. On January 7, a QAnon conspiracy theorist who had [driven a truck loaded with weapons](#) from Colorado to D.C. was arrested after threatening elected officials, including House Speaker Nancy Pelosi. On January 16, Capitol police [arrested](#) a man at a security checkpoint who was carrying a gun and an 'unauthorized' credential for the January 20 inauguration. [Multiple similar incidents](#) took place in the days that followed.
- [State governments placed law enforcement on high alert](#) to address any potential for additional violence during the inauguration. Police officers and National Guard troops hastily fortified state legislature buildings and other government complexes around the country. On January 17, small groups of pro-Trump protesters [gathered outside several state houses](#) but were dispersed without violence.
- Criticism over U.S. Capitol security failures led to the [resignations](#) of the Capitol police chief and the House and Senate sergeants-at-arms. Congress and federal law enforcement agencies have launched [sweeping investigations](#) into the failures.
- The January 6 attack highlighted the potential that extremists could infiltrate the ranks of police and military. Investigations estimated that almost [30 military](#) and [law enforcement](#) officers participated in the January 6 attack, prompting the FBI to [vet National Guard members](#) assigned to protect the inauguration ceremony January 20.
- Social media companies took more aggressive actions to dismantle networks of right-wing agitators and Republican leaders—including President Trump—on their platforms. Their efforts appeared to be working: [An initial study shows that online misinformation about election fraud dropped 73%](#) after their accounts were suspended. But right-wing groups have now [migrated to encrypted messaging services](#), making their activities less visible to potential new recruits but more difficult to monitor.
- On January 13, the U.S. House of Representatives [voted to impeach former President Trump](#) for inciting the January 6 violence and insurrection, making him the only U.S. President in history to be impeached twice. The U.S. Senate voted [57 to 43](#) to find Trump guilty, but a two-thirds majority is required to convict.

The storming of the U.S. Capitol building shocked the nation and carried immense symbolic power. Though it is difficult to predict how the attack's consequences will continue to unfold, it seems destined to become a dramatic moment in American politics.

The January 6 Capitol attack marked the zenith of violent activity during the 2020 presidential election. On January 20, President Trump vacated office and President-elect Biden was inaugurated without incident. Ultimately, the 2020 election resulted in a profoundly scarred, but peaceful, transfer of political power.

V. Conclusion

The 2020 election presents a puzzling case study in political violence. In a country where mass shootings are common, a hotly contested, acrimonious election did not devolve into widespread violence at the polls. Despite [violent rhetoric and growing partisan animosity](#), widespread voter intimidation did not materialize. Early voting and Election Day voting proceeded peacefully. Angry crowds surrounded ballot counting facilities, but they did not interfere with the counting process. Election officials across the country received death threats, but none were physically harmed. Protesters and counter-protestors engaged in clashes, but the conflicts were limited in number and relatively small in scope. Republican officials encouraged supporters to challenge the presidential election's outcome, but none were successful in overturning the results. Protesters stormed the U.S. Capitol, killing five, but the attack did not achieve the attackers' goal of stopping the transfer of power. In short: The 'warning signs' were all flashing, but the voting process played out in a largely peaceful manner, and the government institutions were sufficiently strong to resist attack.

There is no clear answer to explain how the 2020 presidential voting was able to succeed despite what many called the clear and present dangers to democracy. Several explanations are plausible. One explanation could be simply that the warnings of nationwide violence were overblown. Violent rhetoric from partisan leaders and supporters could have simply been hot-headed hyperbole. Acrimonious protests do not necessarily imply people are willing to take unlawful actions. Though the isolated clashes were violent, their relatively small scale and the fact that radical fringe groups like the "Proud Boys" were the driving force of such gatherings—rather than more mainstream GOP supporters—underscore the lack of widespread, normalized partisan violence.

Another possible explanation is that events before and after Election Day lowered the stakes of the election results and therefore reduced the value of violent opposition. Though Republicans lost the presidency, they improved their numbers in the [U.S. House](#) and retained a newly minted majority on the U.S. Supreme Court. U.S. Supreme Court Justice [Ruth Bader Ginsburg](#)'s death in September and the swift confirmation of Justice [Amy Coney Barrett](#) solidified a conservative majority on the Supreme Court for the foreseeable future. Justice Barrett's

confirmation further consolidated the [influence of Republican-appointed judges](#) throughout the federal judiciary. Until Georgia's January 5 runoff election for two U.S. Senate seats—held the day before the Capitol attack—Republicans maintained control of the U.S. Senate. At the state level, Republicans continued to hold a majority of [gubernatorial seats](#) and [state legislatures](#). These factors combined may have convinced Republicans their policy priorities were still significant and secure. Such robust representation may have made it 'safer' for Republicans to lose the presidency and reduced any potential value of violent opposition.

The actions of individual actors may have also played a role. On November 7, as his electoral lead widened, President-Elect Biden used [a widely broadcast speech](#) to appeal for calm and unity, reminding Americans that, though "[w]e may be opponents, [] we're not enemies." At the local and state levels, this call was echoed by officials from [both parties](#), who assured their constituents that the [electoral process was working](#) and asked for [patience](#). President-Elect Biden continued to reinforce these themes through the post-election period and devoted most of his [inauguration speech](#) to an impassioned call for unity. These appeals may have calmed tensions at a critical time.

Republican officials may also have retained some hope in their future ability to win elections, thus reducing the appeal of resorting to violent opposition. Proclivity for violence against democratic systems is highest when an election's losers do not believe there is any value in working within the bounds of the democratic system. Republican leaders, who hold a majority of state elected offices, increased their share of seats in the U.S. House of Representatives and lost two U.S. Senate only by the slimmest of margins. They may believe their political future was bright and, therefore, had no need to risk open violence. And President Trump announced his intention to return "[in some form](#)" to politics.

A more optimistic explanation: U.S. institutions worked. State and local officials planned for and handled emerging controversies. Election officials overcame daunting challenges and ran a technically sound, orderly election. President Trump and his supporters railed against the electoral process but were willing, at least initially, to work within normal institutional procedures to challenge it, filing [numerous](#) lawsuits. When those lawsuits failed, their efforts to overturn the election lost legitimacy and were abandoned by key Republican officials—including Vice President Mike Pence—splitting the party. Key Republican secretaries of state and legislators rejected President Trump's efforts to overturn the will of the voters.

Some combination of these explanations may partially explain why the 2020 election remained relatively peaceful. But a final possible factor might be simply luck. Given the same circumstances, it is plausible to think that more violence could well have transpired. A slightly different course of events—a political leader's provocative comment, revelations of foreign

interference at a key moment, an inflammatory video broadcast on social media, an accidental discharge of a firearm in a polling place or at a crowded protest—could easily have spiraled into more significant chaos and violence. And had evacuations of Congressional leaders been delayed, or if the evacuation of those leaders had been intercepted by the January 6 mob, the attack on the U.S. Capitol building could have resulted in the death of Congressional members, even the vice president, potentially upending the American democratic process.

Though the 2020 election itself was more peaceful than many anticipated, it still leaves behind a troubling legacy. Election officials and their families faced death threats and increasingly acrimonious encounters with the public they serve. Former President Trump’s continuous and baseless claims of fraud may undermine public faith in the democratic system for decades to come. Polling done a week after the January 6 attack showed that [21% of Republicans approved of the attack on the U.S. Capitol](#) and fully half said they would describe the insurrectionists as “defending freedom.” More than 80% of Republicans also said they [did not blame President Trump](#) for the violence. The insurrectionists’ “success” at delaying Congress’ certification of the 2020 presidential election [raised the profile of right-wing militia groups](#), potentially fueling their future recruitment efforts. Though the U.S. dodged political violence this time, declining public trust in the electoral process and rising partisan rancor does not bode well for future stability.

The 2020 election demonstrated that the erosion of democratic norms for the personal political gains of politicians can have violent consequences. Whether or not America has learned this lesson in time to avoid future violence and division remains to be seen.

CHAPTER 4

MAIL VOTING



CHAPTER 4: MAIL VOTING

INTRODUCTION

One of the most notable aspects of the 2020 elections was the significant increase in the number of voters who cast absentee or mail ballots. Though the percentage of Americans voting by mail has [steadily increased](#) over the last 25 years, and mail voting had already become the predominant method of voting in a handful of states prior to 2020 (e.g. Washington, Oregon, California, Colorado, Utah, and Hawaii), tens of millions of Americans voted by mail for the first time in 2020, primarily to avoid the health risks of in-person voting amid the pandemic. About [46%](#) of [all voters](#)—approximately 73 million Americans—cast their votes by mail or absentee ballots in the 2020 presidential election, more than double the prior record set in the 2016 presidential election (in which about 21% of voters cast absentee or mail ballots).

The surge in demand for mail voting launched numerous policy and legal debates regarding whether and how to scale and administer mail voting in the pandemic. Questions included who should be able to pick up mail ballots and drop them off on behalf of other voters (an issue known as “ballot collection” or sometimes “ballot harvesting”), whether and in what circumstances voters and those assisting them should be able to drop off absentee ballots at drop boxes (in addition to mailboxes, post offices, election offices, or polling places), and what happens when a voter fails to insert their ballot into the “secrecy sleeve” (or inner envelope) that some states send with the package of ballot materials. Although the potential for mailed ballots to arrive late is always an issue, in 2020, structural changes at the U.S. Postal Service (USPS) implemented by a political appointee of President Donald J. Trump caused some to question the capacity and commitment of the USPS to deliver mail ballots on time. For ballots returned on time to election officials, some observers feared that an unprecedented number of absentee ballots would be rejected due to voters’ inadvertent failure to comply with all the ballot signature and witness requirements or due to a determination by election officials that the signature on the ballot did not match the voter’s signature on file. These issues, and many more related to mail voting, were the subject of over [260 pre-election lawsuits](#) challenging how the procedures and rules of mail voting apply in the pandemic—an unprecedented volume of litigation on the topic. The research in this chapter explores each of these issues in detail. A summary of each report follows.

Ballot Collection in the 2020 Elections

The coronavirus pandemic heightened the importance of ballot collection in 2020, as a record number of people voted absentee because they were unable to vote in person or uncomfortable

with the risk posed by leaving their homes to return their ballots. Ballot collection refers to the practice of third-party individuals gathering and submitting completed absentee ballots for other voters. Ballot collection can provide a convenience for all voters who cast mail ballots, and it can provide a solution for mail voters with disabilities or other challenges that make going to a post office, mail box, or election site particularly difficult. This memo surveys the debate about ballot collection, the state laws regulating it, and the litigation regarding ballot collection laws and practices in the 2020 general election.

Ballot Drop Boxes in the 2020 Elections

During the 2020 general election, the absentee ballot drop box became an increasingly popular option for voters to submit completed mail ballots to election officials without using the mail. While some states had successfully used ballot drop boxes for years, the coronavirus pandemic jump-started the practice throughout the country, particularly after questions emerged about the U.S. Postal Service's capacity to deliver absentee ballots reliably on time. Although a few states, such as Tennessee and Missouri, prohibited the use of ballot drop boxes, citing the risk of voter fraud, nearly 40 states had ballot drop boxes available during the 2020 general election, and voters' use of ballot drop boxes was the highest of any election in American history.

U.S. Postal Service and the 2020 Elections

In the months leading up to the 2020 general election, many Americans expressed growing fears about the U.S. Postal Service (USPS) and its ability to deliver mail-in ballots in a timely manner. Despite an increased use of vote-by-mail during the coronavirus pandemic and public concerns about Postmaster General Louis DeJoy's decision-making, more than 97% of ballots were delivered without delay throughout the final weeks of the election, and the agency administered the largest vote-by-mail election in American history. There were, however, significant regional variations in on-time delivery.

Secrecy Sleeves and the "Naked Ballot" in the 2020 General Election

Less than two months before the 2020 general election, the Pennsylvania Supreme Court ruled that election officials must reject mail-in ballots received without the "secrecy sleeve," the inner envelope that holds the ballot and protects the voter's privacy while their personal identifying information and signature is being examined. Philadelphia City Commissioner Lisa Deeley warned that the state supreme court's ruling could lead to the rejection of around 100,000 additional absentee votes in the 2020 general election—a staggering number that could potentially impact the outcome of the presidential election. Ultimately, perhaps due to greater awareness brought to the issue by Deeley's warning and public education campaigns, only 7,411 absentee votes were rejected in Pennsylvania for any reason, including for lack of a secrecy sleeve. This paper summarizes the secrecy sleeve rules in Pennsylvania and 16 other states that used secrecy

sleeves in the 2020 general election, as well as a few states that left the use of secrecy sleeves up to counties. It also examines the impact of those rules on ballot rejection rates in the 2020 general election.

Signature Verification and Witness Requirements in the 2020 Elections

Due to the coronavirus pandemic, more than 92 million voters requested or were sent a mail ballot for the 2020 general election. In the months before the election, some experts estimated that up to 80 million Americans would submit a mail ballot in the 2020 general election. In the end, approximately 73 million votes—or 46% of all votes cast—were cast by mail, more than double the percentage from 2016. Many of these voters used absentee ballots for the first time and were not aware of the procedures used by their state to confirm their identity on their mail ballots. While rules differed by state, they typically included requirements that the voter sign the return ballot envelope and, often, that the voter's signature match the voter's signature on file with election officials. Experts predicted that the increase in mail ballots for the 2020 general election would likely result in a higher number and a higher percentage of ballot rejections—a prediction driven by the high number of expected first-time users of mail ballots—a group more likely to make mistakes in completing their ballots. Some observers also expressed concern about how election officials would determine whether voter signatures on their return ballot envelopes matched their signatures on file. The early data available suggests that election officials rejected a lower *percentage* of mail ballots in November 2020 than in previous years but, due to the increased volume of mail ballots, a higher *absolute number* of mail ballots. This report examines the signature verification landscape across the United States during the 2020 elections, with a particular emphasis on the battleground states of Arizona, Florida, North Carolina, Michigan, Pennsylvania, and Wisconsin.

Pre-Election Mail Voting Litigation in the Coronavirus Pandemic

Facing projections that 80 million Americans or more might choose to vote by mail in the November 2020 general election, stakeholders turned to the courts to clarify the appropriate ways for election officials to adapt, apply, and administer the rules of mail voting in the highly competitive elections taking place during the coronavirus pandemic. Plaintiffs across the country filed over 340 lawsuits between March 4, 2020, and November 3, 2020 (Election Day), challenging election procedures affected by the coronavirus pandemic, including nearly every aspect of the absentee balloting process. They asserted claims under a variety of state and federal laws and constitutional provisions. This report outlines the many legal challenges to absentee and mail voting systems brought from the beginning of the coronavirus pandemic in March up to Election Day, largely in response to the pandemic.

Ballot Collection in the 2020 Elections

March 10, 2021

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I. Introduction

In the wake of an election with a [record number](#) of absentee ballots, every aspect of the mail balloting process has garnered renewed attention. Most voters of mail ballots deposit their ballots into mailboxes or drop boxes or deliver them to polling places or election offices. In the 2020 general election, as in prior elections, some mail voters gave their completed ballots to family members, friends, or other third parties who delivered them on their behalf. The coronavirus pandemic increased the salience and importance of the rules concerning such third-party ballot collection, because many people were unable or unwilling to leave their homes to deposit their ballots themselves.

The practice of ballot collection (which is sometimes pejoratively called “ballot harvesting”) has led to debate over how best to balance voter access and convenience with election security and integrity. In 2020, as in past years, partisans argued about the chain of custody in ballot delivery and the potential for election fraud. This policy debate also spilled over into the courtroom during the 2020 election season, as plaintiffs in several states litigated the topic of ballot collection laws and practices. This report reviews the general parameters of the debate around ballot collection, the specific allegations of fraud in ballot collection during the 2020 election, the various state statutory requirements governing ballot collection in 2020, and the many lawsuits on the topic in 2020.

II. The Debate Over Ballot Collection or “Harvesting”

As with so many issues concerning mail balloting, the different policies surrounding the collection and return of mail ballots became topics of polarized debate. Those who saw third-party assistance as helpful in granting greater accessibility to voters often refer to the practice as “community ballot collection.” Those who opposed the practice called it “ballot harvesting.” As the parties’ positions in litigation attested to, Democrats in 2020 generally favored the practice, while Republicans generally opposed it.

Supporters of third-party collection of ballots maintained that the practice was critical for voters who had difficulty returning their ballots in person or through the mail. This was particularly true for voters in [rural areas](#) or [Native Americans living on reservations](#), where the nearest post office, mailbox, or ballot drop box might be far away from their residence. For voters who lacked cars and did not have regular postal service to their residence, having a third party

collect and return their ballots could be critical in getting ballots to an election official in time to be counted. The coronavirus pandemic exacerbated many of these concerns, especially for individuals vulnerable to respiratory diseases who faced increased risks when leaving the house or taking public transportation. Even though many states expanded mail-in voting due to the coronavirus pandemic, ballot collection was still an important option for individuals who feared that the postal system might delay or lose their ballots.

[Opponents of ballot collection](#) contended that the practice increased the likelihood of voter fraud or intimidation. Once the ballot left the voter's hand, the voter had no control over what the third party ballot collector might do with the ballot—revote it, tamper with it, destroy it, or fail to deliver it on time. Critics pointed to a 2018 [high-profile ballot collection](#) violation in North Carolina's Ninth Congressional District. There, a campaign consultant was [indicted](#) for [improperly handling](#) absentee ballots by having people other than the voters to whom absentee ballots had been issued mark or sign as witnesses for voters they had never met. With respect to voter intimidation, opponents of ballot collection [cited instances](#) where third-party ballot collectors have “strong-armed” voters, pressuring them to complete and hand over their absentee ballots.

III. Ballot Collection Allegations in the 2020 General Election

Disputes over ballot collection flared up in a small number of states during the 2020 election season. The few allegations of fraud due to ballot collection, and the tenuous nature of some of the allegations, suggested that ballot collection fraud was not a widespread problem. There were three broad categories of allegations: (1) misuse of drop boxes by voters; (2) misuse of drop boxes by partisan organizations; and (3) partisan officials being paid to manipulate and deliver absentee ballots.

A. Drop box misuse by voters

The Republican Party alleged that ballot collectors routinely dropped off multiple ballots at ballot drop boxes, in violation of Pennsylvania state law. In Northampton County, Pennsylvania, the county GOP said its volunteers, while monitoring the county's four ballot drop boxes from a distance, witnessed about 10 cases of people dropping off multiple ballots, [according to](#) the county Republican Party chairwoman, Lee Snover. Snover posted photos of what appeared to be voters dropping off bags of ballots, in violation of Pennsylvania's restrictive ballot collection

laws that do not permit third-party ballot collection. In Philadelphia County, the Trump campaign [videotaped](#) voters dropping off two or three ballots at a time. In response, the city solicitor for Philadelphia noted that, while third-party delivery is generally prohibited, “voters who require assistance delivering their ballot may appoint an agent to do so.” County executives, along with Pennsylvania Attorney General Josh Shapiro, also reiterated that dropping off another person’s ballot was illegal.

B. Drop box misuse by election officials

The major conflict over drop box misuse occurred in early October in California, where state and county-level Republican parties [set up](#) more than 50 unofficial drop boxes, labeled them as “official” “secure ballot dropoff location[s],” and indicated they were “approved and bought by the GOP.” The drop boxes were placed in Los Angeles, Fresno, and Orange counties. The California Republican Party argued that these drop boxes were effectively the same as in-person ballot collection and, therefore, complied with California’s ballot collection law. California law permitted anyone to collect and submit another voter’s ballot. Opponents of the GOP drop boxes, including California Attorney General Xavier Becerra, argued they were illegal because California law prohibited unofficial, unauthorized drop boxes and because they constituted fraudulent solicitation of votes.

California Secretary of State Alex Padilla sent a [cease-and-desist letter](#) to the California Republican Party, warning that he would pursue legal action if the Republican Party did not comply by October 15. The California Republican Party said it would not comply with the cease-and-desist order, but it did agree not to use unstaffed or unsecured ballot drop boxes. Padilla [decided](#) not to take further action and said that he would continue to monitor the Republican Party’s activities and proceed with an investigation, if necessary. On October 21, when some social media posts showed that the drop boxes were still wrongly marked as “authorized” or “official,” Padilla and state Attorney General Becerra sought a subpoena, seeking information about voters whose ballots had been collected at the unauthorized drop boxes. A California court [denied](#) the attorney general’s motion to expedite the lawsuit, and Becerra voluntarily [dismissed](#) the lawsuit because he said his office was able to ensure through other means that the ballots dropped in the Republican boxes had been delivered to election officials. The California Republican Party blamed the misleading signage on its drop boxes on “overzealous” volunteers and said the improper signage was quickly taken off the drop boxes.

C. Manipulating and delivering absentee ballots

Opponents of ballot collection argue that laws permitting ballot collection open the door for individuals to collect large numbers of ballots and tamper with or alter them. In Texas, [state law](#) allowed absentee voters to have their ballots returned by a family member, roommate, or, in the case of a person with a disability, a person designated as their voting assistant. In [In re Hotze, plaintiffs](#), a group of Republican voters, party officials, and political nominees, petitioned the Texas Supreme Court for a [writ of mandamus](#) to invalidate a Harris County clerk's decision to allow voters to drop off completed absentee ballots to 11 county clerk annexes. In the [petition](#), the plaintiffs submitted affidavits from two private investigators who said they had documentation that two Democratic campaign operatives were collecting blank absentee ballots and ordering others to complete the ballots, pretending to be other people, including dead people, homeless people, and nursing home residents. The claims were unsupported by any evidence other than the affidavits, and the Texas Supreme Court [denied](#) the writ of mandamus without comment.

At the end of September, ballot collection critics in Minnesota [cited](#) videos of a man driving around Minneapolis, appearing to be illegally delivering dozens of completed absentee ballots. Project Veritas, a right-wing organization that promoted the video, alleged that the man was paid by a representative in the U.S. House to harvest those ballots. However, the Stanford Internet Observatory's Election Integrity Partnership [concluded](#) that the video was part of a "coordinated elite disinformation campaign." Indeed, the original footage of the video was produced when Minneapolis had permitted individuals to collect more than the statutory limit of three ballots. The man in the video also [denied](#) that he filled out the ballots or altered them in any way.

IV. State Rules on Ballot Collection

Laws and regulations governing the collection of ballots vary significantly by state and tend to revolve around two issues: (1) who is allowed to assist voters by collecting and returning their ballots; and (2) how many voters can a third party help via ballot collection. Some states have additional restrictions on ballot collection, and many states include exclusions or exceptions to the general regulations. For a list of state-specific regulations, please refer to this [table](#) (although recent changes in states, such as Florida, may not be reflected there).

A. Who can assist with ballot collection?

Ballot collection rules vary by state. Four states (Alabama, Nevada, Oklahoma, and Pennsylvania) ban ballot collection by third parties altogether, allowing no one but voters themselves to drop off their ballots. Eleven states (Alaska, Arizona, Georgia, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, and Texas) allow a family member, friend, caregiver, or member of the voter's household—some allow all four—to drop off an absentee ballot on behalf of a voter.

Seven states (California, Colorado, Connecticut, Indiana, Maine, Oregon, and Tennessee) permit additional third parties—outside of immediate family members or caregivers—to assist with ballot collection. For instance, [Indiana](#) permits a “person designated as the attorney for the voter” to collect a voter's ballot. [Connecticut](#) permits police officers to collect ballots. [California](#) allows voters to “designate another person to return the ballot,” without requiring a ballot collector to have any specific relationship to the voter.

Some states impose additional restrictions on who can collect and deliver an absentee ballot. Virginia and Washington, D.C., for instance, allow third-party ballot collection only in emergency or extenuating circumstances, such as disability, illness, or accident. While [Virginia](#) issued official guidance explicitly stating that contracting COVID-19 was a valid excuse for third-party ballot collection in 2020, the District of Columbia was silent on the matter. Three states (California, North Dakota, and Maine) explicitly prohibit compensation for delivering a ballot on behalf of a voter.

Finally, the laws in 13 states (Delaware, Idaho, Hawaii, Kentucky, Mississippi, New York, Rhode Island, Utah, Vermont, Washington, Wisconsin, Wyoming, and West Virginia) do not explicitly specify who can collect ballots; third-party ballot collection is neither explicitly prohibited nor explicitly protected by state regulations.

B. Limits on the number of ballots collected

In addition to regulations concerning who can deliver a ballot on a voter's behalf, many states restrict how many ballots an authorized individual may deliver on behalf of other voters. Eleven states (Arkansas, Colorado, Georgia, Louisiana, Maine, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, and West Virginia) explicitly limit the total number of ballots an authorized individual may deliver on behalf of voters. Delivery limits range from no more than one ballot, as in [Louisiana](#), to no more than 10 ballots, as in [Colorado](#) and [Georgia](#). Limits on how many ballots a notary public can notarize in one election range from three ballots, the limit in [New](#)

[Jersey](#), to 20 ballots, the limit in [Oklahoma](#). The remaining states that allow for third-party ballot collection do not specify or restrict the number of ballots a third party may deliver or notarize on behalf of voters.

C. Other ballot collection measures to address fraud

Some states impose additional restrictions on ballot collection to reduce the likelihood of voting fraud, such as the possibility that a person collects ballots but then fails to deliver them. In [Oregon](#), no one may collect ballots within 100 feet of any building that is officially designated for ballot drop off. Third-party ballot collectors are also prohibited from establishing a location to collect voted ballots *unless* the third party displays a sign stating: “NOT AN OFFICIAL BALLOT DROP SITE.” These measures are designed to prevent voters from dropping their ballots off at a location they mistakenly believe is an official voting location.

Some states have adopted measures to ensure that ballot collectors do not fraudulently obtain or tamper with voters’ ballots. For example, 13 states (Arkansas, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Montana, Nebraska, New Jersey, North Dakota, South Carolina, and South Dakota) require authorization—often by voter signature—to collect and drop off ballots on behalf of the voter. [South Dakota](#) takes a different approach, requiring that ballot collectors directly notify the election supervisor of the precinct for each voter from whom they collect a ballot. [Nebraska](#) prohibits a candidate or anyone serving on a candidate’s campaign committee from serving as a ballot collector, unless the person is a member of the voter’s family. This ostensibly reduces the likelihood that a ballot collector would be incentivized to tamper with the ballot.

Some states attach criminal penalties to aspects of ballot collection in order to deter voter fraud. For instance, in four states (Arizona, North Carolina, Oklahoma, and Texas), an unauthorized third party who collects and delivers a ballot on behalf of a voter commits a felony. [Texas](#) explicitly makes it a felony to collect ballots “with intent to defraud the voter or the election authority.”

D. Statutory changes to ballot collection laws in light of COVID-19

In response to the extenuating circumstances surrounding the coronavirus pandemic, a couple of state legislatures relaxed their ballot collection or drop-off laws. For instance, Illinois [modified](#) its election law, permitting election officials to “establish secure collection sites for the postage-free return of vote by mail ballots.” In Nevada, the legislature repealed its criminal prohibition on ballot collection and [permitted](#) voters to authorize third parties to return their

ballots. While statutory changes to ballot collection laws have not been widespread, court orders relaxing ballot collection laws in light of the pandemic have been more commonplace. These court orders and lawsuits are discussed below.

V. Lawsuits Over Ballot Collection Laws

Ballot collection has been, not only a contentious talking point and legislative issue but, the subject of litigation over the legality and constitutionality of various ballot collection statutes. Cases were brought by different parties in different states, with the [Republican](#) and [Democratic](#) parties often intervening. Some plaintiffs challenged restrictions on ballot collection, while others challenged the lack of restrictions. Litigants ground their claims on a variety of state and federal statutes and have reached a variety of outcomes..

A. Challenges to laws restricting ballot collection

Plaintiffs who support ballot collection have challenged restrictions on the practice. Among the claims they have raised are:

- **Claims that ballot collection restrictions violate the right of free speech and association.** Plaintiffs raised claims under both the First Amendment and various state constitutional provisions, arguing that collecting ballots constitutes protected political speech, like urging citizens to register to vote and distributing voter registration forms.
 - Defendants responded that there is nothing inherently expressive or communicative about receiving a voter's completed ballot and delivering it to the proper location.
- **Claims that ballot collection restrictions violate equal protection under the Fourteenth Amendment.** Plaintiffs argued that these restrictions on ballot collection and delivery deny equal protection because they have a discriminatory purpose or impact on voters of different ages or voters of different social, racial, and economic backgrounds.
 - Defendants responded that ballot collection restrictions must be evaluated under a "rational basis" review standard and should be struck down as a violation of equal protection guarantees only if they are not rationally related to a legitimate governmental purpose. Here, defendants argued that ballot

collection restrictions *are* rationally related to the government's interest in preserving the integrity of elections and preventing voter fraud.

- **Claims that ballot collection restrictions violate various federal statutes.** Plaintiffs argued that prohibitions on ballot collection violate Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act. They argued the restrictions discriminate against and fail to provide reasonable accommodations to persons with disabilities. Litigants also argued that restrictions violated the Voting Rights Act (VRA) because they failed to provide sufficient voting assistance. The VRA provides that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State...in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” Plaintiffs argued that ballot collection restrictions unduly burden Hispanic, African-American, and Native American voters.
 - Defendants argued that ballot collection restrictions do not unduly burden the right to vote under the meaning of federal statutes because these restrictions are, at most, minimally burdensome on voters. Defendants emphasized that voters have alternative ways to submit their ballots, including vote-by-mail and ballot drop boxes, both of which make voting widely accessible.

B. Challenges to laws permitting or expanding ballot collection

Plaintiffs who oppose ballot collection challenged laws that permitted or expanded the practice, raising the following claims:

- **Claims that laws that permit ballot collection violate the fundamental right to vote.** Plaintiffs raised these claims under the First and Fourteenth Amendments and under various state constitutional provisions. Plaintiffs argued that permitting ballot collection causes voter-dilution (because fraudulent votes will be counted in with valid votes) and direct disenfranchisement (because some ballot collectors will fail to deliver some ballots).
 - Because plaintiffs were often seeking preliminary injunctions against these permissive ballot collection laws—laws that extended the authority to collect and deliver ballots beyond the voter's family or household members—defendants emphasized that plaintiffs needed to show a substantial likelihood of irreparable harm if the preliminary injunction was not granted. Defendants argued that

plaintiffs had no basis for concluding that any alleged fraud or irreparable harm was likely to occur and, therefore, plaintiffs failed to meet their burden of proof for a preliminary injunction.

- **Claims that laws permitting ballot collection violate equal protection under the Fourteenth Amendment.** In states that permit ballot collection for specific cohorts of voters, such as senior citizens, plaintiffs argued that the state must grant the right to vote on equal terms, that it cannot value one person's vote over that of another. Such laws, they argued, make it easier for some groups to vote than others and, thus, violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.
 - Defendants responded that laws permitting ballot collection should receive "rational basis" review. Defendants argued that state legislatures have a rational basis to adopt these measures as a means of enfranchising voters who might have justifiable health concerns if they voted at in-person polling locations. They argued that state legislatures have the right to strike the appropriate balance among concerns about election integrity, public health, and voter access.

VI. Court Decisions on Ballot Collection in 2020

A. Courts that ruled in favor of ballot collection

- [*Driscoll v. Stapleton*, No. DA 20-0477 \(Mont. Sup. Ct. 2020\)](#) - The Montana Supreme Court in late September ruled in favor of ballot collection proponents, granting a preliminary injunction through the 2020 election against Montana's restrictions on ballot collection. The restrictions had permitted ballot collection only "by certain persons, including election officials, postal workers, or the voter's family members, household members, caregivers, or acquaintances." The court found no evidence "of voter fraud or ballot coercion, generally or as related to ballot-collection efforts."
- [*Western Native Voice v. Stapleton*, No. DV-2020-377 \(Mont. Dist. Ct., Yellowstone Cnty. 2020\)](#) - A Montana state court ruled in favor of various Native American tribes seeking a permanent injunction against a state law that prohibited ballot collection unless the ballot collector fell into one of six categories of exemption and the law's limitation on the number of ballots a ballot collector could accept and deliver to no more than six ballots. The court held that the law unduly burdened Native American tribes because Native Americans, living on geographically isolated reservations, systematically lacked

access to regular mail service, preventing many from being able personally to mail or drop off their voted ballots. The court also ruled that there was “no basis to support the limit of six ballots per collector.”

- [*Republican National Committee v. Benson*, No. 20-000191-MM \(Mich. Ct. Claims 2020\)](#) - At the end of September, plaintiffs sued the Michigan Secretary of State in state court, seeking declaratory relief that Michigan’s ballot collection restrictions were valid and enforceable. The [complaint](#) acknowledged that the law was enjoined by the court in *Michigan Alliance for Retired Americans v. Benson* (described above), but it argued that a declaration of enforceability was needed to prevent fraud, ballot tampering, and voter intimidation. The court at the end of October dismissed the plaintiff’s claims as moot.
- [*Democratic Congressional Campaign Committee v. Simon*, No. 62-CV-20-585 \(Minn. Dist. Ct., Ramsey Cnty. 2020\)](#) - A Minnesota state court granted a preliminary injunction against a state law restricting third-party ballot collectors to only three ballots each. The court found that the law would likely impose an unconstitutional burden on protected minorities’ right to vote and right to free speech. The court also noted that “the effects of the COVID-19 pandemic will exacerbate the burden on those same affected classes of voters.” The Minnesota Supreme Court [affirmed](#) the injunction with respect to the ballot collection restriction.
- [*Election Integrity Project of Nevada v. State of Nevada*, No. A-20-820510-C \(Nev. Dist. Ct., Clark Cnty. 2020\)](#) - Plaintiffs, opponents of ballot collection, sought a preliminary injunction against a new Nevada law that repealed a criminal prohibition against “ballot harvesting” and replaced it with new provisions that plaintiffs alleged “fail to adequately deter voter intimidation.” The court denied the preliminary injunction, finding that the plaintiffs had put forward only “unfounded speculations regarding voter fraud.”
- [*Cook County Republican Party v. Pritzker*, No. 1:20-cv-04676 \(N.D. Ill. 2020\)](#) - A U.S. district court in Illinois upheld a law that permits election officials to “establish secure collection sites for the postage-free return of vote by mail ballots.” The court found that the creation of such drop sites “says nothing to change who may place the ballot in the drop box” and that plaintiff did “not demonstrate that Illinois faces the risk of illegal ballot harvesting or other fraud,” as plaintiffs claimed.

B. Courts that ruled against ballot collection

- [*New Georgia Project v. Raffensperger* \(N.D. Ga. 2020\)](#) - A U.S. federal district court in Georgia denied relief to plaintiffs seeking a preliminary injunction against a state law that restricted ballot collection to the voter's family members. The court found that Georgia's interest in protecting election integrity outweighed the plaintiffs' burden.
- [*Crossey v. Boockvar*, No. 32-MAP-2020 \(Penn. Sup. Ct. 2020\)](#) - The Pennsylvania Supreme Court upheld a state law banning ballot collection and held that "it has long been the law of this Commonwealth . . . that third-person delivery of absentee ballots is not permitted."
- [*Democratic Congressional Campaign Committee v. Ziriax*, \(N.D. Okla. 2020\)](#) - A U.S. district court in Oklahoma found that the state's ballot assistance law, which makes it a felony offense to assist more than 10 voters in returning sealed absentee ballots, constituted "no more than a minimal burden on a voter's right to vote" and did not "prohibit or criminalize the plaintiffs' speech, voter education efforts, or publications, or efforts to get out their members' votes."
- [*Michigan Alliance for Retired Americans v. Benson*, \(Mich. 2020\)](#) - A Michigan court of appeals [upheld](#) a state law that restricted ballot collection to specific third parties, such as family members and election clerks. The order reversed a lower state court ruling that had [enjoined](#) the law. The lower court observed that, "in ordinary times, the [ballot collection prohibition] likely poses no constitutional issue. These are not, however, ordinary times."
- [*Middleton v. Andino*, \(D.S.C. 2020\)](#) - A U.S. district court in South Carolina upheld a law restricting ballot collection to the voter's immediate family, holding that the law is "rationally related to the government's interest in preserving the integrity of elections and preventing voter fraud."
- [*American Federation of Teachers v. Gardner*, No. 216-2020-CV-0570 \(N.H. Super. Ct., Hillsborough Cnty. 2020\)](#) - A New Hampshire state court dismissed plaintiffs' claim that the state's ballot collection measure, which restricts ballot collection to family members and caretakers, violated the First Amendment. The court held that "the practice of collecting and delivering absentee ballots is not expressive conduct implicating the First Amendment."

- [*Alliance for Retired Americans v. Dunlap*, No. Ken-20-262 \(Me. Sup. Ct. 2020\)](#) - The Maine Supreme Judicial Court [affirmed](#) the lower court's denial of the plaintiffs' request for a preliminary injunction against Maine's ban on compensation for ballot collection and Maine's requirement that some voters have witnesses if they wish to take advantage of ballot collection. In upholding these restrictions on ballot collection, the court found that voters are still afforded "fundamental fairness," thanks to numerous alternatives available to use in returning their ballots.
- [*Nielsen v. DeSantis*, \(N.D. Fla. 2020\)](#) - Florida voting groups sued the governor, challenging the prohibition on the use of paid organizers to assist voters with ballot collection. A U.S. district court in Florida denied the plaintiffs' request for a preliminary injunction, concluding they would not suffer irreparable harm before the impending trial. On the eve of the trial, the plaintiffs [dropped the lawsuit](#) in exchange for assurances that Florida would ensure that voters understood mail-in-voting options.
- [*American Women v. State of Missouri*, No. 20AC-CC00333 \(Mo. Cir. Ct., Cole Cnty. 2020\)](#) - Plaintiffs sued in Missouri state court, alleging that the state's "Ballot Collection Ban," which entirely prohibited individuals from helping voters return their completed ballots, was unconstitutional. At the end of October, the Missouri court held that the ban "clearly regulates conduct, not speech" and, therefore, was constitutional.

C. Pending decisions

- [*Arizona Republican Party v. Democratic National Committee*](#) - Individual voters in Arizona, along with the DNC, [sued](#) the Arizona secretary of state, challenging Arizona state law H.B. 2023, which imposed criminal penalties for assisting with ballot collection. A federal judge [upheld](#) the law after a trial, saying that it was, at most, minimally burdensome. In January 2020, a divided Ninth Circuit U.S. Court of Appeals, sitting *en banc* in [*Democratic National Committee v. Hobbs*](#), reversed, ruling that the law was enacted with discriminatory intent and adversely impacted thousands of Native American, Hispanic, and Black voters who had relied on third-party collection. The Arizona Republican Party filed a petition for certiorari to the U.S. Supreme Court on April 27, and the Supreme Court [granted certiorari](#) on October 2 for [two](#) related Arizona voting rights cases, which it consolidated. The Supreme Court stayed the Ninth Circuit decision pending appeal, heard oral argument in the case March 2, 2021, and is expected to rule later in 2021. Therefore, the law criminalizing ballot collection was in effect during the 2020 election, including the early voting period, and ballot collection was a criminal offense in Arizona.

No reports or allegations have been found that voters engaged in ballot collection, even amidst these back-and-forth changes to the law.

VII. Conclusion

The debate over access and integrity in mail balloting has often focused on laws and practices relating to third-party ballot collection. As with many other features of American election administration, Democrats and Republicans have hardened their positions on ballot collection, both in their litigation posture and in their public criticism or support for the practice. While critics in 2020 pointed to chain of custody issues with mail ballots, particularly related to drop boxes, and a few possible isolated instances of fraud, there is no evidence of widespread fraudulent third party ballot collection in the 2020 election. Court resolution of pre- and post-election litigation relating to ballot collection laws and practices helped to clarify the applicable rules and mitigate voter confusion. Since the general election, legislators in [nine states](#) have proposed laws that would further restrict who can assist voters in returning their mail ballots. Based on these developments, it appears the issue of ballot collection is likely to prompt partisan responses for the foreseeable future.

Ballot Drop Boxes in the 2020 Elections

March 10, 2021

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I. Introduction

During the 2016 general election, nearly [16%](#) of voters nationwide cast their ballot using drop boxes.¹ Four years later, with many more states providing access to ballot drop boxes, over [40%](#) of absentee voters cast their ballot using ballot drop boxes. The 2020 election saw the highest use of drop boxes in U.S. history. Ballot drop boxes are secure, locked structures that allow voters in many states to cast completed absentee ballots without having to rely on the U.S. Postal Service (USPS) for delivery or having to return the ballot in person to election officials. According to the [Election Assistance Commission](#) (EAC), some voters prefer ballot drop boxes to mail delivery due to “concern[s] about meeting the postmark deadline and ensuring that their ballot is returned in time to be counted.” Many states, therefore, offered voters the option to drop off absentee ballots up until Election Day, typically through staffed, indoor drop-off locations and unstaffed, outdoor boxes that were locked, anchored, tamper-proof, and often monitored by [24-hour video surveillance](#).

In some states, ballot drop boxes have been successfully used for years and serve as a popular option for many voters. In Colorado, for example, [nearly 75%](#) of all voters in the 2016 general election cast their ballots using a drop box. In Washington State, ballot drop box usage rates have also [increased over time](#), from 37.7% in the 2012 general election to 56.9% in 2016 and 73.1% in 2020. In other states, however—especially those without a history of robust absentee voting—the use of ballot drop boxes is in its infancy. Yet, in response to the coronavirus pandemic, an increasing number of states ramped up their use of ballot drop boxes during the 2020 election to provide voters an additional option to cast a ballot without having to enter polling sites on Election Day or potentially overwhelming the USPS with mail-in votes.

II. The Ballot Drop Box Landscape

A. Drop Box Usage by State

The National Conference of State Legislatures reports that only [eight states](#) explicitly permit or require ballot drop boxes by statute or regulatory guidance: Arizona, California, Colorado, Hawaii, Montana, New Mexico, Oregon, and Washington State. In practice, however, many more states use ballot drop boxes regularly, either through statewide practice (without specific

¹ Background information throughout this memorandum was drawn from “[The Use of Ballot Drop Boxes During COVID-19](#),” Axel Hufford (August 23, 2020). See also “[Where Can You Drop Off Your Ballot? A 50-State Analysis](#),” Axel Hufford, Lane Baker, Alexandra Popke, Garrett Jensen, and Gabriella Garcia (October 10, 2020).

III. The Use of Drop Boxes in 2020

A. Changes Since the Start of the Coronavirus Pandemic

During the coronavirus pandemic, several state legislatures and governors expanded the use of ballot drop boxes for November's general election.

- [Michigan](#) election officials recommended that during its August primary voters use drop boxes instead of the postal service due to mail delivery backlogs that jeopardized the prospects for on-time deliveries. The state now has hundreds of ballot drop box [locations](#), most of which are 24/7, outdoor fixtures. As part of its expansion, Michigan used [\\$2 million](#) of the federal funding it received from the Coronavirus, Aid, Relief and Economic Security (CARES) Act "for cities to buy additional equipment to make obtaining and processing absentee ballots easier, such as ballot drop boxes, high-speed counting machines and automatic letter openers."
- [Georgia](#) installed 144 absentee boxes through a statewide grant program, which allows counties to apply for \$3,000 to offset 75% of the cost of new ballot drop boxes. Georgia's Secretary of State Brad Raffensperger "encourage[d] every county to take advantage of the grant program and install a drop box ahead of the November elections."
- [New Jersey](#) state officials announced that more drop boxes would be added before November.
- [Connecticut](#) installed [around 200](#) drop boxes with CARES Act funding in time for the August 11, 2020 primary.
- [Kentucky](#)'s 2020 general election plan included the use of ballot drop boxes for the first time, with locations to be decided by county clerks.
- [New Mexico](#) launched a pilot program with ballot drop boxes for the general election.
- [North Dakota](#) allowed voters to return ballots via drop box during the June primary.
- [Maryland](#)'s state elections administrator requested \$40,500 in additional funding from the state to purchase additional ballot drop boxes.
- [Rhode Island](#)'s Board of Elections authorized drop boxes for the June 2 primary in all 47 polling places and at the 39 boards of canvassers in each city or town hall.
- [Louisiana](#)'s secretary of state took steps to limit vote-by-mail options but nonetheless proposed curbside drop-off options for absentee ballots.

By contrast, several states explicitly disallowed the use of ballot drop boxes in the 2020 elections, despite (in some cases) having provided drop boxes in previous election cycles. [Tennessee](#), for example, did not allow drop boxes due to alleged concerns of fraud. Tennessee

Secretary of State Tre Hargett said the availability of drop boxes creates the risk some individuals will pressure absentee voters to let them “watch you fill that ballot out and drop that ballot off for you.” “We believe it’s a great security measure to have someone returning their own ballot by the United States Postal Service,” he said. Similarly, [New Hampshire](#) did not allow voters to leave a ballot at town or city hall drop off boxes after hours; voters had to provide postage and use the mail service or directly hand deliver the ballot to an election official during office hours. [Missouri](#)’s secretary of state chose not to distribute the 80 drop boxes the state had already purchased because, he claimed, state law required ballots to be returned by mail. The [South Carolina](#) Senate in September rejected a Democratic proposal to allow ballots to be placed in drop boxes, with a 25-16 party-line vote.

In other states, controversy developed over the precise number of ballot drop boxes available during the 2020 general election. In [Ohio](#), [Secretary of State Frank LaRose](#) issued a directive that limited each county to one ballot drop box. This limitation raised ballot access concerns, particularly for voters without access to transportation. For example, Delaware County’s sole drop box was behind the county’s board of elections building, 2.5 miles away from the city of Delaware and “nowhere within walking distance of the city’s residents.” LaRose claimed that he did not have the legal authority to expand drop box locations without legislative action, but Ohio’s Democratic Party Chairman [David Pepper](#) argued that the secretary of state was “doing everything he could to stop drop boxes, delaying it for almost a month, and then unilaterally only saying one per county without a legal opinion.” Similarly, Texas Governor Greg Abbot ordered that each county could have only one ballot drop-off location for voters, a decision which was later [upheld](#) by the Texas Supreme Court. Moreover, these drop-off locations were not ballot drop boxes at all; rather, each location was an in-person hand-delivery station staffed by election officials and only available during business hours.

Although there is little-to-no evidence of ballot drop boxes being used historically for voter fraud, California became a subject of controversy shortly before the election when the state Republican Party created and distributed ballot drop boxes that were labeled “official” but were entirely controlled by the party. In the weeks leading up to Election Day, the California Republican Party placed [50 collection boxes](#) in conservative areas of Orange, Fresno, and Los Angeles counties. Although these boxes were all labeled either “Ballot Drop Box” or “Official Ballot Drop off Box,” they were anything but official under the law. The state Republican Party claimed that the boxes were legal because California allowed for ballot collection and delivery by third parties. California’s secretary of state and attorney general disagreed and sent a cease-and-desist letter to the Republican Party, ordering they remove the boxes. The attorney general began an investigation, issuing subpoenas, and Secretary of State Alex Padilla released a [statement](#) that “[s]tate law is clear—anyone who is collecting and returning a voter’s ballot must put their name, signature, and relationship to the voter on the return envelope....If a

person who has been designated by a voter to return their ballot fails or neglects that responsibility, they can face serious legal consequences.” Nevertheless, Padilla said, anyone who used these unofficial ballot drop boxes could rest assured that their votes would not be invalidated due to the unauthorized nature of the collection box.

B. Ballot Drop Box Litigation and Campaign Controversy

During the June 2 primary election in [Pennsylvania](#), the City of Philadelphia installed 11 ballot drop boxes around the city and additional drop boxes [around 20 counties](#) to help accommodate a surge in absentee voting. The Trump [reelection campaign later sued](#) Pennsylvania in federal court, arguing that the use of ballot drop boxes during the primary was unconstitutional and asking the court to bar their use in the general election. The [complaint](#) alleged that “inadequately noticed and unmonitored ad hoc drop boxes” and “the lack of statewide standards governing the location of drop boxes” violated the equal protection clause of the Fourteenth Amendment. The suit also claimed that drop boxes “have increased the potential for ballot fraud or tampering” and that the state’s mail-in voting system “provides fraudsters an easy opportunity to engage in ballot harvesting, manipulate or destroy ballots, manufacture duplicitous votes, and sow chaos.”

A federal judge [ordered](#) the Trump campaign to produce evidence of voting fraud occurring via drop boxes. After the Trump campaign “[failed to produce any evidence](#) of vote-by-mail fraud in Pennsylvania,” the judge [put the case on hold](#) pending resolution in Pennsylvania state court. President Trump also [tweeted concerns](#) about ballot drop boxes, alleging that they “make it possible for a person to vote multiple times” and are a “big fraud,” but Twitter has since [placed a public interest notice](#) on the Trump post for violating its civic integrity policy “for making misleading health claims that could potentially dissuade people from participation in voting.”

In the end, on September 17, the Pennsylvania Supreme Court [ruled](#) that, under state law, drop boxes were a proper method for voters to return ballots, and it green-lit their use for November’s election. As a result of the “clear legislative intent underlying Act 77,” the court [wrote](#), referring to the state law which allowed state voters to use absentee balloting, “the Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes.” Republican officials tried, unsuccessfully, to overturn the ruling. The Trump campaign was later caught [videotaping](#) various ballot drop boxes in Philadelphia, in an effort to find voters using the drop boxes to commit voter fraud. Pennsylvania Attorney General Josh Shapiro rebuked these efforts, noting that “Pennsylvania law permits poll watchers to carry out very discrete and specific duties” but “videotaping voters at drop boxes is not one of them.”

Shapiro also argued that “the act of photographing or recording a voter casting a ballot could be voter intimidation—which is illegal.”

IV. Conclusion

Public health concerns emerging from the coronavirus pandemic led to greater use of ballot drop boxes during the 2020 general election than in any election in American history. It was an increase spurred in part by the expected increase in absentee voting generally and in part by questions about the capacity of USPS to deliver all absentee ballots in a timely manner. As a result, according to [Pew Research Center](#), over 40% of Americans who voted by absentee or mail-in ballot returned their ballot via a drop box, well above the 15% who dropped their ballots off in-person and nearly as many as the 44% who mailed in their ballots. Indeed, the use of ballot drop boxes was popular across party lines, with 43% of Biden voters and 37% of Trump voters opting to use a designated drop box. Finally, given the expanded voting options in 2020, an overwhelming [94% of voters](#) said that voting in 2020 was either “very easy” or “somewhat easy” (including 95% of Biden voters and 93% of Trump voters). Overall, this polling suggests that state expansion of ballot drop boxes may be popular across party lines and, in future elections, a significant portion of the electorate may opt to continue using their local ballot drop box.

The U.S. Postal Service and the 2020 Elections

March 10, 2021

Author: Axel Hufford

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I. Introduction

In the months leading up to the 2020 general election, many Americans expressed growing fears about the U.S. Postal Service (USPS) and its ability to deliver mail-in ballots in a timely manner. There were reports of crippling backlogs of mail, medicine deliveries gone missing or long delayed, and viral social media posts showing USPS's iconic blue boxes being carted off—all contributing to the uncertainty. With an increased use of vote-by-mail during the coronavirus pandemic, some commentators claimed that President Trump was trying to cripple the postal service to meddle in the election.

Amid these fears, Postmaster General Louis DeJoy—the chief executive who took charge of the USPS in June 2020—testified before Congress about several changes to the agency's operations, including a reduction in [overtime pay](#) and the dismantlement of several hundred [high-speed mail sorters](#). He also responded to the worries sparked by President Trump's [remarks](#) that such changes might compromise the use of vote-by-mail delivery right before the 2020 election. Despite this public controversy, the agency also took measures to improve its processing speeds, minimize any misplaced election mail in its facilities, and ensure that the election would not be disrupted due to USPS delays. In doing so, the agency successfully ensured that [over 97%](#) of ballots were delivered within five days throughout the final weeks of the election and far fewer ballots were misplaced or delayed than what many feared.

II. USPS Performance During the 2020 Election

A. Months Before Election Day

During the 2020 election season, over the course of 14 months, USPS processed over [4.5 billion](#) pieces of political and election mail—from campaign ads and ballot applications to voter registration information and the ballots themselves. This volume represented a [114% increase](#) over the mail volume during the 2016 general election cycle, a significant challenge for the USPS, particularly given the agency's financial challenges and the coronavirus pandemic.

According to USPS, in January 2020, the agency began to [systematically sweep](#) its processing facilities for election mail, inspecting 220 ballot processing facilities daily. During these sweeps, the agency's U.S. Postal Inspection service typically observed mail conditions, checked election-mail logs, and searched for misplaced ballots. After a federal court in September ordered the agency to publicly disclose the reports associated with these sweeps, it was

revealed that [10 percent](#) of the reports showed that the agency “found ballots that should have been processed, failed to complete the check or did not report the results.”

On May 29, USPS General Counsel Thomas Marshall also sent [a letter](#) to local and state election officials nationwide to address the high likelihood that more voters would vote by mail in November’s elections due to the coronavirus pandemic. Marshall’s letter advised that, typically, “all Election Mail (including ballots) mailed from individual voters to state or local election officials must be sent by First-Class Mail.” Although first-class mail is typically delivered in two to five days, Marshall warned, “the Postal Service cannot guarantee a specific delivery date or alter standards to comport with individual state election laws.” The letter recommended that—throughout the country—voters should mail their ballots at least one week before the deadline in their state for the receipt of mail ballots, in order to ensure that ballots arrive in time to be counted. The letter also recommended that states use USPS’s Intelligent Mail barcodes to better track all election mail, which “can be used both by the Postal Service and by the mailer to track the delivery and return of ballots.”

Two months later, and just six weeks after new Postmaster General DeJoy took charge, the USPS sent follow-up [letters](#) to 46 states and Washington, D.C., reiterating the risk that some ballots might arrive too late to be counted. According to the letters, some state deadlines for voters to request absentee ballots were [too close to Election Day](#) and “the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law.” As such, the USPS recommended that “election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters.” It also recommended that, if state law requires ballots to be returned by Election Day, “voters should mail their ballots no later than Tuesday, October 27,” a week before Election Day.

Only four states did not receive the letter—the four states with a history of conducting universal vote-by-mail elections: Colorado, Oregon, Utah, and Washington. For most other states, the [massive increases](#) in the use of vote-by-mail in November dramatically heightened the need for improved coordination between election officials and the USPS.

B. Weeks Before Election Day

In the weeks leading up to Election Day, as millions of Americans cast absentee ballots through the mail system, voters relied on USPS’s processing and delivery systems in order for their votes to be validly cast and counted.¹ The postal agency’s election mail performance faced additional scrutiny in the wake of several USPS cost-cutting changes over the summer—from [removing](#)

¹ Note that, in [28 states](#), election officials must have received ballots by Election Day to be counted.

mail sorters to [reducing](#) overtime hours. The changes resulted in late-summer delays of over [7 percent](#) of the country's first-class mail. Nevertheless, by October, USPS election mail performance had reached a level of relative success. For example, from October 24 to October 30, the agency's on-time processing rate (*i.e.*, the percentage of ballots sorted, postmarked, and transported within one to three days) fluctuated between [93.1% and 94.7%](#). That figure fell to 89.6% on the day before Election Day and, on Election Day itself, USPS processed 93.3 percent of ballots on time, or [over 115,000](#) processed ballots.² The day after Election Day, November 4, the USPS processed over [305,184 ballots](#), with 3.8% of these ballots being "processed in states where ballots are not accepted if they arrive after Election Day." Notably, according to [USPS court documents](#), between October 1 and Election Day its average delivery time for ballots was just 2.5 days, and 97.5% of ballots were delivered within five days.

But the nationwide figures do not tell the whole story because the agency's performance varied widely by region. In Detroit, for instance, USPS had an on-time processing rate [below 80%](#) after October 24. Similar processing rates were seen in several districts of Colorado, Wyoming, and central Pennsylvania. USPS officials explained these delays, saying they were due, in part, to employee unavailability due to COVID-19 infections. By Election Day, around [3,600 USPS employees](#) were infected with COVID-19, and an additional 4,500 were in quarantine—1.3% of the agency's 630,000-person workforce. Spikes in particular areas resulted in some understaffed facilities. In response, USPS said that, for some postal facilities, the agency had [shifted employees](#) from other facilities, increased overtime hours, and hired new, temporary workers.

C. Election Day

On Election Day itself, a federal judge in Washington, D.C., [ordered](#) the USPS (in a minute order) to [search 27 postal facilities](#) in several battleground states to find any undelivered ballots and, by Tuesday afternoon, to deliver any discovered ballots to election officials. The U.S. District Court Judge Emmet G. Sullivan [said](#) the unusual order was necessary because, after [an injunction](#) in early October sought to improve delivery speeds, "some measures were not taken after the court issued its injunction." Moreover, according to [court filings](#) shortly before Election Day, "nearly 300,000 ballots had been scanned into the U.S. mail system since Oct. 24 but had not been scanned again to show they had been delivered, including more than 11,000 in Pennsylvania, nearly 16,000 in Florida and more than 6,000 in Michigan."

² Several postal and voting experts say the agency should hit a [97% on-time processing target](#), but there is some disagreement over an ideal-but-achievable figure.

Fortunately, it [appears](#) that the vast majority of these 300,000 ballots were correctly delivered. According to the USPS, the [ballots were expedited](#) by skipping the final scan to indicate they had been delivered. Although the agency initially failed to comply with Judge Sullivan's November 3 order, arguing that the afternoon deadline was not "operationally possible," it ultimately [completed the ordered sweep](#) and discovered just 13 delayed mail ballots (10 in a Lancaster, Pennsylvania, facility, and three in a Johnstown, Pennsylvania, facility), which were then delivered to election officials.

By the end of election night, however, [nearly 8,000 ballots](#) (or around 7 percent of the ballots processed that day) still remained in USPS sorting facilities and had not been processed in time for November 3 delivery. Although they would all be delivered by the next day, the small proportion of these ballots headed to Michigan and Wisconsin, for example, would be considered late and not be counted, under their respective state laws.

D. After Election Day

On Wednesday, November 4, Judge Sullivan [ordered](#) another sweep of USPS facilities, this time focused on Texas. During these sweeps, [815 more mail-in ballots](#) were found and delivered to election officials, and most were delivered by the state's 5 p.m. statutory deadline. Around the country, however, many more ballots were still being processed on November 4—around 150,000—although most of these late ballots were going to states that would accept ballots postmarked before Election Day but arriving after Election Day. For example, [over half](#) of these 150,000 ballots were in California (including 25,000 in San Diego and 25,000 in Los Angeles and Sacramento combined), which allowed ballots to be received up to 17 days after the election and still be counted. According to USPS spokesman [David Partenheimer](#), "[t]he Postal Service is required by law to deliver all mail that is deposited in our system. We cannot control when voters choose to mail their completed ballots, but we implemented extraordinary measures to ensure ballots were, and continue to be, delivered to the boards of elections as quickly as possible[.]"

One day later, another [39,000 ballots](#) were processed by USPS on November 5, including 4,000 in Arizona, Georgia, Nevada, North Carolina, and Pennsylvania combined. Moreover, another sweep of 120 USPS processing facilities discovered 11,900 undelivered ballots, including nearly 800 in Pennsylvania, nearly 500 in North Carolina, and 17 in Nevada. All told, however, it appears very unlikely that USPS delays affected the outcome of the presidential race in any state, especially as the closest swing states (Arizona and Georgia) were both decided by a margin of over 10,000 votes.

III. Louis DeJoy and Postal Service Changes in 2020

The USPS's Board of Governors selected Louis DeJoy in June of 2020 to be postmaster general. The Board [operates similarly](#) to a public corporation's board of directors, [overseeing](#) the agency's budget, managing long-term planning, and choosing the postmaster general.³ The current board is made up of six men, including four Republicans and two Democrats, all appointed by President Trump and confirmed by the U.S. Senate.

In December 2016, shortly before President Obama left office, the USPS's Board of Governors lost its last remaining presidentially appointed governor, whose [term had expired](#). Political [wrangling](#) over Obama's nominees prevented him from filling the vacancies before his term expired, leaving all nine seats vacant at the end of his term. This was the first time since the board's creation in 1970 that its board was entirely vacant. In October 2017, President Trump [nominated](#) Republican Robert M. Duncan and Democrat David Williams to the USPS Board of Governors. After both were confirmed by the Senate, Duncan became the chairman of the Board of Governors and Williams became the board's vice-chairman. From August 2018 through June 2020, President Trump nominated, and the Senate confirmed, several additional [USPS board members](#).

Signs of strife first appeared on April 30, 2020, when David Williams [resigned](#) from the board. [Days later](#), the board announced Louis DeJoy as its unanimous selection for the new postmaster general. [According to Williams](#), "I resigned from the board of governors because I was convinced that its independent role had been marginalized and that representations regarding an independent postal service for the nation were no longer truthful." Williams had also [expressed concerns](#) to the board over the likely nomination of DeJoy. Nevertheless, [DeJoy](#) began his role as postmaster general on June 15.

A. Immediate Changes to USPS Operations

Shortly after DeJoy arrived, the USPS implemented several changes in an attempt to make the agency "financially solvent," according to a [memo](#) describing DeJoy's plans and expectations. Although the USPS previously [requested \\$75 billion](#) in emergency funds from Congress during the coronavirus pandemic, DeJoy largely focused on internal cost-saving measures. On his first day as postmaster general, DeJoy sent a [video message](#) to his employees in which he described

³ Background information throughout the latter half of this memorandum can be found at "[The United States Postal Service: Changes in 2020 and Election Readiness](#)," Axel Hufford (Aug. 31, 2020).

the agency as having an “expensive and inflexible business model” and that he wanted “to put this institution on a trajectory for success.”

Under DeJoy’s new leadership, the USPS made some immediate changes, ostensibly to cut costs. First, 23 USPS executives were [reassigned or displaced](#), including the two top executives who previously oversaw the agency’s day-to-day operations. This change included the [ousting](#) of several agency veterans without apparent replacements. And, according to [some analysts](#), the newly restructured organizational chart helped centralize power around the new postmaster general.

Second, in an effort to [eliminate overtime pay](#), USPS required that late delivery trips no longer be authorized. As a result, any mail that would ordinarily be delivered with overtime pay would now be held until the next day, causing delays. Leadership instructed letter carriers to start their routes on time and to return on time, rejecting a common practice of working after hours until all mail was delivered.

Third, the USPS dismantled and removed [671 high-speed mail sorters](#). These machines label and sort [tens of thousands](#) of paper mail items every hour and, historically, have allowed mail carriers to spend much more time delivering mail than sorting and organizing it. Some mail-sorting equipment has been dismantled [every year](#) during the 2000s, particularly as overall paper mail use has declined and because machine removal creates more floor space for increased package processing. More recently, the USPS decommissioned 3% of machines in 2018 and 5% of machines in 2019. The 2020 changes, however, amount to a 13% reduction in mail-sorting equipment.

In addition, the USPS removed several dozen blue collection boxes in [Montana](#), as well as [Oregon](#) and possibly some [other states](#), including New York, California, and Pennsylvania. One [viral social media](#) post showed stacks of the iconic blue mailboxes and claimed, without evidence, that the USPS was taking them away as “part of their plan to steal the election.” The agency said the photos were [misleading](#) and said the removals were part of “normal” maintenance operation. The USPS has 142,000 mailboxes nationwide, according to agency spokesperson [Kimberly Frum](#), and relocating some boxes due to “lack of use” was a standard practice.

Since the mail sorting changes, the American Postal Workers Union filed a [grievance](#), arguing that decommissioning sorting machines could harm the processing of election mail in November. Despite [some additional claims](#) that these reductions targeted key battleground states, however, it appears that the removals [correlated with population](#), with California having the most decommissioned machines.

USPS leadership described the above changes as part of an “[operational pivot](#)” and assured employees that “operations will begin to run more efficiently and that delayed mail volumes will soon shrink significantly.” The agency, however, continued to see nationwide delays and declines in overall performance. On August 12, [an internal presentation](#) prepared for the postmaster general reported a “significant drop in service standards across the board since the beginning of July,” according to the U.S. House Committee on Oversight and Reform, which released the internal report. The agency’s [scoring system](#) showed that first-class mail performance had fallen 8.10% from its pre-July baseline, while marketing mail declined by 8.52% and periodicals fell by 9.57%.

According to a private [mail-tracking analysis](#), the summer also had more mail delays than typical, albeit a modest increase from recent years. For example, between July 1 and August 15 2020, 31% of USPS mail was delivered late, an increase from the 26.5% rate from earlier in 2020. Overall, 2020 data showed that 27% of tracked mail was late, an increase from 23% in 2019.

B. Public Outcry and Congressional Hearings

In May 2020, U.S. House Democrats unveiled a proposed \$3 trillion [stimulus package](#) to address the coronavirus pandemic. The package included \$25 billion in USPS funding and a separate \$3.6 billion to help states expand early voting and vote-by-mail during the upcoming elections. President Trump later [expressed disapproval](#) over these two provisions, arguing on [Fox Business](#) in August that the election funding would support “something that will turn out to be fraudulent” and that the USPS funding is needed so the postal service “can take all of these millions and millions of ballots.” He went on to suggest that denying both provisions “means you can’t have universal mail-in voting because they’re not equipped to have it.”

This interview led to [accusations](#) that Trump was attempting to sabotage the USPS to undermine the election, or at least reduce the number of vote-by-mail ballots. In response, multiple Democratic leaders [raised the alarm](#) about Trump’s intentions, including Speaker of the House [Nancy Pelosi](#) and former President [Barack Obama](#). [Some commentators claimed](#) that Trump’s election comments were connected to DeJoy’s recent changes to the agency, arguing that the changes were aimed at disrupting the mail ahead of the election.

As a result, Pelosi called the House of Representatives back into session in August, earlier than expected, and the House [voted 257-150](#) (with 26 Republicans in support) to provide \$25 billion to the USPS and to reverse the operational changes made by the postmaster general. But the

Republican-controlled Senate did not approve any similar legislation. The White House also [threatened to veto](#) the measure, and Senate Majority Leader Mitch McConnell [released a statement](#), saying that “the Senate will absolutely not pass stand-alone legislation for the Postal Service while American families continue to go without more relief.”

In the meantime, DeJoy [released a statement](#) on August 18 assuring Americans that the USPS “is ready today to handle whatever volume of election mail it receives this fall.” The statement also made the following promises:

- Regarding planned changes as part of the USPS’s operational initiatives, “[t]o avoid even the appearance of any impact on election mail, I am suspending these initiatives until after the election is concluded:
- USPS retail hours will not change;
- Mail processing equipment and blue collection boxes will “remain where they are;”
- Mail processing facilities will not be closed;
- Overtime will continue to be approved, as needed;
- A leadership task force on election mail will be expanded and continue working with election officials; and
- On October 1, “we will engage standby resources in all areas of our operations, including transportation, to satisfy any unforeseen demand.”

DeJoy [testified](#) before the House Oversight Committee and Senate Homeland Security and Governmental Affairs Committee the following week. Although he acknowledged that recent operational changes had [contributed to mail delays](#), he denied responsibility for most of the changes and said that the USPS would not restore equipment that had already been removed. Nevertheless, DeJoy confirmed that other planned new changes had been halted until after Election Day. He also [offered support](#) for Congressional efforts to provide the USPS with emergency funding during the pandemic, while advocating for the Postal Regulatory Commission to increase its price caps on USPS mail products to garner additional revenue.

When Postmaster General DeJoy testified in Congress, the USPS released several statements expressing confidence in its ability to deliver election mail during the coming months. The agency’s [Twitter account](#) noted that the USPS delivers approximately 433 million pieces of mail per day; thus, even if all Americans decided to vote by mail, “330 million ballots over the course of the election would be [only 75%](#) of what we deliver in one single day.” The account went on to reassure voters that, even with the increased use of vote-by-mail, “we anticipate election mail will account for less than [2% of all mail volume](#) from mid-September until Election Day.” The agency [maintained](#) that “delivering America’s election mail is our number-one priority between now and Election Day,” but it urged voters to “plan ahead,” if choosing to vote by mail.

IV. Conclusion

Over the course of the 2020 general election cycle, the USPS processed over [135 million ballots](#), the vast majority of which were handled correctly, delivered on time, and eventually counted by election officials. (The figure includes blank ballots sent to voters and never returned, as well as those returned and counted.) There were allegations that President Trump was interfering with the USPS to alter the presidential race, fears that enough ballots might be delayed to impact the election, and a budgetary crisis would go unaddressed by Congress to mend the agency's financial woes. But despite these months of uncertainty, the USPS successfully achieved its [mission](#) to "provide prompt, reliable, and efficient services to patrons in all areas and [to] render postal services to all communities." Though it was not perfect—with mail delays, missing ballots, incomplete compliance with court orders, and some [insubordination](#) toward Congressional investigators—the USPS successfully administered the largest vote-by-mail election in the country's history.

Secrecy Sleeves and the “Naked Ballot” in the 2020 General Election

March 10, 2021

Authors: Axel Hufford, Ashley Richards, Lane Baker, Neil Wary, and Jesse Lazarus

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I. Introduction

During the 2020 general election, at least 17 states provided absentee voters with a “secrecy sleeve” in addition to an outer return envelope, voter instructions, and the ballot itself. A secrecy sleeve, also referred to as an “inner envelope” or “privacy sleeve,” is a paper envelope (or, in some cases, a folded piece of paper) within which voters place their absentee ballots. The voter puts the ballot into the secrecy sleeve and then places the secrecy sleeve inside an outer envelope, sometimes called the return envelope. The voter then seals the outer envelope, and mails or delivers the ballot envelope to election officials. The intended purpose of the secrecy sleeve is to protect a voter’s privacy by separating the ballot itself from a voter’s identifying information. The voters identifying information and signature are sometimes required to be written on the outside of the outer return envelope and sometimes required to be written on the outside of the secrecy sleeve or on a separate certificate.

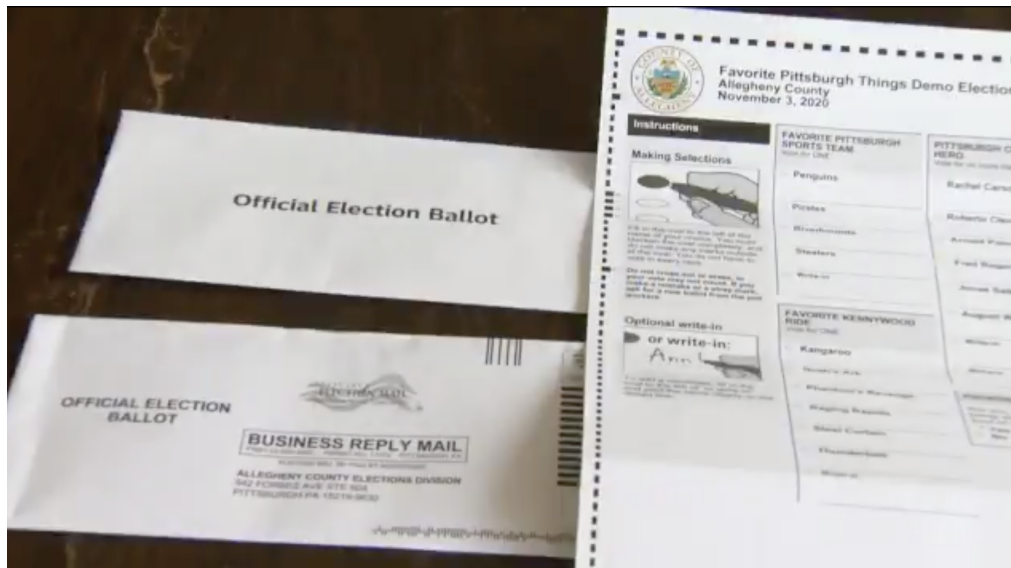
Through the years, some voters unfamiliar with the mail-in ballot process in their states place their completed ballots directly inside the outer envelope, discarding the secrecy sleeve. How election officials process these so-called “naked ballots” is governed by each state’s law and varies from state to state. Of the 17 states that provided all voters with secrecy sleeves in 2020, some of them—including Pennsylvania, Kentucky, New Hampshire, and Ohio—rejected the naked ballots. The votes simply did not count. Other states—such as Florida, Georgia, and Washington—counted the votes even if they were received without a secrecy sleeve. A few states—such as Michigan and Oregon—left the decision up to individual counties as to whether to use secrecy sleeves. This memo outlines the various secrecy sleeve rules and procedures implemented in each state that used them during the 2020 general election, and it assesses how such rules impacted the vote in each such state.

II. Pennsylvania’s Secrecy Sleeve Requirement

In the June primary election, [most counties](#) in Pennsylvania, including Philadelphia, did *not* reject naked ballots. According to [one estimate](#), rejecting naked ballots statewide would have amounted to over 11,000 fewer votes being counted in the primary election—more than 6% of all absentee votes. The Pennsylvania Supreme Court [ruled](#) on September 17, 2020, that absentee ballots returned without secrecy envelopes would be rejected and, therefore, not counted in the November election.

Four days later, on September 21, Philadelphia City Commissioner Lisa M. Deeley sent a [letter](#) to the state legislature, urging it to take immediate action in response to the court decision.

Describing the secrecy envelope requirement as a “vestige of the past” that served only to “disenfranchise well intentioned Pennsylvania voters,” Deeley noted that secrecy sleeves had lost relevance over time. In a previous era, secrecy sleeves protected the identifying information of voters because absentee ballots were counted in public view at individual polling locations. Today, however, absentee ballots are counted at a central location and through a speedy “industrialized process,” Deeley explained, so the primary purpose of their use has disappeared.



The envelope marked only “Official Election Ballot” is Pennsylvania’s secrecy envelope, and the “Business Reply Mail” is the outer envelope. Ballots were required to be enclosed within both to be counted in the 2020 general election.

In addition, Deeley wrote that removing the secrecy sleeve requirement would save thousands of dollars per year and speed up the counting process. Without any secrecy envelopes, for example, absentee votes could be removed from envelopes at 24,000 ballots an hour (double the current rate) and scanned at 32,000 ballots an hour. At that speed, Deeley wrote, “there is no opportunity to stop, or even slow down, and identify how an individual voted—anonymity is maintained.”

Deeley estimated that, if the Pennsylvania Supreme Court decision were to stand and all absentee ballots arriving without sleeves were rejected, over 100,000 ballots in Pennsylvania could be thrown out during the 2020 general election, based on estimates from previous elections and the massive increase in first-time absentee voters expected in 2020. Notably, the 2016 presidential election in Pennsylvania was decided by just over [44,000 votes](#). It is difficult to independently estimate the impact of the court decision because many counties (including Philadelphia) [did not keep track](#) of naked ballots during the 2020 primary. However, [Mercer](#)

[County](#) and [Lawrence County](#) tracked naked ballots and found that 5% of all absentee mail ballots lacked a secrecy envelope. According to Lawrence County's elections director [Ed Allison](#), there were more ballots rejected for being naked ballots than for late receipt during the primary.


The Pennsylvania Supreme Court decision came down to whether or not the statutory language of Pennsylvania's secrecy envelope provision was mandatory or discretionary. Justice Max Baer, in the [majority opinion](#), concluded that the provision was mandatory: "Whatever the wisdom of the requirement, the command that the mail-in elector utilize the secrecy envelope and leave it unblemished by identifying information is neither ambiguous nor unreasonable." The decision also ruled on a number of other voting-related matters. It allowed ballots to be counted if received up to three days after Election Day (if postmarked by Election Day), permitted the use of ballot drop boxes, and blocked the use of partisan poll watchers from out-of-county. (Pennsylvania Republicans [asked](#) the U.S. Supreme Court to stay the ruling on the deadline extension only, not on the secrecy sleeve ruling; the court [denied](#) the stay request in two brief [orders](#).) The secrecy sleeve decision sparked a flurry of efforts by nonprofit organizations and political campaigns to quickly educate voters, with graphics and videos, that the secrecy envelope was now required.

After Election Day, three additional lawsuits regarding secrecy envelopes in Pennsylvania were filed. Two were election challenges, involving only a very small number of absentee ballots. In the [first](#), filed November 19, 2020, in the Court of Common Pleas of Bucks County, the court interpreted the aforementioned Pennsylvania Supreme Court decision to [hold](#) that 69 absentee ballots with *unsealed* secrecy envelopes at the time of canvassing were *not* "naked ballots." The court [held](#) that, as it could not be determined whether the secrecy envelopes had become unsealed after being submitted by the voter, there was insufficient evidence to determine that the voter had failed to comply with the mandate or that the privacy of those ballots had been violated. The court ruled the 69 ballots could be counted. The Trump campaign appealed the decision, but the Commonwealth Court, on November 25, 2020, [affirmed](#) the decision. In the second lawsuit, the Court of Common Pleas of Westmoreland County, on November 23, 2020, [held](#) that 12 provisional ballots lacking secrecy sleeves must all be rejected by the Westmoreland County Board of Elections. In the third lawsuit, [Metcalf v. Wolf](#), plaintiffs alleged that officials in predominantly Democratic counties weighed absentee and mail-in ballot envelopes to determine whether secrecy envelopes were contained within the outer envelopes, in violation of the Election Code. The Commonwealth Court [dismissed](#) the suit as an improperly-filed election contest.

Ultimately, only 7,411 absentee ballots (or less than 0.3% of absentee votes) were [rejected](#) in Pennsylvania for any reason, including for lack of a secrecy sleeve, during the 2020 general


election. Though Deeley's concerns were largely unrealized, the public awareness she brought to the issue by voicing her concerns may have played a significant role in educating the public and preventing a greater number of rejections.


PENNSYLVANIA VOTERS:





You may be naked, but your ballot must not.*

How to properly complete your Pennsylvania Mail-in Ballot



- 

1 Complete your ballot in blue or black ink.
- 

2 Insert your completed ballot into the small ballot envelope. If your ballot is not inside the small envelope, it will be considered a "naked ballot" and will **NOT** be counted.
(Think of it as underwear for your ballot.)


- 

3 Place your sealed ballot envelope into the larger return envelope.
(This would be your ballot's pants.)


- 

4 Seal the return envelope and sign and date the voter declaration. Your ballot is ready to be mailed.

**Does not apply for in-person voting.*

@joshinphi

III. The Use of Secrecy Sleeves in Other States

Outside of Pennsylvania, at least 16 states had laws requiring election officials to provide absentee voters with secrecy sleeves in the 2020 general election. These state laws varied widely on whether ballots returned without a secrecy sleeve could be counted or had to be rejected. In most of these states, the decision depended on whether other voter authentication requirements—such as voter signatures—were required to be printed on the secrecy sleeve itself, rather than the outer envelope. In states where the inner envelope doubled as a voter certification document or a place for the voter's signature, the ballot was generally rejected if it was missing that inner envelope. In states where the inner envelope was used solely to protect the voter's privacy or for the voter's convenience, however, "naked ballots" were typically not rejected.

IV. States That Rejected Naked Ballots

A. Kentucky

A Kentucky [statute](#) required that the county clerk send voters two official envelopes for returning their absentee ballots, along with each ballot. One was a white outer envelope, labeled "Absentee Ballot." It provided space for the voter's signature, address, precinct number, and witness signatures (required only if the voter signed with a mark instead of a signature). The second was a yellow secrecy envelope. In addition, there was a "detachable flap on the secrecy envelope" that provided space for the same voter information.

In the Kentucky 2020 primary in June, the state [required a voter's signature](#) on *both* the outer white envelope and the detachable flap of the inner yellow envelope. In July, however, the Kentucky State Board of Elections passed an [emergency regulation](#) applicable to only the 2020 general election that allowed county boards of elections discretion to accept absentee ballots if the voter signed on at least one of the two envelopes. The [emergency regulation](#) noted that one signature could be sufficient for "substantial compliance" with voter verification procedures. The [emergency regulation](#) also included a number of other rules to [allow](#) absentee ballots that would have been rejected in the primary to be accepted in the 2020 general election. That included accepting absentee ballots even if the detachable flap on the inner envelope was detached (but still inside the outer or inner envelope), if the inner envelope was not sealed, or there was no outer envelope at all (only an inner envelope). Kentucky State Board of Elections Executive Director Jared Dearing noted that the emergency regulation helped to standardize

the rules for evaluating absentee ballots, whereas previously there had been more variation at the county level (per phone call with Jared Dearing, 1/08/2021). Some rules, however, did not change: During both the primary and the general election, the state **[rejected absentee ballots missing the inner envelope](#)**.

During the 2020 Kentucky primary, 32,048 absentee ballots were rejected overall, including [nearly 2,000](#) for missing the inner envelope. During the 2020 Kentucky general election, by contrast [fewer than 2,500](#) absentee ballots, or less than 0.4% of the total received, were rejected for *any* reason, including for missing the inner envelope. (The number rejected specifically on account of missing secrecy sleeves, as of the time of writing, was not yet publicly available.) Kentucky State Board of Elections Executive Director Jared Dearing [credited](#) voter education as one factor explaining the significant relative decrease in absentee ballot rejections. In addition to the relaxation of absentee ballot requirements and the standardization of evaluation criteria from the emergency regulation noted above, another factor may have been the implementation of a new absentee ballot cure [process](#). The new process required election officials to inform voters if their absentee ballots were rejected, including rejections for missing the inner envelope. Such voters were given the opportunity to cure the ballot up to six days after Election Day. The new absentee ballot cure process was [recommended](#) by Kentucky Secretary of State Michael Adams in August 2020 and accepted by Kentucky Governor Andy Beshear through [executive order](#) the same day. As a result, at least 3,946 voters were [contacted](#) about curing their ballots for the general election, and more than 1,500 of those successfully cured their ballots. The new absentee ballot cure process, however, was [limited](#) to enforcement in the 2020 general election.

Other provisions of the emergency regulation further supported the absentee ballot curing process in the 2020 general election. For instance, the regulation allowed for an online portal for voters to request absentee ballots. Once the voter requested an absentee ballot, state election officials printed the labels and affixed them to the outer and inner envelopes before mailing the ballot packet to the voter. The labels included an intelligent barcode that identified the voter, the voter's address, and the voter's precinct number (per phone call with Kentucky State Board of Elections Executive Director Jared Dearing, 1/08/2021). The intelligent bar codes both relieved voters of the burden of filling out their own address and precinct numbers on the envelopes and also allowed voters and election officials to track the status of the voter's absentee ballot (per phone call with Dearing, 1/08/2021).

Inner envelope

15,075 ballots rejected
47% of rejections
Because one or both signatures were missing

4,079 13%
Late
Reject

3,865 12%
Flap missing or detached
Accept if detached

3,413 11%
Inner envelope not sealed
Accept

1,963 5%
No inner envelope
Reject

1,113 3%
No outer envelope
Accept

Rules for Nov.
Accept if one signature
Reject
Accept

THIS ENVELOPE MUST BE SEALED. DO NOT DETACH FLAP FROM ENVELOPE.

Inner envelope

FOLLOWING TO BE TYPED BY CLERK BEFORE MAILING

VOTER'S NAME _____

VOTING ADDRESS _____

PRECINCT NUMBER _____

KRS 117.995(5) Any person who signs a name other than his own on an application for an absentee ballot or on the verification form for the ballot or on an emergency absentee ballot affidavit, or any person who votes an absentee ballot other than the one (1) issued to his name, or any person who applies for the ballot for the use of anyone other than himself or the person designated by the provisions of this chapter, or any person who makes a false statement on an application for an absentee ballot or on an emergency absentee ballot affidavit shall be guilty of a Class D felony.

X
VOTER MUST SIGN (or "mark") HERE
TWO WITNESSES MUST SIGN IF "MARK" IS USED.

WITNESS _____ WITNESS _____

OATH FOR VOTER NOT CERTIFIED AS REQUIRING ASSISTANCE ON A PERMANENT BASIS
Complete the following *only if you require assistance to vote*.
(Voter certified as requiring assistance on a permanent basis need not sign this oath form, but person assisting voter must sign below.)
I hereby state, under oath (or affirmation), that I am a qualified voter in the precinct listed above and that the reason I require assistance in voting is:
☐ Blindness ☐ Physical disability
☐ Inability to read English

Signature or "Mark" of Voter _____
Two witnesses must sign if "mark" is used.

WITNESS _____ WITNESS _____

OATH FOR PERSON ASSISTING VOTER
I hereby state, under oath (or affirmation), that I will mark the ballot in accordance with the directions of the voter requiring assistance. I further state that I am not the voter's employer, an agent of that employer, or an officer or agent with that voter's votes.

Signature of Person Assisting Voter _____

WITNESS _____ WITNESS _____

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

07-0863 KRS117.995(7)

Outer envelope

OFFICIAL ELECTION MAIL

OFFICIAL ABSENTEE BALLOT MATERIAL

VOTER MUST SIGN HERE
TWO WITNESSES MUST SIGN IF "MARK" IS USED

WITNESS _____ WITNESS _____

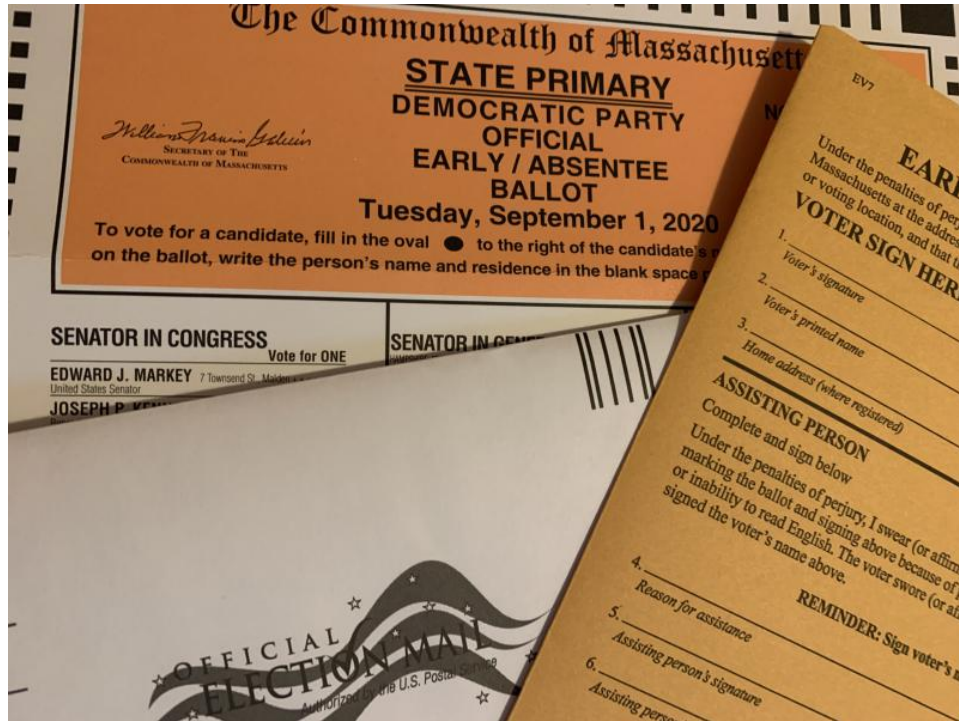
VOTER'S NAME _____

VOTER'S ADDRESS _____

PRECINCT NUMBER _____

B. Massachusetts

In the 2020 general election, Massachusetts' absentee ballot packets [included](#) the ballot, [instructions](#), an outer white envelope, and an inner yellow secrecy envelope (marked "Early Ballot Envelope"). With the Massachusetts scheme, the voter's signature was required on an affidavit on the inner secrecy envelope. Under state law, absentee ballots submitted without the signed secrecy envelopes were [considered](#) "naked ballots" and were not counted. Massachusetts' relevant [statute](#) provided that the secretary of state (or "secretary of the commonwealth," as Massachusetts' official is called) would prepare absentee ballots with "[e]nvelopes of sufficient size to contain the ballots." These envelopes must also [bear](#) the voter's affidavit of compliance. The [statute](#) also required that, when examining received absentee ballots, election officials use the signature on the "inner envelope" to verify the voter's signature. If an election official rejected a voter's absentee ballot, they were required to [notify](#) the voter "as soon as possible."



During the Massachusetts 2020 primary, 17,872 absentee and early ballots were [rejected overall](#) (1.7%), including about 8,000 that were rejected for lateness and about 3,000 that were rejected because they were missing necessary voter information. During the 2020 general election, [20,036](#) absentee and early ballots were rejected (or about .8%). Of absentee ballots only, Massachusetts [rejected](#) 3.3% (or 5,152 ballots) in the 2016 general election compared with only .6% (or 13,718 ballots) in the 2020 general election. In October 2020, a research and consulting firm (Nielsen Norman Group) analyzed the user experience with the Massachusetts absentee ballot package and [advised](#) that ballot rejections could be reduced with design changes. It recommended making the signature line on the secrecy envelope more visible, adding pictures to the instructions that come with the absentee ballot, and clearly indicating in the instructions that absentee ballots received without the secrecy envelope will be rejected.

C. New Hampshire

New Hampshire absentee ballots contained an [inner affidavit envelope](#) that required a signature. A **missing inner envelope, or an inner envelope without a signature, resulted in the [rejection](#) of a voter's absentee ballot.**

New Hampshire's relevant [statute](#) provided that the secretary of state would prepare absentee ballots, along with affidavit envelopes large enough to contain the ballots. The affidavits printed on these envelopes would certify that the person submitting the ballot was a New Hampshire

voter who was unable to vote in person for that election. The affidavit left spaces blank for the voter (or the person assisting the voter) to print their name, city or town, and ward, and to include a signature.

A related [statute](#) provided that “[t]he voter shall execute the affidavit on the envelope...shall enclose and seal the inner envelope with the affidavit in an outer envelope...[and] shall then endorse on the outer envelope the voter’s name, address, and voting place.” New Hampshire statutes also expressly mandated that inner envelopes be provided to voters and that these envelopes be signed and included with the ballot. Thus, New Hampshire’s inner envelopes served not only as secrecy sleeves but also as affidavits, increasing their importance.

TOWN OF

Absentee from City or Town. A person voting by absentee ballot because of absence from the city or town in which he or she is entitled to vote shall fill out and sign the following certificate: I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of _____, New Hampshire, in ward _____ that I will be unable to appear at any time during polling hours at any polling place because I will be working on election day or I am voting on the Monday immediately prior to the election, the National Weather Service has issued a winter storm warning, blizzard warning, or ice storm warning, and I am elderly or infirm, have a physical disability, or have to care for children or infirm adults, or I will be otherwise absent on election day from said city or town and will be unable to vote in person.

Absentee Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate: I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of _____, New Hampshire in ward _____ that I will be observing a religious commitment which prevents me from voting in person or that on account of physical disability I am unable to vote in person.

I certify that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

Signature: _____
Print Name: _____

A person assisting a disabled or blind voter shall make and sign a statement on this envelope in the space provided acknowledging the assistance.
I attest that I assisted the applicant in executing this form because he/she has a disability.

Signature: _____
Print Name: _____


In accordance with RSA 659:34, the penalty for knowingly or purposely providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Form A 1/2019

Affidavit Envelope: Please sign one of the two affidavits that best suits your situation. If you received assistance in completing your ballot, your assistant must sign as well. Seal your ballot in this envelope. (No other documents should be enclosed in this envelope).

Return Envelope: Seal your Affidavit Envelope in this envelope to return. If you have any documents which need to be returned with your ballot, those are sealed in this envelope as well. Don't forget your postage!

Name _____
Voting Address _____ Ward _____
City _____ State _____ Zip _____
FORM P


ENCLOSED IS THE BALLOT OF AN ABSENTEE VOTER.

TO: TOWN OR CITY CLERK OF _____
CITY CLERK
51 No. Park St.
Lebanon, NH 03766

New Hampshire election policies implemented in 2020 may have limited the number of absentee ballots rejected due to missing inner affidavit envelopes. Returning a ballot without the inner affidavit envelope [was](#) the second most frequent reason for rejected absentee ballots in the New Hampshire 2020 primary on September 8. Out of 1,343 rejected ballots, those missing inner envelopes amounted to only 337 rejected votes, or less than 0.04% of absentee ballots received. The relatively small number was due in part to “partial pre-processing procedures” [implemented](#) for the first time in New Hampshire in 2020. Partial pre-processing allowed election officials to open the outer envelopes when absentee votes arrived and determine whether the inner envelope was included and signed. The partial pre-processing was intended to create opportunities for voters to be notified of and correct absentee ballot errors. New Hampshire Assistant Secretary of State and Elections Legal Counsel Bud Fitch

[recommended](#) that New Hampshire election officials also employ these same partial pre-processing procedures in the 2020 general election, and at least some jurisdictions did so. As of early January 2021, based on early reports and surveys from local New Hampshire officials, Fitch estimated that more than 63% of New Hampshire voters lived in cities and towns that conducted partial pre-processing during the 2020 general election (per email from Fitch, 01/05/21).

D. New Jersey

In New Jersey, each absentee ballot package [contained](#) an outer envelope, an inner envelope (with a certificate attached to the flap that required a signature), a page with general information, and the ballot itself. Although each county designed its ballot differently, every county included an inner envelope with a certificate that required a signature. Because the inner envelope was needed for signature verification, **a missing inner envelope would result in ballot rejection.**

A large number of absentee ballots were rejected in New Jersey's primary and general elections, likely attributable to the extraordinary expansion of the use of mail ballots in the state and high number of first time mail voters (a group [more likely to make mistakes](#)). In the July 7, 2020, primary, [almost 88%](#) of the approximately 1.47 million New Jerseyans who voted did so using a mail-in ballot—a massive increase due to the coronavirus pandemic and an [executive order](#) requiring that absentee ballots be mailed to all registered voters. In the general election, the percentage of vote by mail [increased](#) from 7% in the 2016 presidential election to 86% in 2020 presidential election.

During the 2020 primary, [8,055 absentee ballots](#) were rejected because of missing or unsigned inner envelope certificates. During the 2020 general election, [19,475 absentee ballots](#) were rejected because of missing or unsigned inner envelope certificates. That increase—though more than double—was less than the increase in the total number of absentee ballots cast, which more than tripled, from [1.28 million](#) in the primary to [4.4 million](#) in the general election. Notably, the total number of ballot rejections increased by less than two-thirds, from [40,845](#) in the primary to [66,506](#) in the general. Even so, after the high absentee ballot rejection rate in the state primary, New Jersey lawmakers [passed](#) the Ballot Cure Act on August 28, 2020, in an effort to reduce absentee ballot rejections based on voter error. Under the Act, New Jersey election officials were required [to alert](#) voters within 48 hours, if they forgot to sign the inner envelope certificate, and then instructed the voter on how to certify the ballot and get it counted.

New Jersey law [required](#) that county clerks send with each mail ballot two envelopes “of such sizes that one will contain the other.” New Jersey’s inner envelope included the voter certificate on a flap attached. Finally, a reminder was printed on the outer envelope, which stated, in relevant part, “for your vote to count, you must: 1) Vote your ballot and place it in the inner envelope with the attached certificate, 2) Seal the envelope, 3) Place the envelope into the larger envelope addressed to the board of elections and seal that envelope.” Thus, the plain language of the statute could be interpreted to suggest that returned ballots that do not include the certificate that is attached to the inner envelope will be rejected. For at least the 2020 primary and general elections, however, commissioners with the Union County Board of Elections voted to accept absentee ballots that were not in the inner envelope as long as a certification was still included (per email from the administrator of the Union County Board of Elections, 12/15/20).

E. New York

New York’s absentee ballots contain an inner envelope (called the “ballot envelope” or “oath envelope”) on which was printed the voter affirmation requiring a signature. According to [Oswego](#) and [Cattaraugus](#) counties, election officials said that, “unless the oath is signed and the ballot is enclosed in the secrecy envelope, your ballot will not be counted.” As such, **ballots in New York were rejected if they were missing the inner envelope or corresponding signature.** During New York’s 2020 primary, election officials rejected [over 84,000 ballots](#) in New York City alone, due to a combination of missing signatures, mismatched signatures, and absentee ballots arriving without postmarks. However, subsequent [state law changes](#) and [an agreement](#) between New York and the League of Women Voters gave voters the opportunity to

correct technical errors or other problems during New York’s 2020 general election voting. The [recent state law changes](#), for instance, required local boards of elections to notify voters as soon as possible if their absentee ballot had deficiencies, including an unsealed or missing inner envelope that would need to be cured in order for the vote to count. In addition, for New York’s 2020 general election voting, voters who [received](#) notice of such a deficiency between the dates of October 27 and November 3 (Election Day) had seven days to cure the deficiency, and voters whose absentee ballots were received on or after November 3 had five days to cure their absentee ballots, following notice of such deficiency.

New York’s [election code](#) explained that, “[t]he board of elections shall furnish with each absentee ballot an inner affirmation envelope.” One side of the inner envelope had spaces printed for the voter’s name, address, district, and other identifying information. The reverse side of the inner envelope displayed the voter affirmation, declaring that the voter met all requirements and qualifications. The affirmation included room for the date, the voter’s signature, and the signature of a witness (if the voter did not sign their name). The inner envelope additionally included instructions for the voter regarding the marking, mailing, and deadlines for the return of the ballot by various methods.

OFFICIAL ABSENTEE BALLOT

036160

General Election November 3, 2020
District: City of Rye ED 7
Ballot: _____

VOTER ID: _____
COUNTY: WESTCHESTER

General Election November 3, 2020
SIGNATURE REQUIRED (SEE OTHER SIDE)

Board of Elections use only / Para uso exclusivo de la junta electoral

OFFICIAL ABSENTEE BALLOT FOR GENERAL (OR PRIMARY OR SPECIAL) ELECTION _____, 20____

Name of voter _____
Residence (street and number if any) _____
City/town of _____ (village, if any) _____
County of _____
Assembly district _____
Legislative district (as applicable) _____
Ward (as applicable) _____
Election district _____
Party enrollment (in case of primary election) _____
Inspector (D) _____ Inspector (R) _____

Instructions to voter:

1. First mark your ballot, then fold it and place it in this envelope, and then seal this envelope.
2. Sign and date the statement on the reverse side of this envelope. Your signature will be compared to the signature on file with the board of elections to verify your identity.
3. Place this envelope in the return envelope.
4. Your ballot can be returned to any Early Voting or Election Day poll site, or to your local Board of Elections by 9:00 pm on Election Day, if delivered in person, or be postmarked by Election Day and received not later than seven days following the election.

If you have an application for an absentee ballot, do not place it in this envelope. Instead, place it in the return envelope along with this sealed envelope.

Instrucciones para el votante:

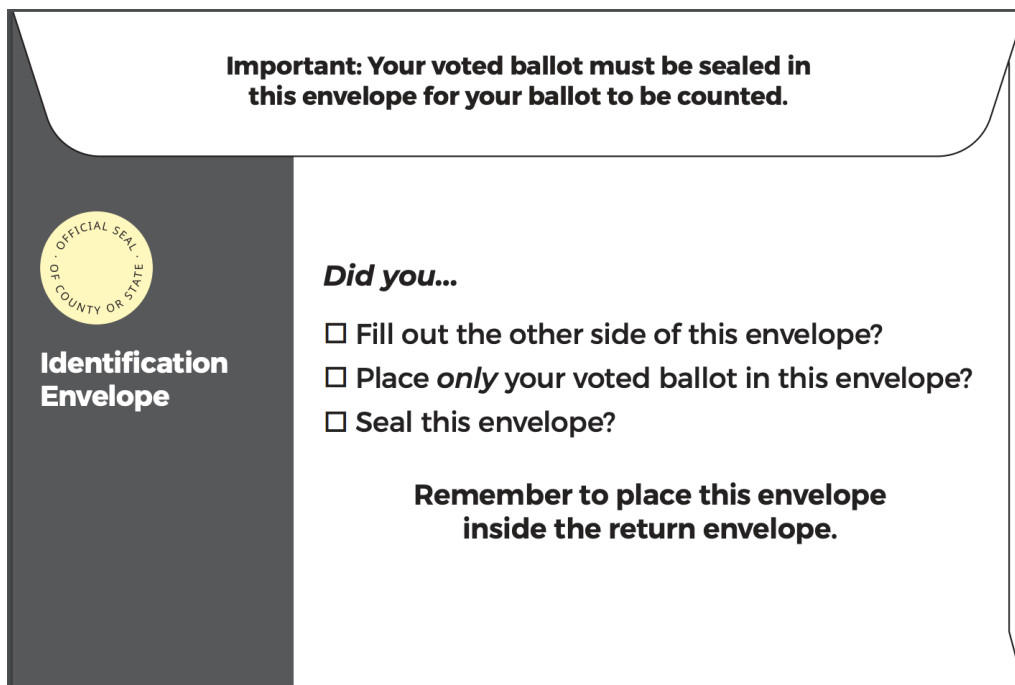
1. Primero, marque su boleta electoral, luego, dóblela y ubíquela en este sobre y selle el sobre.
2. Firme y feche la declaración en el reverso de este sobre. Su firma se comparará con la firma archivada en la junta electoral para verificar su identidad.
3. Ubique este sobre en el sobre de devolución.
4. Su boleta puede devolverse a cualquier centro de votación del Día de la Elección o Votación Anticipada, oa la junta Electoral local antes de las 9:00 pm del Día de la Elección, si se entrega en persona, o llevar el matasellos del Día de la Elección y recibirla a más tardar siete días después la elección.

Si tiene una solicitud para boleta electoral en ausencia, no la coloque en este sobre. Colóquela en el sobre de devolución junto con este sobre sellado.

Ballot envelope
Sobre de boleta electoral

F. Ohio

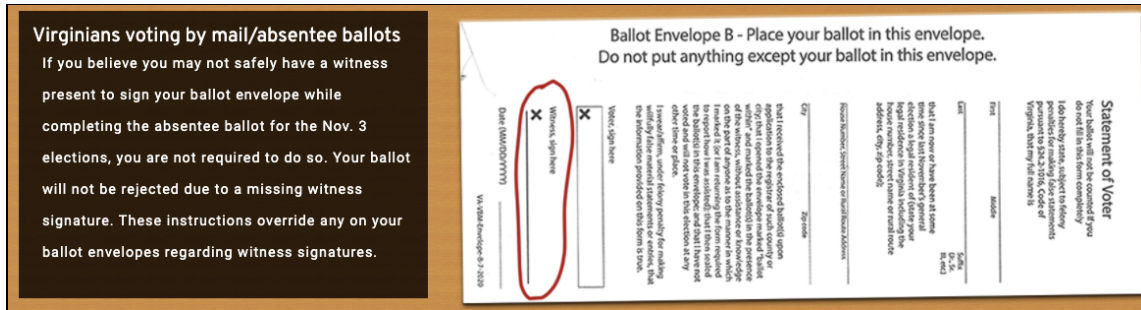
The Ohio absentee ballot package contained an inner [absentee ballot “identification envelope”](#) that was required for signature verification purposes. Therefore, **absentee ballots received without inner envelopes were rejected in Ohio**. During the 2020 primary, of the 21,154 ballots that were rejected in the state, nearly 4,000 of them were [rejected](#) because they were returned without the identification envelope or without sufficient information on the inner envelope. During the 2020 general election, the number of absentee ballots cast was over 90 percent more than the number cast in the primary, but only 9,205 absentee ballots were [rejected](#) in the state for all reasons combined.



Under Ohio law, the director of elections was [required](#) to send with each absentee ballot, an inner “Identification Envelope” and an outer return envelope that bore the post office address of the director. Printed on the inner envelope was the “Identification Envelope Statement of Voter,” which included spaces for the voter’s name, address, and other identifying information, as well as a declaration of the veracity of the information provided and space for the voter’s signature. Failure to include the identification envelope within the return envelope would mean the absence of this required information and declaration.

G. Virginia

The 2020 Virginia absentee ballot contained an [inner envelope](#) that included space for the required voter signature. Thus, **a missing inner envelope resulted in a ballot's rejection**.



According to the Virginia [election code](#), absentee voters had to be sent a ballot, an inner envelope “for resealing the marked ballot,” and an outer return envelope. The side flap of the inner envelope displayed the “Statement of Voter,” which contains the standard oath for absentee voters. The statute says that “[w]hen this statement has been properly completed and signed by the registered voter and witnessed, his ballot shall not be subject to challenge[.]” But in the 2020 primary and general elections, Virginia did [not reject votes](#) for *lack* of a witness signature. In accordance with [rulings](#) by the U.S. District Court for the Western District of Virginia, the state waived the witness requirement during the pandemic for voters who feared exposure to the coronavirus, pursuant to a consent decree.

V. States That Included Secrecy Sleeves But Accepted Naked Ballots

A. Alaska

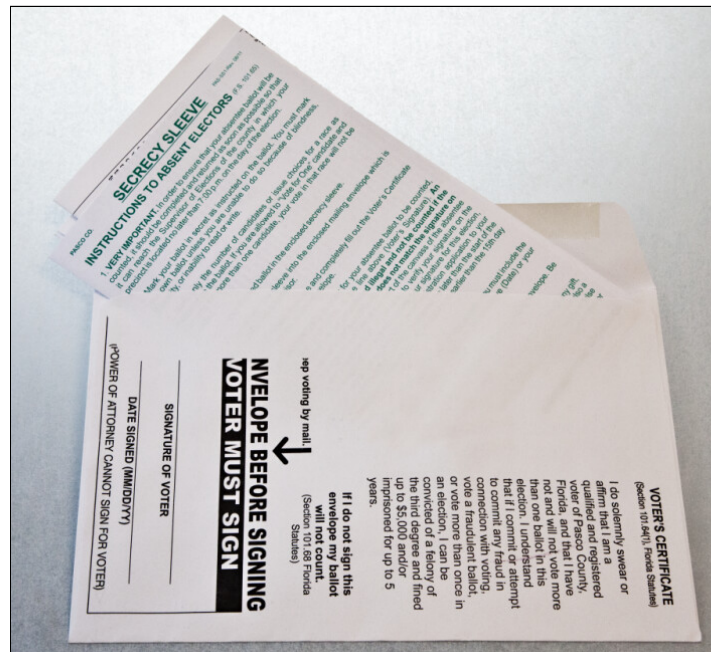
During the 2020 primaries in Alaska, election officials [rejected](#) a total of 1,240 absentee ballots, primarily due to a missing (or improper) signature from a voter or witness or because the ballot envelope was postmarked after Election Day. During the 2020 general election, the state [rejected](#) a total of only 569 absentee ballots. [State law](#) called for a secrecy sleeve to be provided to absentee voters, but it did not indicate that a ballot must be rejected if it was missing the secrecy sleeve when submitted. Before the 2020 general election, a representative from the Alaska Division of Elections for the Municipality of Anchorage [stated](#) that **election officials would not reject ballots submitted without secrecy sleeves**, which was also its policy for the

2020 primary. Thus, at least in Anchorage, failure to use the secrecy sleeve did not result in rejection of the vote.

[Alaska law](#) required that the election director “shall provide a secrecy sleeve in which the voter shall initially place the marked ballot, and shall provide an envelope with the prescribed voter’s certificate on it, in which the secrecy sleeve with ballot enclosed shall be placed.” This statute placed requirements on both the election official and the voter to make use of the secrecy sleeve. However, the space for the voter’s signature, witness signature, and voter declaration appeared on the outer mailing envelope, not on the secrecy sleeve.

B. Florida

Each absentee ballot in Florida contained a ballot, a secrecy sleeve with instructions for the absentee voter, and a return envelope. **However, if a voter forgot to include the secrecy sleeve with the ballot, the vote was still counted**, according to [election officials](#). Nevertheless, around [18,000 absentee ballots were rejected during the 2020 presidential primary](#) due to missing signatures and mismatched signatures, among other reasons.



Florida’s [election code](#) provided secrecy sleeve instructions for both election officials and voters. It stated, in relevant part, that election supervisors “shall enclose with each vote-by-mail ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and a mailing envelope, into which the absent elector shall then place the

secrecy envelope.” The voter’s certificate must be printed on the back of the mailing envelope, with the line for the voter’s signature crossing the seal of the envelope. The secrecy envelope itself displayed a printed warning that the ballot would not be counted if it was not received by the supervisor of elections by 7 p.m. on Election Day.

C. Georgia

In 2020, Georgia absentee ballot packages [contained](#) the ballot, instructions, an outer envelope, and a “privacy sleeve” in the form of a white piece of paper. An August 21, 2020, [order](#) from the U.S. District Court for the Northern District of Georgia, Atlanta Division, noted that “the ballot design was changed for the 2020 primary election to eliminate the secrecy envelope....Instead, the 2020 primary ballot included a ‘privacy sleeve,’ a change that was made to ‘allow faster processing of returned ballots by election officials.’” This change [remained in effect](#) during the 2020 general election. **Officials said that returning the absentee ballot inside the privacy sleeve was [entirely optional](#).** Note, however, that the Georgia Secretary of State’s office [mistakenly included](#) in its instructions that absentee ballots would include an inner “envelope,” rather than a folded white sheet of paper that now served as the privacy sleeve.

Georgia’s [election code](#) detailed the requirements of voters with respect to the secrecy envelope. It stated that “the elector shall vote his or her absentee ballot, then fold the ballot and enclose and securely seal the same in the envelope on which is printed ‘Official Absentee Ballot.’ This envelope shall then be placed in the second one, on which is printed the form of the oath of the elector; the name and oath of the person assisting, if any; and other required identifying information.” Nevertheless, as noted above, officials treated use of the inner envelope (which in 2020 consisted of a folded piece of paper) as optional and did not reject the ballots of voters who failed to use it.

D. Hawaii

In Hawaii for the 2020 general election, each [absentee ballot package](#) delivered to the voter included a return envelope, a yellow secret sleeve, general information, and the ballot itself. **Ballots were [still counted](#), even if the voter forgot to use the secrecy sleeve.**



Hawaii's absentee voting [statute](#) explicitly required that the clerk provide absentee voters with "ballots, ballot envelopes, and a return envelope that shall contain a statement to be subscribed to by the voter." The statement affirmed that the intended voter was the person voting and had to be signed for the ballot to be counted.

E. Minnesota

Minnesota's [election code](#) required that "a return envelope, a ballot envelope, and a copy of the directions for casting an absentee ballot" be provided to each absentee voter. The statute also detailed the design of the envelopes, requiring that the "return envelope shall be of sufficient size to conveniently enclose and contain the ballot envelope and a folded voter registration application." According to officials in Hennepin and St. Louis counties, **a missing "ballot envelope" (or secrecy sleeve) was not a criterion for rejection**. These two counties also used a separate "signature envelope" (in addition to the return envelope and the ballot envelope) that was required for signature verification; but, regardless, it appeared that the state did not reject ballots for lacking only the secrecy envelope.

The state [statute](#) provided counties two options for the placement of the voter information. Either (i) the return envelope must be large enough "to contain an additional envelope, that when sealed, conceals the signature, identification, and other information" of the voter, or, (ii) the return envelope must include "an additional flap that when sealed, conceals the signature, identification, and other information" of the voter." This language left open the possibility that the inner envelope need not necessarily be the vehicle for providing identifying voter information. Finally, the certificate of eligibility to vote by absentee ballot, which had spaces for both the voter

Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address MN

ID number (MN driver's license #, MN ID card #, or last four digits of SSN)

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature X

Witness must complete this section

Witness name

MN street address (or title, if an official or Notary) MN

City

I certify that:

- the voter showed me the blank ballot before voting;
- the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;
- the voter enclosed and sealed the ballots in the ballot envelope; and
- I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.

Witness Signature X

If notary, must affix stamp

For Official Use Only

☐ Accepted ☐ Rejected (reason:)

PIER Signature Envelope- Registered

Highlights and "X"s

In addition to drawing an "X" through the witness section on applicable ballots, officials in St. Louis County, Minn., are highlighting important sections that voters sometimes miss.

and a witness to sign, was printed on the back of the outer return envelope, rather than the inner envelope.

F. North Dakota

The [North Dakota Century Code](#) stated simply that “a secrecy envelope and a return envelope must be enclosed with the ballot” sent to absentee voters. The voter affidavit, and spaces for the voter’s signature and identifying information, were displayed on the back side of the outer return envelope, not the secrecy envelope. Burleigh County Election Manager Erika White [said](#) that, “There’s nothing in law that states we need [the secrecy envelope] coming back, and we see ballots all the time where we just have the ballot inside of this envelope, and that’s fine, we accept that. It’s really up to the voter if they want to use the secrecy sleeve.” An election specialist in the office of North Dakota Secretary of State Lee Ann Oliver confirmed **that absentee ballots lacking secrecy sleeves were still counted in North Dakota in the 2020 general election** (per email received by Jesse Lazarus from Election Specialist in the Office of the North Dakota Secretary of State Lee Ann Oliver, 1/4/21).

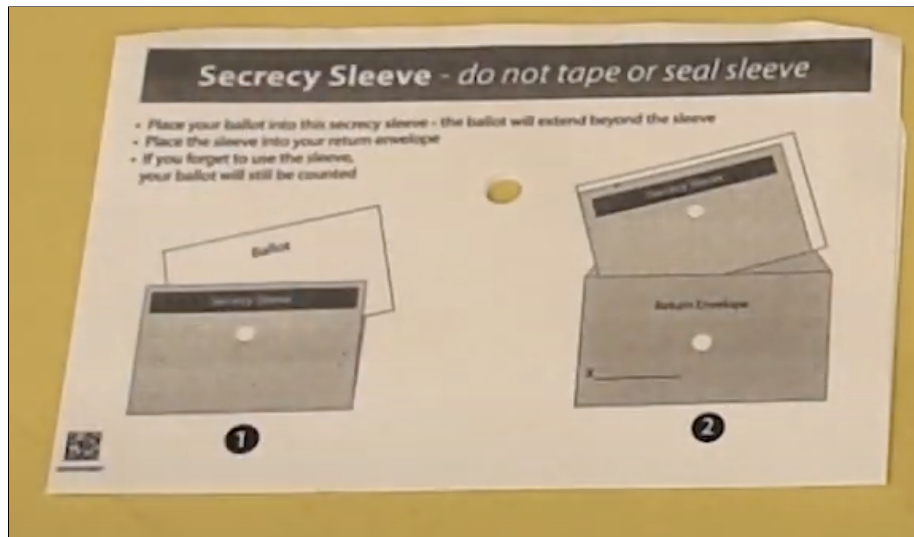
G. Texas

Texas provided two envelopes, an inner “ballot envelope” and an outer “carrier envelope” that included voter information, such as [a signature](#). The Texas [election code](#) provided that, “[a]fter marking the ballot, the voter must place it in the official [inner] ballot envelope and then seal the [inner] ballot envelope, place the [inner] ballot envelope in the official [outer] carrier envelope and then seal the [outer] carrier envelope, and sign the certificate on the [outer] carrier envelope.” It also expressly states that, “Failure to use the [inner] official ballot envelope does not affect the validity of the ballot” (emphasis added). Further, the 2020 Texas Handbook for Election Judges and Clerks [stated](#) that a “ballot is considered valid even if it is not enclosed in a ballot secrecy envelope.” **Thus, ballots were still counted if the voter forgot to include the inner envelope.**

The inner ballot envelope was required only to display instructions for marking and returning the ballot, the deadline for doing so, limitations on assistance to the voter, and criminal penalties for unlawful assistance. The outer [carrier envelope](#), by contrast, had to include space for the voter to identify the relevant election and personal identifying information, as well as the voter certificate and signature, along with other specified textual material and the oath of any person assisting the voter.

H. Washington State

Washington State's absentee ballots were sent with secrecy sleeves but, in at least [one county](#), the secrecy sleeve specifically stated: "If you forget to use the sleeve, your ballot will still be counted." Therefore, **it appeared that ballots received without secrecy sleeves would not be rejected.** Additionally, the official [website](#) of the secretary of state stated: "Your elections department will securely process your ballot if your security envelope is unsealed."



Washington's [election code](#) required that absentee voters be provided with "a security envelope in which to conceal the ballot after voting," along with a larger return envelope. The code further mandated that the voter swear to and sign a provided declaration but stated simply that the "ballot materials must provide space for the voter to sign the declaration," without specifying on which envelope or other ballot materials the oath should be printed.

I. West Virginia

West Virginia absentee ballots were sent with inner and outer envelopes, but the state did not specify whether ballots returned without inner envelopes would be rejected. The state's [election code](#) required election officials to provide absentee voters with two envelopes—one marked "Absent Voter's Ballot Envelope No. 1" and the other marked "Absent Voter's Ballot Envelope No. 2." The voter had to place their ballot into the envelope marked "No. 1" and seal it and then place this sealed envelope into the envelope marked "No. 2." Finally, the forms on the outer envelope (No. 2) had to be completed and signed before the envelope was returned.

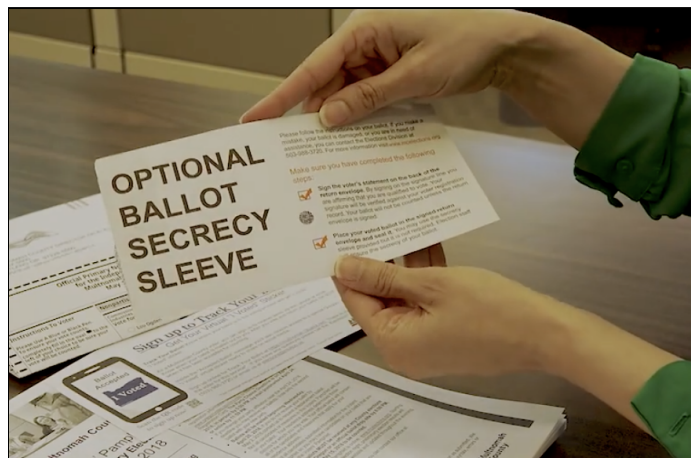
Therefore, while the voter certification was on the outer, rather than the inner envelope, the code did contemplate the voter using both envelopes.

Absentee ballot [instructions](#) advised voters to fold a completed ballot, put it in “envelope #1” and seal that inner envelope before placing the inner envelope into “envelope #2,” which then had to be sealed and signed. Election officials at the county clerk’s office in Kanawha County said that **ballots would not be rejected if the voter failed to use the inner envelope.**

VI. States That Allowed But Did Not Require Counties To Use Secrecy Sleeves

A. Montana, Oregon and Michigan

A few states allowed for, but did not require, counties to provide secrecy sleeves to absentee voters. For example, under [Montana law](#), “[i]f a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot” and the ballot will still be counted.



Similarly, Michigan law provided that each absentee ballot sent to the voter should [include](#) instructions to direct the voter to first vote and then “place the ballot in the secrecy envelope, if any.” The instructions further [indicated](#) that, if a secrecy envelope was not provided, the voter should “refold the ballot to conceal [their] vote.” Michigan’s election code [instructed](#) election officials responsible for opening absentee ballot return envelopes to take any absentee ballots they found that were not already contained within a secrecy envelope and “immediately insert

that absent voter ballot into an absent voter ballot secrecy envelope.” In other words, absentee ballots were not rejected because the voter did not use the secrecy envelope. Indeed, a spokesperson for the Michigan Secretary of State Tracy Wimmer [confirmed](#) that, if election workers opened a return envelope and found a naked absentee ballot without a secrecy envelope, they would simply place the absentee ballot into a new secrecy envelope and “proceed as normal.”

In [Oregon](#), the [default rule](#) was to provide voters with a secrecy envelope. However, counties could apply to the secretary of state to use a different procedure for maintaining privacy, and the [state](#) assured voters that “[t]he county elections office will maintain the privacy of your ballot if you forget the optional secrecy envelope or sleeve and your ballot will still count.”

VII. Conclusion

Of the 17 states that required election officials to provide absentee voters with secrecy sleeves, seven states rejected ballots received without the secrecy sleeve. In most of these states, the voter’s signature, certification, or other required identifying information was required to be written on the secrecy sleeve, so the rejection of the ballot was largely driven by the missing voter information. Just five states—Florida, Georgia, Hawaii, Texas, and Washington—made it clear that they would count “naked ballots,” or ballots received without a secrecy sleeve, statewide, in the general election of 2020. And large counties in several other states—including Alaska, Minnesota, North Dakota, and West Virginia—also confirmed that ballots would not be rejected for lack of a secrecy sleeve. In most of these states, the required voter information was on the outer envelope, not on the secrecy sleeve. In other jurisdictions, however, the rules were not so clear, and voters risked their ballot being rejected and their vote not counted if they forgot to use the inner envelope.

To avoid rejected votes for failure to include the inner envelope, policymakers, election officials, political parties, and nonprofits in 2020 employed several successful strategies. In Pennsylvania, the publicity around litigation and awareness campaigns appeared to have helped educate the public about the importance of including the secrecy sleeve, reducing voter error. In other states, such as Kentucky, ballot-curing processes appeared to have lowered overall absentee ballot rejection rates, including from failure to include the secrecy envelope.

For policymakers and election officials seeking to reduce rejection rates based on inadvertent failure of the voter to include the inner secrecy envelope, moving the location of required voter information or certification from the inner envelope to the outer envelope, as was the case in

Alaska, North Dakota, and Texas, could make it easier for legislatures and election officials to accept ballots where the voter forgets to use the inner envelope. And as Philadelphia's City Commissioner Lisa M. Deeley cautioned in her [letter](#) to the Pennsylvania state legislature, it is worth examining whether the use of secrecy envelopes continues to serve the original purpose for which they were adopted, or whether modern vote-counting procedures obviate their necessity.

Behind the Scenes of Mail Voting: Signature Verification and Witness Requirements in the 2020 Elections

March 10, 2021

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Introduction

Due to the coronavirus pandemic, at least 92 million voters requested or were sent a mail ballot for the 2020 general election. By the morning of Election Day, November 3, 2020, voters had returned 64.6 million mail ballots to election officials. Many of these voters were using absentee ballots for the first time and not aware of the procedures used by their state to confirm their identity on their mail ballots.

Most states verify the identity of voters who cast their ballots by mail in one of two ways: 1) by comparing the voter's signature on the ballot's official return envelope to the voter's signature on file with the election office, or 2) by having a witness (or two) or a notary public sign to attest that the ballot was completed by the intended voter. These signature verification requirements are designed to prevent voter fraud in mail voting. While there is [no evidence of widespread fraud](#) in mail voting, [including in 2020](#), there have been isolated cases in the history of mail voting.

Though voter-identity verification rules differ by state, the rules typically include a requirement that the voter sign the return ballot envelope and that the voter's signature on that envelope match the signature on file with election officials. Experts predicted that the increased use of mail-in ballots would likely result in more ballots being rejected due to the voter's failure to sign their ballot, an election official's determination that the signature did not match the signature on file, or the voter's failure to meet a state's witness requirement. Studies have shown that ballots of first-time absentee voters are [more likely to be rejected](#) due to voter error.

The [early data on ballot rejections](#) from the 2020 general election suggested that, while experts' worst case fears of higher absentee ballot rejection rates were not borne out, the absolute *number* of ballots rejected did increase. Despite the dramatic increase in first-time mail-in voters, election officials [rejected a lower percentage of mail-in ballots](#) than in previous years.¹ Of [23 states reporting](#), 20 states reported lower rates of absentee ballot rejections in November 2020 compared with November 2016. However, because mail voting as a percentage of overall voting increased substantially in the 2020 general election—from [21% in 2016 to 46% in 2020](#)—it is likely that most states nonetheless saw an increase in the absolute *number* of ballots rejected as compared with prior years, even as the *percentage* of rejections declined. While there is no one explanation for the downward trend in mail ballot rejection *rates* in the 2020 general election, several factors likely provide part of the answer: removal of obstacles to mail voting—by election officials, state legislatures, and courts; increased voter education regarding mail voting procedures, and the electorate's motivation to make sure its ballots counted in what was expected to be a closely contested presidential contest.

¹ As of the time of writing, the 2020 general election data are not yet available from the Election Administration and Voting Survey (EAVS), which includes granular data on the numbers of, and reasons for, mail ballot rejections. Thus, for this report, voting statistics regarding the 2020 general election are from the limited data released by individual states and press reports.

This report examines the signature verification practices for mail ballots (sometimes called “absentee ballots”) that were employed across the United States during the 2020 general election, with a special focus on six battleground states. Part I outlines four areas: (i) the legal framework for verifying the identity of the voter of a mail-in ballot, specifically signature and witness requirements, (ii) the signature verification and cure processes employed, which varied widely by state and even by county, (iii) ballot rejection rates for signature defects, and (iv) the litigation related to signature verification and witness requirements. Part II is a deeper dive into the specific signature and witness rules, verification processes, rejection rates, and litigation in each of these six battleground states: Arizona, Florida, Michigan, North Carolina, Pennsylvania and Wisconsin.

Part I: Signature Verification Landscape

I. Signature and Witness Requirements: the Legal Framework

The legal framework for processing, verifying, and counting mail-in ballots varied widely across the 50 states and the District of Columbia in 2020, and, in some states, changed due to both the increased demand for mail voting and a flood of litigation. Every state had its own process for verifying the identity of voters who cast mail ballots, also known as absentee ballots. Every state [required](#) such voters [to sign](#) their mail ballots, usually on the return envelope, an inner envelope, or a separate certificate. Thirty-one states (plus the District of Columbia) had an additional process to “verify” that the signature was that of the intended voter (see *Table 4* for a list of these states). In these states, election officials compared the voter’s signature on the return ballot envelope with the voter’s signature on file (with voter registration or other government entity) and determined if they matched. Some states, alternatively or additionally, required a witness to sign the envelope to affirm the identity of the voter. At least two states, Alabama and Arkansas, required that voters also return a photocopy of an acceptable form of identification with their absentee/mail ballot.

When an absentee or mail ballot complied with the particular ballot requirements of a state, it was accepted and counted. Sometimes, however, voters returned an absentee/mail ballot that did not meet all the requirements. For example, the ballot’s return envelope may have been missing the voter’s signature or, in a state that required signature verification, the signature on the envelope may have been deemed by election officials not to match the voter’s signature on file. When ballots did not satisfy all the requirements, some states rejected the ballot outright, while other states notified the voter and provided the voter with an opportunity to “cure” their ballot deficiency.

Some states had rules, codified in state law, that enabled voters to cure signature deficiencies in time for the ballots to be counted. These states notified voters when there was a problem and provided them with a process and time frame by which to fix the problem, typically by verifying that the ballot was indeed theirs. In the 2020 general election, 29 [states](#) had such a process for missing signatures and/or “mismatched” signatures (those that election officials determined did not match the signatures on file): Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, Utah, Washington, and West Virginia, as well as the District of Columbia. In a few of these states, these processes were temporary accommodations during the pandemic. Additionally, due to ongoing state and federal lawsuits and appeals regarding its notice and cure process, North Carolina created such a process, suspended it after mail voting had already begun, and then largely restored its process to allow voters to cure missing signatures, in response to a series of court orders.

In states that did not have such a notice and cure process, ballots with missing or mismatched signatures were simply not counted. In these states, when election officials determined that the

signatures did not match, they rejected the ballots outright. [Mississippi](#), for example, required election officials to compare the signature on each absentee ballot envelope to the voter's signature on file and toss the ballots if the signatures did not match, without notifying the voter in advance. The other states that tossed votes due to signature defects in the 2020 general election without [allowing voters an opportunity to cure](#) included Texas, Arkansas, South Dakota, and Tennessee.

Several states changed their laws to allow notice and cure only during the pandemic, as an accommodation to the increased demand for mail voting. For example, [New York](#) allowed voters to cure ballot issues only for the November 2020 election, due to the pandemic. Similarly, Louisiana [codified a process](#) for the 2020 primaries, due to the pandemic, to allow voters to cure their signature deficiencies. In October, after plaintiffs initiated a lawsuit to extend the accommodation to the general election, the Louisiana legislature [renewed the emergency rule](#) for all 2020 elections.

Other states adopted notice and cure provisions more permanently. Under [Maine](#) law, for example, election officials could reject an absentee ballot for a signature issue, without notifying the voter or giving them a chance to cure the defect. In response to a [lawsuit](#) in June that challenged that law and others, given the coronavirus pandemic, the secretary of state issued guidance to election officials, saying voters should be notified and given a chance to cure their ballots. A state [superior court decided](#) on September 30, 2020, that the secretary's guidance provided voters with adequate due process. The secretary of state, nevertheless, [issued guidance](#) on October 20, 2020, requiring clerks to "make a good faith effort to notify the voter as quickly as possible (within one business day at a minimum) that the ballot may be rejected or challenged unless its defect is cured." In general, due largely to litigation over the last several years correlated to an increased use of mail voting, there has been a trend towards more states adopting notice and cure procedures.

For states that did not rely on signature matching to verify the mail voter's identity, the most common way election officials authenticated the identity of an absentee voter was by requiring a witness or notary public to sign the ballot, attesting that they observed the intended voter completing the ballot. [Twelve states](#) typically required an absentee ballot to be witnessed or notarized in order to be counted: Alabama, Alaska, Louisiana, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, Virginia, and Wisconsin. [Alabama](#) required that voters have two witnesses sign their ballots or have their ballots notarized. [North Carolina](#) reduced the witness requirement from two to one during the pandemic. [Oklahoma](#) allowed absentee voters to send a copy of a photo ID instead of finding two witnesses during the pandemic. [Minnesota](#), [Rhode Island](#), and [Virginia](#) suspended their witness requirements during the pandemic after lawsuits were filed challenging the requirement, and [Missouri](#) also waived the requirement for 2020.

Opportunities to cure a witness defect on a ballot also varied by state and county. In [Wisconsin](#), while there was no statewide rule, some counties notified voters of witness defects and provided an opportunity to cure; others did not. In [North Carolina](#), the issue of whether voters could cure a witness defect was the subject of a complicated set of lawsuits, settlements, stay

orders, and appeals that, in the leadup to the 2020 general election, resulted in several changes to the rules, even after mail voting had started. In the end, voters were allowed to cure if they forgot to sign their ballots but not if they failed to get the required witness signature. (These events are detailed in Part II under “North Carolina Signature and Witness Requirements.”)

Among states that provided voters an opportunity to cure ballot defects, there was also variation regarding the deadline for curing the defect. For signature defects, for example, some states, such as Montana, required the voter to cure the defect by Election Day, leaving no remedy for mail-in ballots that arrived on or after Election Day. Other states, such as Nevada and California, allowed some time after Election Day for voters to cure the defects. The deadline for curing ballot defects could be different for different defects. For example, under Arizona law, voters had until five business days after Election Day to cure signature mismatches but only until Election Day to cure missing signatures. Ahead of the November 2020 general election, a federal district court [required](#) Arizona to extend the cure period for missing signatures to match the cure period for mismatched signatures; but, on October 6, 2020, [the Ninth Circuit granted appellants an emergency stay](#), reinstating the inconsistent deadlines for curing signature mismatches and missing signatures.

Table 1 displays the signature-matching practices and requirements for mail-in ballots in six battleground states.

Table 1. Signature Verification in Battleground States for the 2020 General Election.

State	Required Signature Verification Process?	Signature Verification Practices Codified?	Witness Requirements ?	Allowed Cure of Missing Voter Signature?	Allowed Cure of Mismatched Signature?	Allowed Cure of Witness Signature Error?	Voters had a chance to cure signature issues after Election Day?
AZ	YES	YES	NO	YES	YES	N/A	YES
FL	YES	YES	NO	YES	YES	N/A	YES
MI	YES	NO	NO	YES	YES*	N/A	NO
NC	NO	N/A	YES	YES	N/A	YES	YES
PA	NO	N/A	NO	YES	N/A	N/A	NO
WI	NO	N/A	YES	YES	N/A	YES	NO

Table 1 is color-coded based on whether or not the practice in question made it easier (green) or harder (red) for absentee voters to cast their ballots.

*Some jurisdictions may have allowed absentee voters to cure their ballots, but there was no state law requiring them to do so. All voters could choose to spoil the ballot with the mismatched signature and request a new ballot.

A. Battleground States that Conduct Signature Matching

Of the six battleground states covered here, three states— Arizona, Florida, and Michigan— conducted signature verification in 2020. In Arizona, election officials were required to [compare the signature on the voter's mail-in ballot](#) envelope with the signature on the voter's registration record. State law appeared to allow for a broad range of practices for the matching process—from the use of techniques taught by forensic specialist trainers with expertise in signature matching (as was done in Maricopa County) to applying a simple visual check based on the subjective judgment of election officials. If the signatures were “inconsistent,” an election official was required to make “reasonable efforts” to contact the voter to provide an opportunity to cure the problem. Voters had until five business days after Election Day to cure signature mismatches, but only until Election Day to cure missing signatures.

Florida's signature verification practices are codified ([Fla. Stat. § 101.68](#)), but the law itself does not provide standards for signature matching, leaving that to the discretion of the counties. A 2019 law required the state to provide signature matching [training](#) to all supervisors of election and county canvassing board members but not to all staff engaged in signature verification. In Miami-Dade, Florida's most populous county, election officials were trained in signature matching practices by a forensic specialist, and officials had to pass a test on signature matching in order to conduct signature match examinations on voter ballots. (Per conversation with Miami-Dade County election official, 9/21/20). In Wakulla County, one of Florida's least populous counties, election officials were not trained in forensic signature matching; they simply looked for similarities between signatures. (Per conversation with Wakulla County election official, 9/21/20). Regardless of what county they lived in, voters had until two days after the election to cure a signature problem, and they were required to include a copy of identification along with the signed cure affidavit.

In Michigan, election officials were required to [compare the signature on the voter's mail-in ballot envelope with the “qualified voter file”](#) signature to “determine the genuineness of [the] signature.” [According to Michigan's guidance on signature matching](#), a signature was deemed insufficient only if it had “multiple, significant, and obvious differences” from the signature on file. On October 7, 2020, Governor Gretchen Whitmer signed a bill into law ([Senate Bill 0757](#)) that required election officials to notify voters within 48 hours of determining that a signature did not match. If the signature was contested less than 48 hours before Election Day, officials were required to notify voters by 8 p.m. the day before the election. Another bill ([House Bill No. 5991](#)) sought to require election clerks to notify voters of signature mismatches and provide cure opportunities until 10 days before the election was certified. That bill [was referred](#) to the Michigan House Committee on Elections and Ethics on July 23, 2020, but did not pass before Election Day.

B. Battleground States that Lack Signature Matching

Laws in Wisconsin, North Carolina, and Pennsylvania did not, in the 2020 general election, require election officials to compare the absentee voter's signature on their ballot return envelope to a signature on file. Wisconsin voters were, however, subject to [stringent ballot](#)

[witness requirements](#) which mandated that absentee voters complete their ballots in front of a witness who was then required to certify that the ballot was completed by the intended voter. Witnesses were required to provide their contact information, including address, along with their signature. The rules regarding the need for a witness for mail-in ballots changed frequently in Wisconsin's April 2020 primary elections, due to litigation winding its way through the courts. On April 3, 2020, a [federal district court](#) ruled, in *Democratic National Committee v. Bostelmann*, that election officials could not reject the ballots of absentee voters without a witness if the voter stated they were unable to obtain a witness safely. The same day, [the Seventh Circuit promptly reversed](#), citing the Wisconsin Election Commission's new guidance for obtaining a witness, prompted by the pandemic and the state's interest in promoting the integrity of elections. In the end, Wisconsin mail voters were required to obtain the signature of a witness in both the primary and general elections.

In North Carolina, [litigation](#) prompted the North Carolina State Board of Elections (NCSBE) to stop requiring election officials to match a voter's signature with a signature on record. However, there were [other reasons why a ballot might be rejected](#) in North Carolina: 1) a voter failed to sign the voter certification; 2) a voter signed in the wrong place; 3) a witness or assistant failed to print their name; 4) a witness or assistant failed to print their address; 5) a witness or assistant failed to sign; 6) a witness or assistant signed on the wrong line; or 7) the voter's ballot was in an unsealed envelope upon arrival. Under a [memo dated October 4](#), the NCSBE temporarily suspended its notice and cure process until pending litigation was resolved. During this time, which was after mail voting in the state had already started, ballots with these defects were simply set aside and could not be cured until a series of related lawsuits were resolved. However, in a memo on [October 17](#), the NCSBE specified that the county board office must contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency. The communication to the voter had to enclose either a cure affidavit or a new ballot. Five deficiencies could be cured via affidavit: 1) a voter failing to sign the voter certification; 2) a voter signing in the wrong place; 3) a witness or assistant failing to print their name; 4) a witness or assistant failing to print their address; and 5) a witness or assistant signing on the wrong line. But the failure of a witness to sign at all was a defect that could *not* be cured. To remedy that defect, an absentee voter would have to spoil their ballot altogether and start from scratch—a more cumbersome process available only on or before Election Day.

Pennsylvania also did away with its signature matching process in September 2020, as a result of [litigation filed in August](#) by the League of Women Voters in the U.S. District Court for Eastern Pennsylvania. The lawsuit alleged that the state failed to require any training in handwriting examination or provide any standards or guidelines to aid election officials in their signature analysis. Plaintiffs dropped their case after Secretary of the Commonwealth Kathy Boockvar [issued guidance](#) on September 11, 2020, to all 67 Pennsylvania counties prohibiting them from rejecting mail-in ballots based solely on a signature matching issue. The campaign of incumbent Republican President Donald Trump challenged Secretary Boockvar's new guidance in federal district court. The district court, on October 10, 2020, [dismissed the lawsuit](#), holding that the Pennsylvania election code "imposes no requirement for signature comparison" for mail-in ballots. Finally, on October 23, 2020, the Supreme Court of Pennsylvania issued a unanimous

[declaratory ruling](#), at the request of Secretary Boockvar, that Pennsylvania law did not require or authorize county election boards to reject absentee or mail-in ballots based on an analysis of a voter's signature.

II. The Signature Matching Process

Signature matching is the process of comparing a signature on the return envelope of a mail ballot against an image of a voter's signature stored in the voter registration files. Voter registration files include the signature voters provided when they registered to vote. In some states, the file can also include signatures provided at other times, such as when voters updated their voter registration (e.g. due to change of address, name, or political party), obtained or renewed their driver's licenses, or when they voted in person in the past (if the voter signed an electronic signature at the polls). Some states or counties store such signatures and are able to provide election officials with images of multiple signatures on file, while others store or show election officials only one signature.

The process of signature matching varies by state and can even vary by county and township within each state. States and counties employ a wide variety of approaches to signature matching: (i) some use automated technology to assist in the review process, while others do not; (ii) some employ temporary staff to evaluate signatures, while others rely on permanent staff; (iii) some have formalized standards for signature verification training and assessment, while others have only informal training and leave much of the process to the discretion of each county election official; and (iv) some states allow election observers to watch the process and register objections to matching determinations by election officials, while others do not.

A. Review Processes and Use of Automated Systems for Matching

For the majority of counties and states, signature review and verification was a tiered process, meaning the first determination that a ballot signature was a mismatch was not the final decision. In the first tier of review, signatures were typically compared by either a staff member or an automated system.

In many counties, ballot return envelopes were first run through a ballot processing machine that scanned and captured the signature digitally. The machines, such as those used in Miami-Dade County in Florida, would then display the image of the scanned signature on a monitor next to an image of at least one signature the state or county had on file for that voter. This allowed the staff member to see the signatures side by side to facilitate their ability to compare them. (Per conversation with Miami-Dade County election official, 9/21/20). If the initial review by an election staffer determined the signatures matched, that was often sufficient to satisfy the signature verification requirement, and the ballot was opened and counted. If the initial review determined there was a mismatch, the ballot typically went to a second level of review by an election staffer.

Some counties relied on automated systems and software to compare the newly scanned signature from the ballot envelope with one or more signatures on file, in the first tier of review. According to Greg Council, a vice president at Parascript, a company providing signature matching software, [about 70 large counties across the country](#) use automated signature verification software to review ballot signatures. A [survey](#) of the signature verification processes in 33 California counties found that only nine counties in the state used automated systems for signature matching, and none allowed a mismatch to be determined conclusively based on an automated determination.

In many counties using automated comparison systems for signature matching, an automated determination of a match was sufficient to verify the signature and would qualify the ballot to be opened and counted. In contrast, an automated determination that the signature did not match was typically insufficient to reject the ballot. In such cases, the ballot typically was routed to one or more staff members for human evaluation of the signature comparison.

If the second level human reviewer determined the signatures matched, the ballot was usually counted. If the second level human reviewer agreed with the automated determination that the signature was a mismatch, then, depending on the state or county, the ballot was either rejected or went to a third tier of review, usually by a supervisor in the elections office (e.g. the registrar, assistant registrar, or other senior staff member). In some states and counties, such as Detroit, Michigan, for example, an intermediate supervisor (below the city clerk) had the power to declare a mismatch and reject the ballot. (Per conversation with Detroit Department of Elections, 9/23/20). In other jurisdictions, a final decision to reject a ballot was made by the registrar or by a canvassing board.

B. Notice and Cure

In states that allowed voters to cure signature mismatches, a final determination that the signature on the return ballot envelope did *not* match the voter's signature on file was sometimes referred to as a "challenge." For the 2020 election, [27 states](#) permitted voters to fix or cure a signature mismatch on a challenged ballot (it was 28 until the Fifth Circuit, on October 19, 2020, reversed a district court ruling that required Texas to provide notice and cure). While some states have allowed signature curing for some time, more states began offering voters the option in 2020 after a [spate of litigation](#) on this issue. One state, New York, notified voters and allowed them to cure signature issues but only for the 2020 general election, in response to the potential threat of COVID-19 on voters' health. In states that offered "notice and cure" opportunities, election officials made efforts to contact the voter through some combination of mail, email, and/or phone, and give the voter an option to cure by certifying the signature was theirs, through some combination of mail, email, and/or phone. Required and acceptable means of notice and cure varied by state and county. A ballot was considered "challenged" until and unless it was cured by the state's [cure deadline](#). If it was not cured on time, it was "rejected" and not counted.

In states that did not allow voters to cure a mismatched signature, the ballot was automatically rejected upon a final determination of a mismatch by election officials. In most states, these

ballot envelopes were not opened. In 2020, states that did not provide voters the opportunity to cure ballot signature defects included Texas, Tennessee, Arkansas, South Dakota, and Mississippi. In Texas, for example, if election officials decided the signature on an absentee ballot did not match the signature on file, they rejected the ballot without notifying the voter before Election Day. They were required by statute to notify voters within 10 days *after* Election Day that their ballot was not counted, but there was no opportunity at that point to fix the error.

C. Staff Hiring

Some election offices have full-time staff members to accomplish signature verification; other offices hire temporary staff. An [examination](#) of California's signature verification process found that larger counties often hired temporary staff to supplement their permanent staff. Some counties across California have more than 70 people to conduct the signature verification process, while smaller counties tend to rely on one to three permanent staff. Some California counties reported hiring the same temporary staff every election season for decades, while others reported temporary staff working for only one or two seasons. In Florida, Miami-Dade County hires between 30 and 100 temporary staff, generally the same people every year. (Per conversation with Miami-Dade county executive assistant to the supervisor of elections, 10/1/20).

Although some jurisdictions used temporary staff to support their signature matching process, temporary workers were not typically given the ability to make a final decision that a ballot signature was a mismatch. For example, in Michigan, jurisdictions could hire and train temporary staff to support the signature verification process, but only the election clerk for that jurisdiction, who undergoes formalized signature verification training, could make a final determination that a signature was a mismatch. (Per conversation with an election training specialist at the Michigan Bureau of Elections, 9/23/20).

In less populous counties, such as [34,000-person](#) Wakulla County, Florida, one or two individuals have verified the signatures on mail-in ballot envelopes for many years. (Per conversation with Wakulla County election official, 9/21/20). Despite having only a small staff to review all signatures, if either of the two individuals found a mismatch, that person would ask for opinions from one or two other staff before finally declaring the signature a mismatch and notifying the voter. (Per conversation with Wakulla County election official, 9/29/20).

D. Training and Standards

Some states incorporated some form of training process, whether formal or informal, to ensure their staff (full-time or temporary) understood the process of verifying signatures. Most states that were entirely vote-by-mail states, such as [Oregon](#), [Colorado](#), and [Washington](#), had well-defined statewide standards of signature assessment. For instance, Colorado's training manual outlined and illustrated various forms of signature differences and considerations. Those considerations included style (i.e. slant of writing, spacing, letter size, curves, and loops), the source of a signature (i.e. electronic pad or paper), and whether the voter was part of a

population requiring special consideration (i.e. voters who struggle with motor issues due to disability or age) (see *Figure 1*). The state also required staff to complete signature matching exercises.

Figure 1. Images of Signatures from Colorado Secretary of State's [Signature Training Guide](#).

BROAD CHARACTERISTICS

The Type of Writing

Next to spelling, the type of writing is the easiest characteristic to notice a difference in. Does the voter's record have only cursive handwriting but the ballot-return envelope has print? This is an immediate indicator for rejection of a signature or further research.

Genuine Signature	Questioned Signature
	


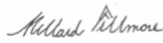


The Speed of Writing

Someone who is writing his or her own signature will perform the act fairly quickly. This is because the person has likely signed his or her name thousands of times, so the gesture is automatic and harmonious, requiring little thought or concentration.

If someone other than the voter took a long time to copy the voter's signature, the copied signature will not have a free and natural look to it. Instead, you should see slower, deliberate marks. If the forger attempted to create the signature quickly, then it should have various characteristic differences.

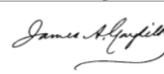


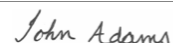
Keep in mind, though, that this situation may go in reverse. If the voter naturally has shaky or poor handwriting that is evident in the SCORE signature, but the ballot-return envelope's signature is suddenly of high quality, that could indicate a forgery.

Look to see whether the ballot-return envelope's signature was made at the same speed as the signatures in SCORE. Please keep in mind that a reasonable explanation for a shaky signature is the voter's advanced age, decreased muscle strength, or the surface below the envelope.

Genuine Signature	Questioned Signature
	
	

Overall Spacing



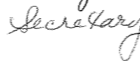



Writing a signature is a fixed and subconscious habit, so the signature's spacing should be reasonably similar. Determine whether the ballot-envelope's signature has odd or unnatural spacing that cannot be reasonably explained.

Genuine Signature	Questioned Signature
	
	

Overall Size and Proportions

The signature's size and proportions should also be reasonably similar. At your first impression, identify whether the ballot-return envelope's signature is too large or small compared to the signatures in SCORE. You may find it difficult to perform this comparison by looking only at one SCORE signature and may need to conduct further research.

The first example below has odd proportions because the letter's height compared to the name's length is very different than the genuine signature. The remaining two examples have unreasonably different sizes.

Genuine Signature	Questioned Signature
	
	
	

Michigan [law](#) required all newly elected or appointed election clerks to undergo training regarding election procedures, and the [two-day training](#) offered by the Michigan Bureau of Elections (MBE) covered the "Absent Voting Process" (along with 11 other topics). The MBE also offered in-person refresher training during election years. The extent to which these trainings covered how to conduct signature verification in particular is unclear. For health and safety reasons, the 2020 training was mostly provided through online courses on the state's Elections eLearning Platform. The MBE provided training materials to jurisdictions primarily through the counties, although it worked directly with the election clerks of larger jurisdictions.

Although state law and the MBE's [handbook](#) for election officials required staff to verify signatures on absentee ballots and determine if they "agreed" with the voter's reference signature on file, they did not spell out what that process should entail. In late 2019, plaintiffs in [Priorities USA v. Benson](#) alleged, among other things, that Michigan (1) lacked any uniform standards for reviewing signatures, resulting in various jurisdictions using diverging criteria to verify signatures, and (2) election officials lacked sufficient training and skills to compare signatures reliably. In early 2020, Michigan Secretary of State Jocelyn Benson released [new signature verification guidance](#) that set a standard: that election officials should presume the intended voter signed their ballot unless there were "multiple, significant, and obvious differences" between the signatures on the ballot and in the file. This guidance also included examples of matching and non-matching signatures, as well as a list of legitimate reasons, such as illness, that may cause a variation in a person's signatures. In April 2020, Priorities USA

[voluntarily withdrew](#) its lawsuit. On October 6, the secretary released very similar guidance for the November presidential election—guidance that was in effect during the election. On March 9, 2021, after the election, a court [ruled](#) that the signature verification guidance issued by Secretary Benson on October 6, 2020, was invalid because the guidance constituted a “rule” as defined by the state Administrative Procedures Act (APA) but was issued without following the formal rule-making procedures which the APA requires. So the guidance may not be used in future elections.

Although a few states had a statewide uniform standard for signature verification, most states left the training and standards to the discretion of the county elections offices. This resulted in significant differences among counties. Some counties codified signature verification standards in a training manual. Others, such as Miami-Dade County, [the most populous county](#) in Florida, provided annual training by forensic experts in handwriting identification techniques. In Miami-Dade, each staff member had to pass a test proctored by the forensic specialist to be able to verify signatures. All staff and temporary workers in Miami-Dade completed signature verification training and took a test provided by Hart & Flores Questioned Document Lab, Inc. (Per conversation with Miami-Dade County election official, 9/21/20). Similarly, election officials in Maricopa County, the [most populous](#) county in Arizona, are trained every two years by forensic experts—who also train the FBI—in signature verification. (Per conversation with Maricopa County Recorder, 9/16/20). In contrast, some counties employed [“on the job” training](#), which could range from a formalized training program that includes shadowing a trained official to an informal policy of “if you have any questions, just ask.”

In many jurisdictions, the same few individuals have run the entire process for years and rely on practices developed and memorized over time. In Florida’s Wakulla County elections office, for example, one woman has verified almost every mail-in ballot’s signature for the past 10 years, despite having no formalized training. Her colleague asserts that she has definitely become “an expert in signature,” though the majority of people who verify signatures are “probably not experts.” (Per conversation with Wakulla County election official, 9/29/20).

Different states and counties employed different standards for review of signatures. Some put emphasis on evaluating the signature as a whole, while others focused on particular technicalities of the signature. Some extended a presumption in favor of the voter, rather than a mismatch, and others did not. A [study](#) published in May 2020 compared the signature verification processes in each of California’s counties. It found that a large county in California emphasized following “general guidelines over specific criteria for comparison,” while other counties in California reported focusing on particular elements of the signature. On September 29, 2020, the California secretary of state issued [emergency regulations](#) to provide “clear and uniform guidance” on the issue to all 58 of the state’s counties. The guidance instructed, “the voter’s registration record shall only be rejected if two different election officials unanimously find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures in the voter’s registration record.” This mirrored a standard recently adopted in some other states. For example, a July 2020 [Nevada law](#) allowed a signature to be challenged only if it differed in “multiple, significant and obvious respects from the signatures of the voter available in the records of the county clerk.” And the Michigan secretary

of state's August 2020 [guidance](#), substantially reissued in October 2020, also provided for a mismatch only where the ballot signature differed in "multiple, significant and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter whenever possible." (A Michigan state court [invalidated](#) the Michigan guidance after the general election for the secretary's failure to follow the required rule-making procedures before issuing it.)

E. The Role of Observers in Signature Verification

State laws regarding the role of observers did not often specifically address whether they have a right to observe the signature matching process or to object to the conclusions of election officials as to whether a signature had matched. As a result, county officials in many states exercised a fair amount of discretion regarding the rights of observers during the signature verification process, and that discretion was not applied uniformly across counties. In California, for example, [research revealed](#) substantial variation among counties regarding whether observers were allowed to watch the signature comparison process and whether they were allowed to object to the conclusions of the election official regarding whether there was a match.

This is also true for the battleground states. In [Arizona](#), for example, state law allowed observers to watch over "any significant voting or processing activities." The county recorder for Maricopa County, however, reported that observers in Maricopa had no right to observe the signature verification process specifically. They could observe it if the process happened to be occurring in an area where observers were allowed, but they were not permitted to challenge a determination of whether any signature was a match or not. (Per conversation with Maricopa County Recorder, 9/16/20).

In **Michigan**, the law provided that one appointed election challenger per eligible group could observe the conduct of the "absent voter counting board," which tallied absentee votes on Election Day and the day before Election Day. If a challenger believed an absentee ballot was submitted by a person unqualified to vote in the precinct, the challenger could challenge that ballot. ([Election Officials' Manual](#)). An election law specialist at the Michigan Bureau of Elections for the past 15 years reported, however, that he was unaware of any requests to observe the signature verification process per se, and the procedures were unclear. ([Election Officials' Manual](#)).

In **Florida**, the law permitted the public to [inspect](#) ballots and be [present](#) for the canvass of mail-in votes. If any eligible voter observing the process believed "that any ballot is illegal due to any defect," that observer could file a protest with the canvassing board. In Miami-Dade, the [most populous](#) county in Florida, the public could observe any of the 15 or more [canvassing board meetings](#) where mail ballots were accepted or rejected. An observer could announce at any time whether they objected to a decision or wanted clarification. Observers could not touch any ballots during inspection and, due to the pandemic, states put in place more strict distancing guidelines between observers and the canvassing board. While an observer could object to or question a decision, the final decision regarding the acceptance or rejection of a

ballot was up to the canvassing board. (Per conversation with Miami-Dade County Deputy supervisor of elections, government affairs, and media relations, 10/2/20). Additionally, candidates and their representatives were allowed to be present during mail-in ballot inspection by the public and could file protests with the canvassing board ([Fla. Stat. §101.572](#)).

Because **Pennsylvania**, **Wisconsin**, and **North Carolina** did not use signature comparison processes in the 2020 general election, there was no signature verification process to observe. Observers could observe compliance with witness requirements in Wisconsin and North Carolina.

III. Rejection Rates Due to Ballot Defects

A. Reasons for Ballot Rejections

Absentee ballots could be rejected by election officials for a variety of reasons, the most common of which included:

- **Lateness:** A ballot was considered late if it was received or postmarked (depending on state law) after the statutory deadline, which was usually Election Day (or some specified number of days after Election Day, provided it was postmarked by Election Day). In most states, lateness was the most common reason for ballot rejections.
- **Missing voter signature:** The voter failed to sign the ballot's return or inner envelope.
- **Signature mismatch:** The signature on the ballot envelope did not match one or more of the voter's signature(s) in the voter files, according to election officials. (*Table 1* above indicates which battleground states utilized signature verification to confirm identity.)
- **Missing witness signature:** The witness signature or other information (e.g. name, address) was missing or incomplete in states that required a witness signature on the ballot envelope. (*Table 1* indicates which battleground states utilized witnesses to confirm identity.)
- **Missing ballot elements:** A voter returned the ballot but failed to use the official return envelope and, if required, a secrecy sleeve, or failed to include the ballot itself.

The proportion of ballots rejected for each of these reasons varied by state and depended on the specific policies and practices of the individual state. Rejection rates could also depend on the extent to which voters had been educated on the specific requirements, such as ballot receipt deadlines and how to complete the voter information on the return envelope. Rejection rates could also depend on how election officials exercised their discretion, particularly for judgment calls, such as whether two signatures matched.

Studies showed that the ballots of certain communities were rejected at disproportionately high rates. According to a [Stanford Law School signature verification report](#) examining the process in California, first-time voters, voters with physical and medical limitations, and voters with limited English proficiency (especially those whose first language is based on a non-Latin alphabet), experienced disproportionate levels of mail ballot rejections of all kinds, including for

signature issues. Young voters were also disproportionately impacted. In the 2020 Florida presidential primary, for example, voters between the ages of 18 to 21 had a ballot rejection rate that was [eight times higher](#) than the rejection rates for voters over the age of 65, though much of that was due to late arriving ballots. Over 65% of the 35,500 rejected ballots arrived after the 7 p.m. Election Day deadline.

Many studies, both historic and current, have shown that the ballots of African American voters are rejected at higher rates than white voters, but importantly, most of this research examined *all* rejections, including those for lateness, and was not focused specifically on rejections for signature mismatch. Research from the [Stanford-MIT Healthy Elections Project](#), for example, showed that, in the 2020 presidential primary elections, Black voters were almost twice as likely as white voters to have their ballots rejected in [Florida](#), more than twice as likely to have their ballots rejected in [Wisconsin](#), and about 50% more likely to have their ballots rejected in [North Carolina](#). [Georgia's 2018 elections](#) showed similar trends regarding minority voters and young voters. According to an analysis by ProPublica, in the 2018 election, [Black voters' ballots were more than twice as likely as those sent in by white voters to be rejected](#). The 2020 general election followed the same trend. As of October 27, 2020, Black voters' ballots in North Carolina had been [rejected](#) at more than [2.5 times](#) the rate of white voters.

B. Rejection Rates in the 2020 General Election

Experts [predicted](#) that the increased use of mail ballots in November 2020 would likely result in more ballots being rejected. Scholars predicted a significant increase in both the number and rate of rejected absentee ballots, particularly in light of the number of first-time mail voters. Studies showed that first-time absentee voters are up to three times more likely to have their ballots rejected.

The [early data on ballot rejections](#) from the 2020 general election suggest that experts' predictions were not borne out. Despite the dramatic increase in first-time mail voters, early data show that election officials [rejected a lower percentage of mail-in ballots](#) than in previous years.² Of the [23 states that have reported](#) so far, 20 states reported lower rates of absentee ballot rejections in November 2020 compared with November 2016. Because mail voting as a percentage of overall voting increased substantially in the 2020 election, [some states](#), probably most, saw an increase in the absolute *number* of ballots rejected as compared with prior years, even as the *percentage* of rejections declined.

Several factors likely contributed to the downward trend in ballot rejection rates in the 2020 general election. First, election officials (and sometimes courts) [removed obstacles](#) that contributed to ballot rejections in several states. Several states extended their ballot receipt deadlines (e.g. [California](#), [Massachusetts](#), [Minnesota](#), [Mississippi](#), and [Nevada](#)). Several states waived or eased witness or notary requirements ([Minnesota](#), [Missouri](#), [North Carolina](#), and

² As of the time of writing, the 2020 general election data from the Election Administration and Voting Survey (EAVS), which includes granular data on the numbers of and reasons for mail ballot rejections, are not yet available. The 2020 general election voting statistics in this report are from limited data released by individual states and press reports.

[Rhode Island](#)). A few states adopted signature matching standards that made it less likely that signatures would be rejected for mismatch (e.g. [Michigan](#)). At least [nine states](#)—Arizona, Georgia, Indiana, Maine, North Dakota, Michigan, New Jersey, New York, and North Carolina—created or enhanced their notice and cure policies in 2020, giving voters an opportunity to cure a defective ballot so it was not rejected. Two states eliminated their policies of rejecting ballots for signature mismatches ([Pennsylvania](#), [North Carolina](#)). Second, to address the surge in mail voting, election officials, civic organizations, political activists, and the press ramped up voter education efforts regarding mail voting procedures. And third, a greater proportion of the electorate was motivated to cast their ballots in the 2020 general election, as evident from the historic voter turnout.

C. Rejection Rate Charts and Graphs

Using data from the Election Administration and Voting Survey (EAVS) for the 2016 general election and the 2018 midterm elections, the Healthy Elections Project team has aggregated and presented, in tables and graphs, the absentee ballot rejection rates in key battleground states (*Table 2*) and in all states (*Table 3*) with a particular focus on signature matching (*Table 4*).

Table 2. Disposition of Vote By Mail Ballots in Key Battleground States.

The chart shows, in key battleground states, the number of ballots cast, the percentage cast by mail ballot (VBM), and the percentage of VBM ballots rejected in the 2016 general, 2018 midterm, and 2020 primary elections.

State	Total number of ballots cast		Percentage of all ballots that were VBM			Percentage of all VBM ballots that were rejected		Number of VBM ballots rejected for lateness		Number of VBM ballots rejected for missing signature		Number of VBM ballots rejected for signature mismatch	
	2016	2018	2016	2018	2020 Primary ¹	2016	2018	2016	2018	2016	2018	2016	2018
AZ	2,722,660	2,409,906	74.1%	78.8%	88%	0.5%	0.5%	660	2,515	3,079	2,435	2,657	1,516
FL	9,613,669	8,355,817	27.9%	31.2%	79%	0.8%	1.2%	6,381	17,780	6,372	6,803	5,545	5,081
GA	4,147,161	3,951,876	5.1%	6.1%	48%	6.4%	3.1%	2,307	3,525	d/u	d/u	338	d/u
MI	4,874,619	4,341,340	25.9%	24.5%	63%	0.5%	0.6%	2,140	2,207	1,319	990	283	300
NC	4,690,195	3,754,895	3.8%	2.4%	1%	2.7%	6.1%	1,119	1,089	963	2,835	32	33
NJ	3,957,303	3,248,642	9.0%	12.5%	87.5%	2.8%	2.9%	2,594	2,142	2,849	3,661	1,161	1,913
OH	5,607,641	4,520,678	21.5%	20.8%	85.1%	0.8%	1.2%	5,203	5,945	708	566	324	225
PA	6,223,150	5,057,630	4.3%	3.9%	53%	1.0%	4.4%	1,341	8,162	573	77	d/u	d/u
TX	8,701,152	7,976,548	5.4%	6.7%	5.0%	1.7%	1.8%	2,858	4,161	660	1,242	1,567	1,873
WI	2,993,000	2,688,341	4.7%	5.6%	61.8%	0.2%	1.7%	19	1,445	d/u	d/u	n/a	n/a

¹Percentage of ballots that were VBM was derived based on the 2020 primary turnout.

²“d/u” means “data unavailable” and “n/a” means “not applicable.”

Table 3. Signature Issues and Rejection Rates in the 2016 General and 2018 Midterm Elections.

The chart shows, for all 50 states, the percentage of VBM ballots rejected in the 2016 general and 2018 midterm elections, and the percentage and number rejected for mismatched or missing signatures.

State code	2016 General			2018 Midterm		
	% of all VBM ballots rejected	% of rejected VBM ballots rejected for mismatched or missing signature	# of VBM ballots rejected for mismatched or missing signature	% of all VBM ballots rejected	% of rejected VBM ballots rejected for mismatched or missing signature	# of VBM ballots rejected for mismatched or missing signature
AK	3.2%	17.1%	150	3.1%	9.5%	72
AL	N/A	N/A	N/A	2.4%	5.6%	76
AR	5.9%	16.9%	273	7.6%	9.2%	106
AZ	0.5%	53.3%	5,736	0.5%	46.1%	3,951
CA	0.7%	69.7%	40,624	2.0%	16.3%	26,331
CO ¹	0.9%	80.4%	18,691	0.8%	81.0%	15,525
CT	1.9%	Unknown	Data unavailable	1.9%	Unknown	Data unavailable
DC	0.2%	75.8%	25	3.6%	22.3%	74
DE	1.5%	6.5%	14	5.0%	2.5%	18
FL	0.8%	54.2%	11,917	1.2%	38.9%	11,884
GA	6.4%	2.5%	338	3.1%	Unknown	Data unavailable
HI	0.7%	72.2%	898	0.7%	52.8%	865
IA	0.7%	46.2%	1,959	1.6%	52.0%	2,653
ID	0.4%	29.7%	260	1.6%	21.2%	252
IL	1.6%	Unknown	Data unavailable	2.2%	Unknown	Data unavailable
IN	0.2%	34.3%	719	0.4%	14.7%	501
KS	2.4%	22.2%	968	1.1%	44.1%	828
KY	5.6%	48.9%	1,049	6.8%	47.9%	842
LA	3.8%	11.8%	268	5.9%	6.7%	173
MA	3.3%	4.6%	236	5.8%	3.6%	185

	2016 General			2018 Midterm		
State code	% of all VBM ballots rejected	% of rejected VBM ballots rejected for mismatched or missing signature	# of VBM ballots rejected for mismatched or missing signature	% of all VBM ballots rejected	% of rejected VBM ballots rejected for mismatched or missing signature	# of VBM ballots rejected for mismatched or missing signature
MD	1.5%	18.1%	432	1.8%	14.7%	294
ME	1.0%	42.7%	1,048	1.1%	41.2%	874
MI	0.5%	26.0%	1,602	0.6%	21.5%	1,290
MN	0.9%	14.7%	895	1.2%	10.5%	788
MO	2.1%	9.4%	551	2.2%	6.5%	307
MS	1.5%	Unknown	Data not available	0.8%	11.0%	53
MT	0.3%	74.7%	840	0.4%	70.7%	971
NC	2.7%	20.5%	995	6.1%	49.2%	2,868
ND	0.7%	48.1%	294	0.6%	71.1%	394
NE	1.1%	47.4%	1,278	0.9%	58.9%	891
NH	2.2%	36.1%	565	2.7%	19.8%	237
NJ	2.8%	40.3%	4,010	2.9%	47.7%	5,574
NM	0.2%	91.6%	87	0.1%	19.6%	47
NV	1.6%	37.0%	436	2.0%	41.0%	727
NY	5.7%	28.2%	6,435	13.7%	19.1%	6,503
OH	0.8%	10.1%	1,032	1.2%	6.9%	791
OK	2.9%	4.4%	129	4.5%	3.7%	115
OR	0.9%	86.9%	15,267	0.0%	50.6%	89
PA	1.0%	22.6%	573	4.4%	0.9%	77
RI	2.7%	68.2%	723	2.8%	68.4%	530
SC	0.6%	9.0%	261	3.1%	6.2%	140

	2016 General			2018 Midterm		
State code	% of all VBM ballots rejected	% of rejected VBM ballots rejected for mismatched or missing signature	# of VBM ballots rejected for mismatched or missing signature	% of all VBM ballots rejected	% of rejected VBM ballots rejected for mismatched or missing signature	# of VBM ballots rejected for mismatched or missing signature
SD	0.3%	14.2%	51	0.3%	17.0%	51
TN	1.1%	11.3%	67	2.2%	8.4%	72
TX	1.7%	27.2%	2,227	1.8%	33.2%	3,115
UT	0.9%	67.0%	4,690	0.9%	59.4%	5,204
VA	0.6%	Unknown	Data not available	2.1%	16.6%	341
VT	N/A	N/A	70	2.7%	7.1%	51
WA	0.9%	75.3%	22,811	1.0%	66.6%	21,538
WI	0.2%	Not applicable	Not applicable	1.7%	Not applicable	Not applicable
WV	2.7%	4.4%	15	1.0%	24.0%	25
WY	0.2%	17.4%	32	0.4%	16.0%	40

¹Colorado: Ballots received after 7 p.m. on Election Day were not listed on any public report. Therefore, lateness is not a reported rejection reason and the rejection rate is likely higher than reported in this table.

Note: All integer values are pulled from 2016 & 2018 EAVS data. All percentage values were calculated using the dataset.

Table 4: Ballot Rejections for Signature Mismatch by State (2016 and 2018 EAVS data) and Which States Required Signature Matching in the 2020 General Election.

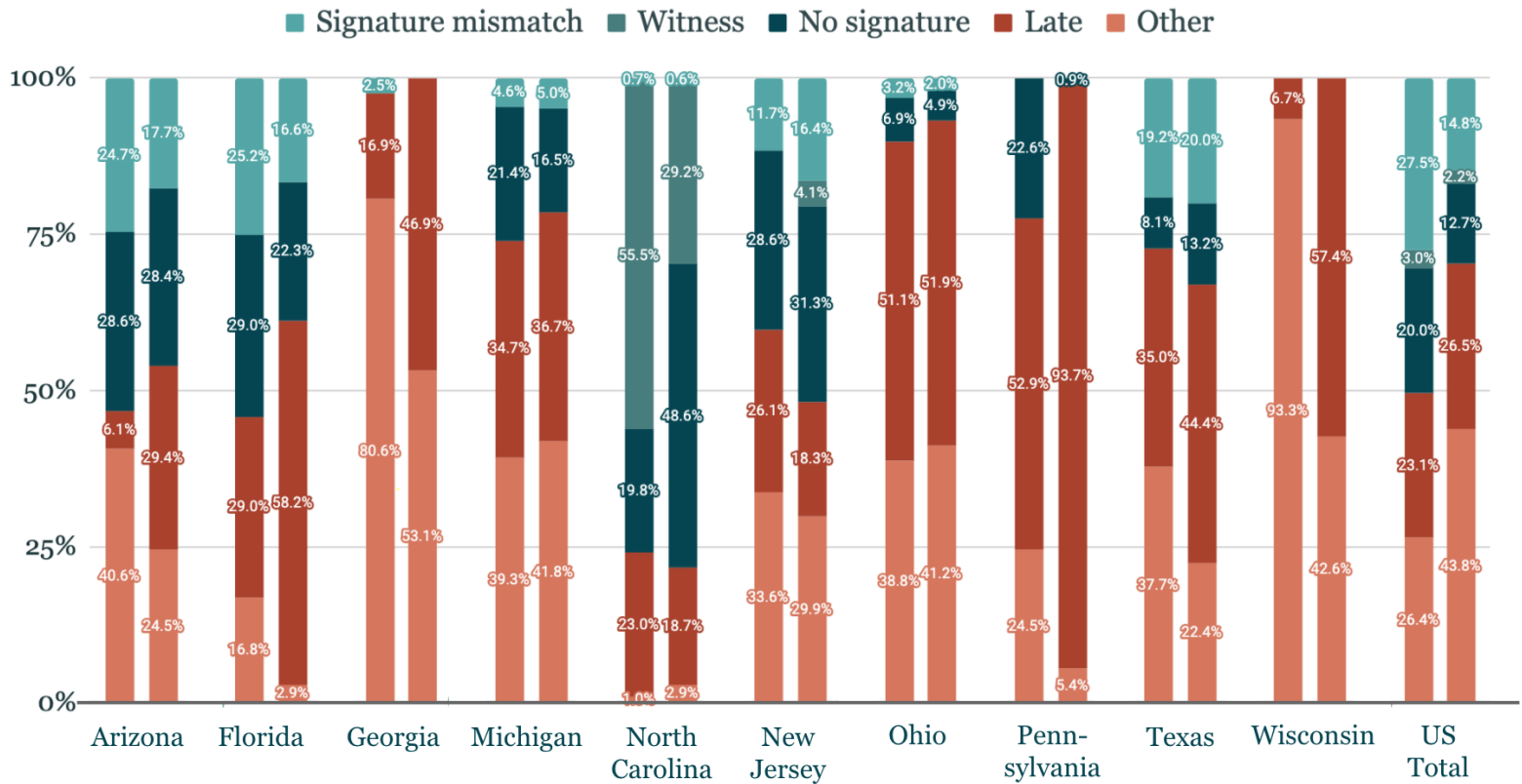
2016 General Election				2018 Midterm Election:				2020 General
State	# of VBM ballots rejected for signature mismatch	% of all votes that were VBM	% of all VBM ballots that were rejected for signature mismatch*	State	# VBM ballots rejected for signature mismatch	% of all votes that were VBM	% of all VBM ballots that were rejected for signature mismatch *	State signature matching requirement?
AK	N/A	8.55%	N/A	AK	N/A	8.50%	N/A	No
AL	N/A	4.15%	N/A	AL	N/A	3.36%	N/A	No
AR	94	2.63%	0.34%	AR	21	1.92%	0.14%	Yes
AZ	2,657	74.11%	0.13%	AZ	1,516	78.81%	0.08%	Yes
CA	25,965	58.26%	0.31%	CA	16,116	59.92%	0.19%	Yes
CO	16,149	92.05%	0.61%	CO	13,027	94.70%	0.53%	Yes
CT	N/A	7.88%	N/A	CT	N/A	6.44%	N/A	No
DC	Data not available	5.33%	N/A	DC	44	4.04%	0.47%	Yes
DE	5	3.13%	0.04%	DE	Data not available	3.86%	N/A	No
FL	5,545	27.87%	0.21%	FL	5,081	31.17%	0.20%	Yes
GA	338	5.14%	0.16%	GA	Data not available	6.14%	N/A	Yes
HI	766	43.54%	0.40%	HI	577	56.30%	0.26%	Yes
IA	N/A	41.14%	N/A	IA	N/A	24.37%	N/A	No
ID	121	28.33%	0.06%	ID	78	12.44%	0.10%	Yes
IL	Data not available	6.79%	N/A	IL	Data not available	8.78%	N/A	Yes
IN	289	33.34%	0.03%	IN	194	26.00%	0.03%	Yes
KS	493	14.68%	0.27%	KS	91	16.14%	0.05%	Yes
KY	55	1.96%	0.14%	KY	46	1.60%	0.18%	Yes
LA	170	2.91%	0.28%	LA	17	2.89%	0.04%	Yes
MA	Data not available	4.61%	N/A	MA	Data not available	3.25%	N/A	Yes

2016 General Election				2018 Midterm Election:				2020 General
State	# of VBM ballots rejected for signature mismatch	% of all votes that were VBM	% of all VBM ballots that were rejected for signature mismatch*	State	# VBM ballots rejected for signature mismatch	% of all votes that were VBM	% of all VBM ballots that were rejected for signature mismatch *	State signature matching requirement?
MD	Data not available	5.72%	N/A	MD	Data not available	4.87%	N/A	No
ME	26	32.93%	0.01%	ME	16	28.74%	0.01%	Yes
MI	283	25.85%	0.02%	MI	300	24.46%	0.03%	Yes
MN	604	22.57%	0.09%	MN	455	24.47%	0.07%	No
MO	Data not available	9.39%	N/A	MO	Data not available	8.45%	N/A	No**
MS	Data not available	8.57%	N/A	MS	Data not available	6.67%	N/A	Yes
MT	240	64.55%	0.07%	MT	390	72.26%	0.11%	Yes
NC	32	3.72%	0.02%	NC	33	2.42%	0.03%	No
ND	260	23.47%	0.32%	ND	334	29.13%	0.35%	Yes
NE	152	27.44%	0.06%	NE	53	23.82%	0.03%	No**
NH	261	9.49%	0.36%	NH	1	7.67%	0.00%	No
NJ	1,161	8.98%	0.33%	NJ	1,913	12.51%	0.47%	Yes
NM	N/A	7.62%	N/A	NM	N/A	63.09%	N/A	No
NV	98	6.51%	0.13%	NV	107	8.87%	0.12%	Yes
NY	67	5.16%	0.02%	NY	175	3.92%	0.07%	Yes
OH	324	21.51%	0.03%	OH	225	20.83%	0.02%	Yes
OK	N/A	6.95%	N/A	OK	N/A	5.81%	N/A	No
OR	9,637	100.00%	0.47%	OR	62	99.60%	0.00%	Yes
PA	Data not available	4.28%	N/A	PA	Data not available	3.87%	N/A	No
RI	230	8.46%	0.58%	RI	334	6.99%	1.23%	Yes
SC	N/A	23.41%	N/A	SC	N/A	4.18%	N/A	No

2016 General Election				2018 Midterm Election:				2020 General
State	# of VBM ballots rejected for signature mismatch	% of all votes that were VBM	% of all VBM ballots that were rejected for signature mismatch*	State	# VBM ballots rejected for signature mismatch	% of all votes that were VBM	% of all VBM ballots that were rejected for signature mismatch *	State signature matching requirement?
SD	16	28.53%	0.02%	SD	12	25.66%	0.01%	Yes
TN	7	2.12%	0.01%	TN	29	1.75%	0.07%	Yes
TX	1,567	5.38%	0.33%	TX	1,873	6.69%	0.35%	Yes
UT	2,443	69.34%	0.32%	UT	3,215	89.93%	0.33%	Yes
VA	N/A	13.48%	N/A	VA	N/A	2.90%	N/A	No
VT	N/A	0.00%	N/A	VT	N/A	9.91%	N/A	No
WA	17,592	99.10%	0.53%	WA	17,228	99.32%	0.55%	Yes
WI	N/A	4.68%	N/A	WI	N/A	5.58%	N/A	No
WV	Data not available	1.71%	N/A	WV	2	1.73%	0.02%	Yes
WY	Data not available	31.05%	N/A	WY	4	30.11%	0.01%	No
Total	87,647	22.52% avg	0.20% avg	Total	63,569	23.27% avg	0.20% avg	31 states and DC required signature matching in 2020

* The “Percentage of all votes rejected for signature mismatch” is calculated by dividing the number of ballots rejected for signature mismatch by the total number of mail-in ballots received.

** While the state has no *requirement* to engage in signature matching, there is evidence that some local election officials have engaged in the practice. For Nebraska, EAVS data show 10 counties reported a total of 152 rejections for signature mismatch in 2016 and 53 rejections for signature mismatch in 2018. For Missouri, a lawsuit [alleged](#) that some local election officials engage in signature verification.

Figure 2. Ballot Rejections by Reason in the 2016 General Election and 2018 Midterm Election.

(2016 and 2018 EAVS data)

IV. Litigation Challenging Voter Signature and Witness Requirements

Both leading up to and after the 2020 general election, plaintiffs filed a flood of litigation challenging various state rules and practices related to signature verification and witness requirements for mail ballots. This section summarizes that litigation, focusing on six battleground states. For a more detailed analysis of litigation challenging signature verification and witness requirement rules nationwide, see Part IV “Challenges to Mail Ballot Voter Verification Procedures” of the Stanford-MIT Healthy Elections Project report “[Pre-Election Mail Voting Litigation in the Coronavirus Pandemic](#).”

A. Signature Matching and Opportunity to Cure Ballot Mistakes

In recent elections, a significant number of absentee ballots have been rejected for signature-related defects. In the 2016 presidential election, about 91,000 ballots (about [0.27% of all mail ballots cast](#)) were rejected for “mismatched signatures”—because election officials determined the signature on the ballot envelope did not match the signature(s) on file. About 66,000 ballots (about [0.2% of all mail ballots cast](#)) were rejected because the voter’s signature was missing. In the 2018 midterm elections, about [64,000 ballots](#) (almost 0.2% of all mail ballots cast) were rejected for mismatched signatures, and almost [as many ballots](#) were rejected for missing the voter’s signature. Taken together, between 0.4% to 0.475% of all absentee ballots were rejected in 2016 and 2018 for voter signature issues on absentee ballots. The rejection rates in the 2020 primaries were even higher, causing some to fear that massive numbers of absentee ballots might be rejected in the 2020 general election, particularly as the ballot rejection rates tend to be [higher](#) among first-time mail ballot users.

Given the anticipated [increase](#) in absentee voting because of the coronavirus pandemic, signature requirements for absentee ballots were a frequent subject of litigation. Indeed, challenges to signature verification laws were among the most voluminous claims brought during the 2020 elections.

Plaintiffs generally challenged two kinds of practices. First, they challenged the use of the signature verification process as a basis to reject ballots, particularly in states that lacked statewide standards and training. Second, and often in the alternative, plaintiffs requested that states adopt so-called “notice and cure” procedures that would require local election officials to notify voters and provide them with an opportunity to fix defective ballots before they were rejected.

The success of the pre-Election Day litigation was mixed. Lawsuits in several states resulted in new rules that made it less likely that election officials would reject ballots for signature mismatches and made it easier for voters to remedy signature defects on ballots, thus reducing the number of ballot rejections. Many lawsuits resulted in consent decrees or voluntary dismissals after the state voluntarily adopted new voter verification policies likely to reduce the rejection rate of mail ballots.

For lawsuits that reached rulings on the merits, some plaintiffs won and others lost. For federal law claims, outcomes generally turned on the court's views of (i) how severe a burden the ballot verification requirement imposed on voters, (ii) the strength of the state's argument that the ballot requirement was appropriate or necessary to deter voter fraud and protect the integrity of elections, and (iii) whether voting by mail was a state-created liberty interest subject to procedural due process protection under the *Mathews* test. Courts were mixed on the constitutionality of state laws that permitted rejection of mail ballots with no opportunity for the voter to cure.

i. Lack of Uniform Standards and Training for Signature Verification

Lawsuits challenging signature verification processes, sometimes called “matching processes,” typically alleged that the state lacked uniform standards or criteria for deciding whether signatures on ballot envelopes matched signatures on record with election offices. Plaintiffs argued that officials responsible for comparing signatures lacked the necessary expertise and training to perform such comparisons and were, thus, prone to making errors. They claimed that these weaknesses violated the U.S. Constitution's guarantee of equal protection because, without uniform standards, the votes of similarly situated voters were subject to disparate treatment, depending on which election official scrutinized their ballot.

Several such cases in 2020 led to consent decrees or states voluntarily altering their policies. Election officials in both Michigan and Pennsylvania, for example, adopted new policies regarding signature verification after lawsuits were filed challenging their state procedures, and they did so before any court ordered them to do so. The new policies in each case were designed to reduce the likelihood that absentee ballots cast by eligible voters would be rejected.

In Michigan, the progressive advocacy organization [Priorities USA](#) [sued](#) the state in December 2019 (before the pandemic), alleging that Michigan lacked uniform statewide standards for reviewing and comparing signatures. That deficiency, the lawsuit said, allowed election officials throughout the state to employ arbitrary and diverging criteria in the matching process. The complaint also alleged that many officials engaged in the matching process did not have sufficient training and skills to compare signatures accurately. In April 2020, the Michigan secretary of state released new [signature verification guidance](#), and plaintiffs dropped the [suit](#). The new guidance did not eliminate the practice of signature verification altogether, but it implemented a statewide standard designed to reduce erroneous rejections. It stated:

Signature review begins with the presumption that the voter's ... envelope signature is his or her genuine signature. 1. If there are any redeeming qualities in the ... return envelope signature as compared to the signature on file, treat the signature as valid. ... 2. A voter's signature should be considered questionable only if it differs in multiple, significant and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter whenever possible.

This guidance was in effect for the 2020 general election but was invalidated by the Michigan court of claims after the election. On March 9, 2021, the court [ruled](#) that the October 6, 2020,

guidance constituted a “rule” as defined by the state’s Administrative Procedures Act (APA) and was unlawfully issued without following the formal rule-making procedures required by the APA. Thus, the guidance is no longer in effect for future elections.

Similarly, in Pennsylvania, the League of Women Voters [challenged](#) the state’s practice of signature matching in federal court, alleging the state failed to require any training for examining handwriting or provide any standards or guidelines to aid election officials in their signature analysis. Plaintiffs alleged violations of both equal protection and procedural due process, as well as infringement of the fundamental right to vote. Plaintiffs [dropped their lawsuit](#) after the Secretary of the Commonwealth Kathy Boockvar [issued new guidance](#) on September 11, 2020, prohibiting all county boards of elections from rejecting returned absentee or mail ballots “based solely on signature analysis.”

The Pennsylvania case did not end there, however. The Trump campaign [challenged](#) the secretary’s new guidance in federal court. The U.S. district court [dismissed](#) the lawsuit on October 10, 2020. In doing so, it stated: “A plain reading of the Election Code demonstrates that it does not impose a signature-comparison requirement for mail-in ballots and applications.” It further held that the *lack* of signature-comparison did not violate the due process or equal protection clauses of the U.S. Constitution. Finally, on October 23, 2020, in response to a petition filed by Secretary Boockvar seeking declaratory relief, the Pennsylvania Supreme Court [unanimously held](#) that “county boards of elections are prohibited from rejecting absentee or mail-in ballots based on signature comparison conducted by county election officials or employees, or as the result of third-party challenges based on signature analysis and comparisons.” The court explained that the state’s election code permits use of signature matching to verify in-person voters and provisional ballots but not for absentee or mail-in ballots. The court clarified, however, that absentee ballots may be rejected for the voter’s failure to sign and date the “declaration envelope” altogether.

ii. Lack of Notice and Opportunity to Cure

Most signature verification lawsuits in 2020 challenged the failure of election officials to notify voters and afford them an opportunity to cure a signature defect before officials tossed the ballots. Short of asking for the elimination of signature matching altogether, these claims sought injunctions to prohibit election officials from discarding any mail ballots for signature mismatch without first notifying the voter and allowing them an opportunity to fix the error. Partially due to litigation over the past several years, [more and more states](#) now require election officials to notify voters and afford them an opportunity to cure ballot signature defects prior to rejecting their ballots.

In 2020, plaintiffs sued in [14 states](#), seeking to prevent ballots from being rejected without the voter being notified and provided an opportunity to cure the error. At least 10 states—[Indiana](#), [Maine](#), [North Dakota](#), [Michigan](#), [New Jersey](#), [New York](#), [South Carolina](#), [North Carolina](#), [Mississippi](#), and [Louisiana](#)—created or enhanced their notice and cure policies in the 2020 general election in response to lawsuits, often through settlements or consent decrees. In the end, for the 2020 general election, at least [21 states](#) offered an opportunity to cure absentee

ballots rejected due to voter signature defects, several in response to litigation.

Lawsuits seeking to require states to adopt notice and cure policies argued that the lack of notice and cure violates multiple constitutional provisions. The two most common claims were that rejecting ballots without notice and cure (i) creates a severe burden on the fundamental right to vote, in violation of the First and Fourteenth Amendments (see lawsuits in [Kentucky](#), [Arizona](#), [Maine](#), [North Dakota](#), [New Jersey](#), [South Carolina](#)), and (ii) deprives voters of their liberty interest in voting, without procedural due process, in violation of the Fourteenth Amendment (see lawsuits in [Louisiana](#), [Maine](#), [North Dakota](#), [New Jersey](#), [South Carolina](#)). Additionally, some lawsuits alleged various state statutory and constitutional violations. A lawsuit in [North Carolina](#) alleged violation of the state constitution's Free Elections Clause and fundamental right to vote protections. And a lawsuit in [Maine](#) alleged violations of the state constitution's guarantees of due process and equal protection, as well as state laws governing qualifications of electors.

Some states voluntarily implemented notice and cure processes after litigation commenced. In New York, after plaintiffs filed a [lawsuit](#) in federal court, the parties reached a [settlement agreement](#) on September 17, 2020, specifying how voters would be contacted if their ballots were rejected and how they could fix the problem. In Louisiana, after plaintiffs [sought](#) a cure process in May, the legislature passed an emergency rule providing voters the opportunity to cure signature deficiencies in the June primary election, and plaintiffs withdrew the cure-related claims. The state legislature later [renewed](#) the emergency rule for the November general election. Similarly, after a [lawsuit](#) was filed in Mississippi, the state's secretary of state implemented [new rules](#) on October 7, 2020, providing for notice and cure. And in response to a [lawsuit](#) filed in Maine, which alleged a host of state and U.S. constitutional violations, the Maine secretary of state instructed state election officials to implement robust [notice and cure procedures](#).

In cases where courts addressed the merits, results were mixed. In some states, plaintiffs won orders requiring states to stop rejecting ballots without providing an opportunity for voters to cure the signature defects. These courts reasoned that the voter's liberty interest in the right to vote is so fundamental, and a notice and cure requirement so minimal, that a process is required before depriving a voter of their vote. In North Dakota, for example, the U.S. district court issued a [preliminary injunction](#), prohibiting the state from rejecting any ballot on the basis of signature mismatch "absent adequate notice and cure procedures." In analyzing plaintiffs' procedural due process claim, the court wrote that it was "[b]eyond debate" that "the right to vote is a constitutionally protected liberty interest." It reasoned that, "although 'the right to apply for and vote via absentee ballot is not constitutionally on par with the fundamental right to vote,' a state that creates a system for absentee voting 'must administer it in accordance with the Constitution.'" The court concluded the state's lack of notice or opportunity to cure constituted no process at all and, in August, issued a [permanent injunction](#) prohibiting the rejection of any absentee ballot on the basis of signature mismatch without "adequate notice and cure procedures."

Similarly, a federal district court in Indiana granted a [permanent injunction](#), finding that the state's rejection of ballots for mismatched signatures with no notice and cure violated two constitutional provisions. The court held that the policy violated the due process clause of the Fourteenth Amendment because, though the right to vote *by absentee ballot* is not a fundamental right, "having extended the privilege of mail-in absentee voting to certain voters, the State 'must afford appropriate due process protections to the use of [mail-in] absentee ballots.'" The court also held, under the *Anderson-Burdick* balancing test, that Indiana's policy created an undue burden on the fundamental right to vote under the equal protection clause of the Fourteenth Amendment because, although only a narrow class of voters were affected by rejections, the magnitude of the burden on those voters was substantial.

A U.S. district court in [South Carolina](#) also [enjoined](#) the state and its county boards from disqualifying otherwise valid absentee ballots on account of mismatched signatures unless affected voters were provided notice and a timely procedure to cure the ballot. The court found that rejecting ballots without notice and cure failed both the *Anderson-Burdick* test and the *Mathews* test.

While lawsuits seeking a notice and cure procedure for signature defects were among the most successful mail voting claims brought by voting rights advocates in 2020, they did not succeed in all cases. The [Fifth Circuit](#) (in a case filed in Texas) and U.S. district courts in [Tennessee](#) and [Arkansas](#), for example, all upheld state policies of tossing ballots where election officials determined that the signature on the ballot did not match that on file, without any requirement to provide a cure process for the voter. The Fifth Circuit and the Tennessee district court rejected plaintiffs' arguments that rejecting a ballot without an opportunity to cure was a violation of the voter's procedural due process rights. The Fifth Circuit [concluded](#) that the state was likely to succeed on its argument that the right to vote "does not implicate any state-created liberty interest under the Due Process Clause." The court was even more skeptical that the right to vote *absentee* implicated a state-created liberty interest, stating that it would "stretch [] the concept too far to suggest that a person is deprived of liberty 'when the Court has said that he has no right to the object of his alleged liberty interest.'"

In Arizona, a state that already had a notice and cure procedure in place, plaintiffs sought to extend the amount of time a voter would have to cure a ballot that was missing the voter's signature. Under state law, voters had until Election Day to cure ballots with *missing* signatures, but they had until five business days *after* Election Day to cure ballots with signature *mismatches*. In [Arizona Democratic Party v. Hobbs](#), a federal district court issued a [permanent injunction](#) on September 10, 2020, that extended the deadline to cure a missing signature. Instead of fixing the issue by Election Day, the district court ruled that voters who failed to sign their ballots had until five business days *after* Election Day—the same amount of time voters had to fix mismatched signatures. The court [found](#) that the Election Day cure deadline, in the circumstances, failed the *Anderson-Burdick* test even under "the most deferential level of scrutiny" and constituted a procedural due process violation under the *Mathews* test.

But on October 6, the U.S. Court of Appeals for the Ninth Circuit put the U.S. district court's order [on hold](#). The Ninth Circuit panel concluded that Arizona was likely to win on appeal

because the requirement that voters supply a *missing* signature by Election Day imposed only a “minimal” burden on the voter. The panel said “the public interest is well served by preserving Arizona’s existing election laws, rather than by sending the State scrambling to implement and to administer a new procedure for curing unsigned ballots at the eleventh hour.” The court noted that the U.S. Supreme Court had repeatedly admonished lower federal courts not to change the rules of an election in the run-up to that election. As of the time of writing, the appellate court had yet to rule on the merits.

During the 2020 general election season, Florida did not have any litigation over its signature verification requirement, perhaps because the state already had a [codified](#) notice and cure procedure that allows for cure up to two days after Election Day. Florida adopted these procedures in response to litigation in [2016](#) and [2018](#). While a cure deadline of two days after Election Day is on the short side for cure periods, Florida started its canvassing of mail ballots well before Election Day. So voters who returned their ballots early should have been notified of defects with sufficient time to cure them. Voters who did not return their ballots until Election Day, on the other hand, were less likely to be notified in time to cure their mistake.

iii. Post-Election Day Signature Verification Lawsuits

Plaintiffs also filed a number of signature verification claims after Election Day, particularly in Pennsylvania and Georgia, where the vote margins between the two presidential candidates were narrow. These lawsuits generally alleged that election officials did not follow required procedures for signature verification and that observers were unable to adequately observe the signature verification process. Plaintiffs were unsuccessful in almost all of these cases, and only a small number of ballots were impacted. While prior to the election signature verification suits aimed at policy reform, after the election, cases targeted specific groups of ballots or were part of a package of claims meant to overturn election results.

In the weeks after the 2020 general election, Pennsylvania’s signature verification process remained under intense scrutiny, as several plaintiffs brought suit against Pennsylvania election officials regarding the mail voting process. The Trump campaign and allies filed numerous lawsuits in Pennsylvania, including several cases that challenged aspects of how signature verification was conducted. In response, the Pennsylvania state courts (i) rejected claims that local Democratic officials violated numerous portions of the election code related to ballot signatures, secrecy envelopes, and poll observers ([Metcalf v. Wolf](#)); (ii) rejected a claim that ballots should be disqualified where voter declarations lacked a date, address, or printed name ([Zicarelli v. Allegheny County Board of Elections](#)); (iii) granted in part a claim that provisional ballots that had the required signature on the ballot but not the required signature on the outer envelope should be rejected ([Zicarelli](#)); and, (iv) affirmed that it was permissible to count absentee ballots where the voter affixed their signature to the declaration envelope but failed to provide the other requested information ([In re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election](#)). The only claim that succeeded was a claim to reject 270 ballots where the voter had signed the ballot but not the return envelope. This number of ballots was nowhere near enough to make up the difference in the statewide vote count between Biden and Trump ([Zicarelli](#)).

Post-election litigation in Arizona challenged election officials' and observers' practices related to signature verification. In [Bowyer v. Ducey](#), 13 Arizona voters and a candidate for the Republican slate of presidential electors sued state officials alleging, among other things, that poll watchers failed to adequately verify signatures on ballots. Plaintiffs sought decertification of Arizona's election results for Democratic presidential candidate Joe Biden or, in the alternative, certification for Trump. On December 9, 2020, the federal district [court](#) rejected the claims for lack of standing, failure to state a claim, delay in bringing the claims, and mootness. The court dismissed the suit, holding that the Eleventh Amendment barred plaintiffs' request for decertification and plaintiffs did not provide any evidence for their claims.

In [Ward v. Jackson](#), one Arizona voter alleged, among other things, that poll workers were not fit to verify absentee ballot signatures. The lawsuit requested an audit and an annulment of the election results. On December 4, 2020, the state superior court for Maricopa County [held](#) that evidence from the court-mandated audit demonstrated neither fraud nor misconduct and showed only a low error rate that had no impact on the outcome. The court denied relief and confirmed the election certification. On December 8, 2020, the Arizona Supreme Court, sitting en banc, [upheld](#) the superior court decision and its determination that the hand count audit was adequate and that there was no evidence of misconduct. On December 12, 2020, plaintiffs submitted a [petition for certiorari](#) with the United States Supreme Court; on February 22, 2021, the [court denied the petition](#).

Georgia saw a flurry of litigation related to its signature verification process following Election Day. Many of these lawsuits targeted the March [consent decree](#) that Secretary of State Brad Raffensperger entered into with the Democratic Party, to settle litigation. The agreement specified that two officials would need to review a rejection decision based on an elector's signature on the mail-in absentee ballot envelope. Lawsuits alleged that this allocation of personnel violated Georgia's Election Code ([Trump v. Raffensperger](#)). Courts dismissed the cases for improper jurisdiction or improperly named parties. Going into the U.S. Senate runoff races, plaintiffs in [Georgia Republican Party v. Raffensperger](#), the party and the campaigns of the Republican candidates for the U.S. Senate requested a declaration that the current Georgia signature-matching process was unconstitutional. They also sought an order to require that the signatures of all absentee ballots be reviewed by three reviewers. The case was appealed to the Eleventh Circuit, which [dismissed](#) it for lack of standing. The court held that the motion impermissibly sought to order a nonparty county official to do something contrary to state law. Since the secretary and the election board did not conduct the signature matching process, were not the election officials that review the voter's signature, and did not control whether the signature matching process could be observed, the court reasoned, the campaigns' alleged injury was not traceable to the secretary, and the secretary did not have the authority to redress it.

B. Witness or Notary Requirements

Witness requirements on absentee ballots can be particularly [confusing](#) to voters and witnesses. They often include multiple components—the witness' signature, printed name,

address, and date of signature—each in a specific location on the back of either the ballot's return envelope or the inner "secrecy sleeve" (an envelope that goes inside of the outer return envelope), or on the back of the ballot or on a separate certificate document. In North Carolina, in the 2016 general election, [2,700 absentee ballots](#), or 55% of all rejected absentee ballots, were rejected due to witness errors.

Election season lawsuits in 2020 challenged witness or notary requirements in every state that had them. Plaintiffs generally asked courts to either suspend the requirements during the pandemic or at least require a notice and cure procedure that would enable voters to fix witness and notary-related mistakes. Several states passed legislation or approved consent decrees or settlements that relaxed or suspended the requirements. Some of those consent agreements were then challenged by intervenors. In cases where courts ruled on the merits of the witness requirements, the results were mixed, with state law generally proving a more fruitful avenue for plaintiffs than federal law.

Of the swing states covered in this memo, Arizona, Florida, Michigan, and Pennsylvania do not have witness or notary requirements and, thus, did not face litigation on the issue. But [North Carolina](#) and [Wisconsin](#) faced legal challenges to these requirements in 2020.

Plaintiffs brought a host of federal and state constitutional and statutory claims. The most common federal claim alleged that witness or notary requirements placed an unconstitutional burden on plaintiffs' fundamental right to vote, violating the First and Fourteenth Amendments to the U.S. Constitution (see lawsuits in [Alabama](#), [Louisiana](#), [Minnesota](#), [Kentucky](#), [Oklahoma](#), [South Carolina](#)). For these claims, plaintiffs argued that the witness requirements, as applied during the coronavirus pandemic, failed the *Anderson-Burdick* test because they left voters, particularly immuno-compromised voters, with an untenable choice between their health and their vote.

Plaintiffs also alleged that the witness or notary requirements violated the equal protection clause of the U.S. Constitution (see lawsuits in [South Carolina](#), [Alabama](#)) and Section 2 of the Voting Rights Act (see lawsuits in [Louisiana](#), [South Carolina](#), [Virginia](#)) because they had a disproportionately adverse impact on African American voters. Plaintiffs also argued that witness requirements constituted an impermissible "test or device" in violation of Sections 3(b) and 201 of the Voting Right Act (VRA) (see lawsuits in [Alabama](#), [South Carolina](#)) and that witness requirements, as applied to voters with disabilities who feared exposure to the coronavirus, violated Title II of the Americans with Disabilities Act (ADA) (see lawsuit in [Alabama](#)).

Plaintiffs additionally challenged witness or notary requirements under various state constitutional and statutory grounds, including under the state constitutions of [Alaska](#), [Minnesota](#), [Missouri](#), and [North Carolina](#), and under [Oklahoma state law](#).

i. Consent Decrees and Settlements Regarding Witness Requirements

Several states voluntarily relaxed or waived witness or notary requirements in the face of legal challenges during the coronavirus pandemic. [Missouri](#), for example, in response to a [lawsuit](#), relaxed its requirement that absentee ballots be notarized. Under its new rules, voters who chose to vote absentee because they were at a heightened risk of complications from COVID-19 were not required to have their mail ballot notarized. In [Virginia](#) and [Rhode Island](#), U.S. district courts approved consent decrees that waived the state's witness requirement for the November general election. In Rhode Island, the Republican National Committee (RNC) [sought a stay](#) from the First Circuit U.S. Court of Appeals, but the court [denied the stay](#) of the judgment below and upheld the consent decree, finding that, under the *Anderson-Burdick* test, plaintiffs were likely to succeed on the merits. A similar story played out in [Minnesota](#).

In North Carolina, Republicans were more successful in their opposition to a settlement relaxing the state witness requirement. After the North Carolina State Board of Elections (NCSBE) [settled](#) a [suit](#) brought in state court by North Carolina Alliance for Retired Americans, the NCSBE issued [new guidance](#) in September to make both witness and signature defects [broadly curable](#) via affidavit. The Trump campaign and North Carolina General Assembly leaders [objected](#) to the settlement and new guidance. After a dizzying array of inter-related state and federal lawsuits and, *after early voting had already started and many absentee ballots had already been submitted*, a federal district court issued an [injunction](#) on October 14 that split the baby. It [required state officials](#) to reject ballots that lacked a witness signature altogether but to provide a standard notice and cure process for other ballot defects, such as an incomplete witness address, a witness or voter signature on the wrong line, or a missing voter signature. The decision was appealed (primarily on other issues in the case) but [left in place](#) by an en banc ruling of the Fourth Circuit U.S. Court of Appeals, and an October 28 [decision](#) of the U.S. Supreme Court to deny injunctive relief.

ii. Federal and State Law Challenges to Witness Requirements

While some states agreed to consent decrees, other states fiercely defended their witness or notary requirements for absentee ballots. In federal courts, plaintiffs who challenged these requirements saw some success on the merits at the district court level, but largely lost on appeal. Cases in Alabama, Wisconsin, and South Carolina illustrate the point.

In Alabama, in the face of extensive litigation prior to the state's July primary runoff, state officials defended the requirement that absentee ballots be submitted with the signature of *two* witnesses or a notary. In [People First of Alabama v. Merrill](#), a U.S. district court judge issued a preliminary injunction that barred the state from enforcing its witness requirement in the July 14 runoff for any voter who provided a written statement outlining a medical condition that placed the voter at a severe risk of serious complications from COVID-19. The state appealed that narrow exception all the way to the U.S. Supreme Court, which [stayed](#) the preliminary

injunction on July 2, thus reinstating the witness requirement just 12 days before the state's primary. With an eye to November, the plaintiffs continued to litigate at the district court and won a permanent injunction against the witness requirement for the general election. But on October 13, the Eleventh Circuit [stayed](#) the district court's permanent injunction, effectively reinstating the witness requirement. Despite all the litigation, the state's requirement of two witnesses or a notary remained intact for the general election, with no exception for immuno-compromised voters.

Similarly, in [DNC v. Bostelmann](#), a federal district court [suspended](#) Wisconsin's witness requirement during the pandemic. But the Seventh Circuit U.S. Court of Appeals [overtured](#) the decision, concluding that the district court "did not give adequate consideration to the state's interests." It cited precedent that "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government."

A notable and high profile example of the legal whiplash of witness or notary litigation during the 2020 election season was [Middleton v. Andino](#) in South Carolina. In May, a federal district court in South Carolina issued a [preliminary injunction](#), suspending the witness requirement for the June primary due to pandemic-related concerns. The litigation continued in two separate lawsuits seeking to extend the injunction to November. In September, a federal district court [enjoined](#) the witness requirement for the November election as well. On appeal, a Fourth Circuit panel [stayed](#) the injunction (thus restoring the witness requirement) but, one week later, the Fourth Circuit, [ruling en banc](#), reversed and reinstated the injunction (thus suspending the witness requirement). Finally, on October 5, *after absentee voting had already started*, the U.S. Supreme Court [reversed](#) the Fourth Circuit's en banc injunction (thus reinstating the witness requirement). The Supreme Court exempted ballots already submitted by voters and any ballots received within two days of the order (as these ballots were presumably submitted in reliance on the Fourth Circuit ruling that no witness was required). Justice Brett Kavanaugh, in concurrence, offered two reasons for his vote with the majority. First, he explained, the state's legislature "should not be subject to second guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." And second, he said, under the *Purcell* principle, the district court should not have made procedural changes so close to the election. (The district court issued its preliminary injunction in May, which was in effect for the state primary, and its permanent injunction on September 18, 2020.)

While most federal court claims were constitutional claims, plaintiffs also brought federal statutory claims under the Americans with Disabilities Act (ADA) and the Voting Rights Act. A U.S. district court in Alabama [rejected](#) a claim that, in the context of the pandemic, Alabama's requirement of two witnesses or a notary violated the ADA by discriminating against individuals who were particularly vulnerable to developing serious complications with COVID-19. The court [found](#) that the requirement did not violate ADA "[b]ecause the witness requirement is deemed a condition precedent to eligibility under state law, and essential eligibility requirements are not subject to reasonable modifications." Another court, in [Thomas v. Andino](#), rejected a claim that South Carolina's witness requirement is a "test or device" prohibited under the Voting Rights Act.

Plaintiffs had some success challenging witness requirements under state law claims. On October 12, 2020, the Alaska State Supreme Court upheld a preliminary injunction [waiving](#) the state's witness requirement for the general election. Applying a state law balancing test similar to *Anderson-Burdick*, the court reasoned that the witness requirement, as applied during the pandemic, impermissibly burdened the right to vote in violation of Article 1, Section 5 of the Alaska Constitution. Having to choose between voting and protecting one's health, the court said, placed a severe burden on the right to vote. In Oklahoma, the state supreme court [struck down the notarization requirement](#) for absentee ballots, on the grounds that it contravened a state law. The state legislature then amended state law two days later, to reverse the Oklahoma Supreme Court and reinstate the notarization requirement.

iii. Post-Election Witness Requirement Challenges

After the 2020 election, petitioners filed a wave of election contests in Minnesota in which they alleged that the secretary of state impermissibly suspended the witness requirement for absentee ballots. The lawsuits argued that this action violated the separation of powers clause of the Minnesota constitution and the equal protection clause of the U.S. Constitution (e.g. [Kistner v. Simon](#), [Quist v. Simon](#), [Rodriguez v. Simon](#)). The state courts in which the cases were filed held that such courts lacked jurisdiction because the petitioners failed to seek a change in the outcome of the election and that the petitioners were barred by laches (i.e., unreasonable delays) because the witness-signature requirement was suspended in August and petitioners filed only after the election.

In Wisconsin, the Trump campaign filed three lawsuits after state election officials certified his opponent as the winner. These lawsuits alleged, among other things, that election officials tampered with ballot witness addresses. Two of these cases failed—one for lack of standing, the other barred by laches, and both refused by the U.S. Supreme Court. The third case, [Trump v. Wisconsin Elections Commission](#), alleged a wide range of malfeasance—from criticisms of drop boxes to Wisconsin's allowing voters "indefinitely confined" to home to vote absentee. The Seventh Circuit [found](#) no violations and upheld the election results, and the U.S. Supreme Court denied certiorari on March 8, 2021.

iv. Litigation Conclusion

In sum, the large volume of litigation in 2020 challenging signature and witness ballot requirements had mixed results. Several states voluntarily altered their signature verification policies after being sued. Some issued new signature matching guidelines likely to result in fewer erroneous ballot rejections (e.g. Michigan, New Jersey), others eliminated signature mismatch as a grounds for rejecting a ballot (e.g. Pennsylvania), and others implemented procedures to provide voters an opportunity to cure signature defects to avoid having their ballots rejected (e.g. Maine, New York, Louisiana, Mississippi). In cases seeking notice and cure that were decided on the merits, courts went both ways. Some U.S. district courts required states to implement cure opportunities for voters (e.g. South Carolina, North Carolina, Indiana)

and others rejected such claims (e.g. Tennessee and the Fifth Circuit). Lawsuits challenging witness requirements won favorable concessions and consent decrees in several states and succeeded to some extent at the district court level; but, for federal law claims, they generally failed on appeal.

In the end, mail ballot rejection rates during the 2020 general election were [down from prior elections](#). Policy changes driven by litigation—both settlements and rulings on the merits—likely played a part. Widespread voter education and increased public awareness regarding the details of mail balloting procedures were also likely important contributing factors.

In the aftermath of the 2020 general election, legislators in many states began [seeking to shore up their voter verification laws](#). Proposed legislation in Pennsylvania and South Carolina—states where courts enjoined, respectively, the use of signature matching as the basis of rejecting a ballot and the practice of rejecting a ballot for signature mismatch with no opportunity to cure—is seeking to bring back the enjoined practices. Bills in several states are seeking to make it harder to satisfy witness requirements. A bill in Arizona seeks to require that all mail ballots be notarized. A bill in South Carolina would require witnesses to include their driver's license or state voter registration number. And two Virginia bills would require witnesses to print their names and provide their residential address. Just as voters are learning the details of how to vote by mail, proposed legislation in states around the country would make it harder to complete an absentee ballot.

Part II: Signature Verification: Swing State Profiles

This section provides an overview of the signature verification policies and practices, ballot rejection rates, and signature verification-related litigation across the six battleground states of Arizona, Florida, Michigan, North Carolina, Pennsylvania, and Wisconsin for the 2020 general election.

Arizona Signature Verification

Arizona's signature verification laws are codified and include a provision that gives notice to voters of any absentee ballot defects and an opportunity to cure mismatched signatures within five business days after Election Day. State law does not include specific standards for signature verification, apparently leaving it up to counties to determine what signature comparison methods to use. Approximately half of all ballots rejected in both 2016 and 2018 were rejected for signature-related issues.

Relevant Laws, Policies, and Deadlines

- **Canvassing Start Date:** Officials can begin processing absentee ballots 14 days before the election, which, in 2020, meant that processing started on October 20, 2020. ([Ariz. Rev. Stat. § 16-550](#)).
- **Training:** Arizona **does not have specific statutory language** indicating what methods election officials should use in comparing and verifying signatures, and there is no statewide training or guidance on signature verification standards or processes.
- **Comparing Signatures:** Arizona requires county recorders to match signatures on return ballot envelopes with signatures on the voters' affidavit of registration. ([Ariz. Rev. Stat. §19-121.02](#)). Upon receiving the envelope containing an early ballot and ballot affidavit, Arizona law states that, "The county recorder or other officer in charge of elections shall **compare the signatures thereon with the signature of the elector on the elector's registration record.**" ([Ariz. Rev. Stat. §16-550](#)). The statute does not specify standards for verification; it simply explains that, "if the signature is **inconsistent** with the elector's signature on the elector's registration record, the county recorder must make "reasonable efforts" to contact those voters ([Ariz. Rev. Stat. §16-550](#)).
- **Notice:** If election officials determine the signatures are "inconsistent," the county recorder or other officer in charge of elections "shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature." ([Ariz. Rev. Stat. § 16-550\(A\)](#)). "County Recorder shall make a reasonable and meaningful attempt to contact the voter via mail, phone, text message, and/or email, notify the voter of the inconsistent signature, and allow the voter to correct or confirm the signature. The County Recorder shall attempt to contact the voter as soon as practicable using any contact information available in the voter's record and any other source reasonably available to the County Recorder." ([2019](#)

[State of Arizona Elections Procedures Manual](#).) In **Maricopa County**, to notify voters of a signature defect, election officials **call or email voters** to ask if they signed and returned their ballot and why their signatures are mismatched or missing.

- **Cure:** Election officials are required to “allow [inconsistent] signatures to be corrected not later than the fifth business day after a ... general ... election that includes a federal office.” ([Ariz. Rev. Stat. § 16-550\(A\)](#)). If the voter confirms the signature is theirs and provides a reason for the appearance of a mismatch, the ballot is considered “cured.” (Per conversation with Maricopa County Recorder, 9/16/20). Arizona voters had [until five business days after the election](#) (in 2020, **November 10**) to cure an *inconsistent* signature, but only until Election Day to cure a *missing* signature on their ballot. (In September 2020, a district court [extended](#) the deadline for curing a *missing* signature to match the already existing five-day deadline for curing a *mismatched* signature, but on October 6, 2020, the Ninth Circuit [stayed the order](#)).

The Signature Matching Process and Standards

Although state law does not require it, Maricopa County, Arizona’s most populous county, trains its election officials every two years by the same team that trains the FBI on forensic signature verification techniques. County election officials responsible for signature verification are trained to look at 27 different points of comparison on a signature, such as slope and pen drop. (Per conversation with Maricopa County Recorder, 9/16/20). Signature verification proceeds through three levels of review in the county. First, a technician reviews a batch of 200 to 250 signatures to determine if each signature matches a signature on record. The technician compares the signature on the ballot envelope to the voter’s signatures already on file, including non-election-related signatures, such as those from housing records or trusts. [If the signatures match](#), the ballot envelope is marked as a “Good Signature.” All of the “Good Signature” ballot packets are then sent to citizen boards, comprised of two members from different political parties. The citizen boards process the unopened packets to prepare the ballots for tabulation and check again to see if any ballots have missing or non-matching signatures. If a ballot envelope is discovered to have a missing or non-matching signature at this point, the citizen board sends it to a higher-level staff member. If the staff member agrees a signature does not appear to match, the staff member directs the ballot through the signature verification process a second time by sending the ballot envelope for review by another technician. If the ballot envelope is still determined to have a non-matching signature, a senior managing auditor reviews the signature prior to its being rejected as a “mismatch.” The county tries to “rule in favor of the voter.” (Per conversation with Maricopa County Recorder, 9/16/20).

There is no requirement that outside observers be allowed to watch the signature verification process. (Per conversation with Maricopa County Recorder, 9/16/20). Observers may be present if the process is occurring in an area where observers are allowed, but they are not permitted to challenge the match determination.

Rejection Rates Due to Signature Defects

As of the time of writing, Arizona has not published ballot rejection rates for the 2020 general election.

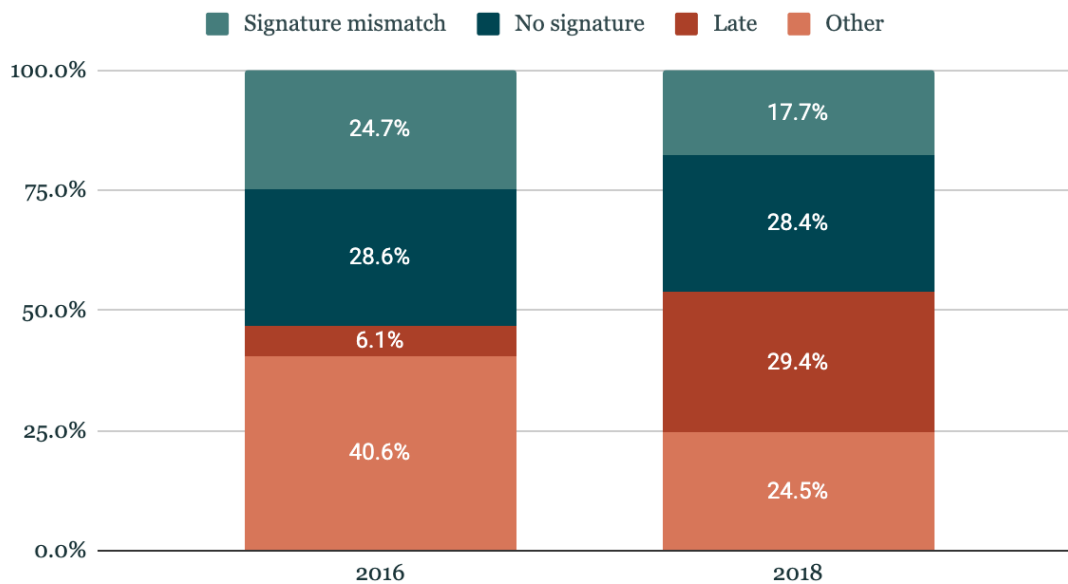
As displayed in *Table 5* below, signature defects on Arizona ballots accounted for over half (approximately 52%) of all ballot rejections across the state in 2016 and 48% of ballot rejections across the state in 2018. Lateness accounted for 6% of ballot rejections in 2016 and increased to 29% in 2018.

Two new state laws, both passed in April 2019, may have helped to reduce the ballot rejection rate in Arizona in the 2020 election. The first [law](#) implemented a cure period—five business days after Election Day—for voters to cure mismatched signatures. The second [law](#) enabled election officials to start tallying incoming ballots 14 days before Election Day, instead of the previously allowed seven days. Each of these changes gave some voters more time to cure signature defects.

Table 5. Rejection Rates in Arizona due to Late Ballots, Missing Signatures, or Signature Mismatches.

	<i>Total ballots cast</i>	<i>Total VBM ballots counted</i>	<i>Total VBM ballots rejected</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>	<i>Rejected for signature mismatch</i>
2016 General (#)	2,722,660	2,017,722	10,769	660	3,079	2,657
2016 General (%)		74.1%	0.5%	6.1%	28.6%	24.7%
2018 Midterm (#)	2,409,906	1,899,240	8,567	2,515	2,435	1,516
2018 Midterm (%)		78.8%	0.5%	29.4%	28.4%	17.7%

(2016 and 2018 EAVS Data)

Figure 3. Reason for ballot rejections in Arizona in 2016 and 2018.

(2016 and 2018 EAVS data)

Arizona Signature Verification Litigation

Pre-Election Litigation

Arizona Democratic Party v. Hobbs, No. 2:20-cv-1143 (D. Ariz.), No. 20-16795 (9th Cir.)

A [lawsuit](#) filed in June 2020 challenged the state's policy of allowing voters with *mismatched* signatures up to *five business days after Election Day* to cure their ballots, while allowing voters with *missing* signatures only until *7 p.m. on Election Day* to remedy that error. On September 10, 2020, a U.S. district court granted plaintiffs a [permanent injunction](#), requiring Arizona election officials to extend the deadline for voters to cure a missing signature. Pursuant to the injunction, voters who returned unsigned ballot envelopes would have up to five business days after Election Day to fix the missing signature, the same time allowed for voters to cure ballots with mismatched signatures and for in-person voters to cure lack of proper identification at the polls.

The state [appealed](#) the decision to the U.S. Court of Appeals for the Ninth Circuit. On October 6, 2020, the court of appeals [granted](#) the state's request to put the district court's order on hold while the state litigated its appeal. The court concluded that the requirement that voters supply a missing signature by Election Day imposed only a "minimal" burden on voters. It also said that, given the nearness of the 2020 Election Day, "the public interest is well served by preserving Arizona's existing election laws, rather than by sending the State scrambling to implement and to administer a new procedure for curing unsigned ballots at the eleventh

hour.” The court noted that the U.S. Supreme Court has repeatedly admonished lower federal courts not to change the rules of an election “on the eve” of an election.

Post-Election Litigation

[*Bowyer v. Ducey*](#), No. 2:20-cv-02321-DJH (D. Ariz.)

Thirteen Arizona voters and one candidate for Republican Arizona presidential elector brought suit in U.S. District Court against Arizona state officials, alleging that poll watchers failed to verify signatures on ballots adequately. On December 9, 2020, [the court dismissed the suit](#), holding that plaintiffs lacked standing because they are not candidates and could not allege any concrete harm. It also held that plaintiffs failed to state a claim, that they delayed too long in bringing a claim and that their claims were moot. With respect to signature verification standards, the court held that the basis of plaintiffs’ complaint was known in October, well before the election, and plaintiffs only first raised it in December.

[*Ward v. Jackson*](#), No. CV2020-015285 (Ariz. Super. Ct., Maricopa County.)

An Arizona voter alleged, among other things, that, in violation of state law, poll workers were not fit to verify absentee ballot signatures. The lawsuit requested an audit and an annulment of the election results. On December 4, 2020, the superior court held that evidence from the court-mandated audit did not demonstrate fraud or misconduct and showed only a low error rate, without any impact on the outcome. The court [denied relief](#) and confirmed the election certification. On December 8, 2020, the Arizona Supreme Court, sitting en banc, [held](#) that the superior court correctly determined that the hand-count audit was adequate and that there was no evidence of misconduct. On February 22, 2021, the U.S. Supreme Court denied a [petition for certiorari](#) in the case.

Florida Signature Verification

Florida's signature verification practices are codified, including a law from 2019 that extends Florida's deadline for voters to cure mismatched or missing signatures from 5 p.m. the day *before* Election Day to 5 p.m. on the second day *after* Election Day. State law does not include specific standards for signature verification, leaving standards up to the discretion of each of the 67 counties. Since 2019, the state has been required to provide signature matching training to all supervisors of elections and members of county canvassing boards. Over half of all ballots rejected in 2016 and almost 40% in 2018 were rejected for signature-related issues.

Relevant Laws, Policies, and Deadlines

- **Canvassing Start Date:** On June 17, 2020, Florida Governor Ron DeSantis signed [Executive Order 20-149](#), **extending the statutory time frame for canvassing** to allow it to begin on the **40th day before the election**, after a [logic and accuracy](#) (L&A) test has been completed. Previously, counting mail ballots could not begin sooner than [22 days](#) before the election. The L&A test is [performed](#) to ensure the voting equipment "system is properly programmed, the election is accurately defined on the voting system, and the input, output, and communication devices are working correctly." The earliest date a logic and accuracy test could be conducted for the 2020 general election was [September 24, 2020](#), the 40th day before the election.
- **Training:** In 2019, Florida enacted a law requiring the state to provide training in signature verification and matching to supervisors of election and members of county canvassing boards ([Fla. Stat. § 97.012\(17\)](#)). The state forensic document examiner, [Thomas Vastrick](#), provided the first major presentation in October 2019 at the Florida State Association of Supervisors of Election (FSASE) Canvassing Board Workshop in Orlando, Florida. Officials can find the [original training presentation](#), as well as a [refresher course](#), online (per email from the Director of the Florida Division of Elections, 9/30/20). The Orlando training was just short of two hours and attended by about 200 election officials. (per [interview](#) between ABC Action News and Thomas Vastrick, 9/18/20).
- **Comparing Signatures:** While the act of signature verification is codified ([Fla. Stat. § 101.68](#)), the specific process and standards are left entirely to each county's discretion. The statute provides only that "the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county." A finding that a signature does not match must be made by a majority of the canvassing board and be considered "beyond a reasonable doubt."
- **Notice:** A county supervisor of elections is [required to send a cure affidavit](#) ([Form DS-DE 139](#)) by first-class mail to any voter who returns a vote-by-mail ballot certificate that does not include the voter's signature or whose signature does not match the voter's signature on file. The supervisor is also required to notify the voter of the signature deficiency by email, text message, or telephone and direct the voter to the cure affidavit and instructions on the supervisor's website ([Fla. Stat. §101.68\(4\)\(a\)\(1-3\)](#)).

Starting the day before the election, the supervisor is not required to notify the voter of the signature deficiency by first-class mail but must provide notice as required by email, text message, or telephone call ([Fla. Stat. §101.68\(4\)\(a\)](#)).

- **Cure:** The affidavit with a new signature, along with a copy of a form of identification, can be returned by **mail, email, fax, or in person** to the county supervisor of elections. The voter has **until 5 p.m. on the second day after the election (November 5, 2020)** to submit their cure affidavit for the general election ([Fla. Stat. §101.68\(4\)\(b\)](#)). A ballot **may not be counted** if the instructions on the affidavit have not been followed.

The Signature Matching Process and Standards

The signature matching process in Florida is at the discretion of each of the 67 counties. To learn more about the matching process in different counties, the Healthy Elections Project contacted three counties and listened to an interview with a fourth county's supervisor of elections. The four counties follow similar procedures for verifying signatures:

In **Miami-Dade County**, the [most populous](#) county in Florida (with a population of 2.7 million), ballot processing starts with a machine scan of the barcode on each ballot's return envelope, which identifies the intended voter of that ballot (per conversation with Miami-Dade County election official, 9/21/20). The machine then displays the signature on the ballot envelope next to the signature on record for the intended voter. The voting record can include a signature from the DMV (usually the signature on a driver's license), a signature used to register to vote, or an electronic signature provided by the voter from a previous time they voted in person. All signature-matching in Miami-Dade County is done by a staff member or temporary worker. Depending on the type of election, the county hires between 30 to 100 temporary staff, most of whom work annually as temporary staff for the county. All staff members and temporary workers are trained annually by a licensed forensic scientist who specializes in signatures and fraud, and all must pass an annual test to become certified to examine signatures (per conversation with Miami-Dade County executive assistant to the supervisor of elections and former voter services supervisor, 10/1/20).

The signature verification process in Miami-Dade follows a three-tiered process. First, a staff member or temporary worker compares every ballot envelope's signature with a signature in the voter's official records. If the initial reviewer determines the signatures match, the ballot will be counted. If the initial reviewer flags the signatures as a mismatch, election officials mail a [cure affidavit](#) to the voter. If the voter has provided sufficient contact information, officials will also try to contact the voter by email, text message, and phone, to give them instructions on how to complete a cure affidavit. Regardless of whether election officials reach the voter or whether the voter cures, ballots flagged as mismatches in the first tier of review proceed to a second tier of review, in which a ballot review *team* examines the signature. If the ballot review team determines the signatures match, the ballot will be counted (even if the voter never files the cure affidavit). If the ballot review team agrees the signature should be challenged, the ballot envelope is sent to the county canvassing board composed of government-appointed officials who also receive annual training and testing in signature verification. This canvassing

board reviews the ballot envelope signature and makes the final determination of whether to accept or reject the signature. For the 2020 general election, the canvassing board aimed to [meet](#) to review signature challenges at least 15 times between when ballots were mailed out and when cure affidavits had to be received by the county (per conversation with Miami-Dade County deputy supervisor of elections, government affairs, and media relations, 10/2/20).

In **Broward County**, the [second most populous](#) county in Florida (with a population of 1.9 million), ballot return envelopes are run through a machine, and computer software compares the signatures on the envelopes with signatures on file and determines whether there is a match (per conversation with a Broward County election official, 9/21/20). If the computer rejects a signature, a group of two to three election officials examine the signatures. If that group rejects the ballot based on a signature mismatch, a second team reviews it. If both teams of election officials reject the signature, election officials will email, call, or mail a postcard to the voter to explain how the voter can fill out the [cure affidavit](#) online to cure their ballot. Broward County election officials follow the signature verification protocol outlined in the secretary of state's training (per conversation with a [communications manager](#) for Broward County supervisor of elections, 9/29/20).

Wakulla County, one of the [least populated counties](#) in Florida (with a population of 33,000), scans a barcode on its ballot return envelopes and pulls up the voter's signature on file (per conversation with a Wakulla County official, 9/21/20). Wakulla uses one to two people to verify all signatures on mail-in ballots. A county election official said that, while they are "no experts" in signature verification, they look for "similarities" between the two signatures they are comparing. These two people have not gone through formalized training but, according to a county official, have honed their skills over time. If the election officials detect a mismatched signature, they direct it to the county supervisor of elections. If the supervisor also rejects it, the elections office will mail to the voter a [cure affidavit](#) ([Fla. Stat. §101.68\(4\)\(c\)](#)). If the office has the voter's email or phone number, an election official will also call or email the voter to alert them to the mismatched signature (per conversation with a Wakulla County official, 9/29/20).

Sarasota County, a county with a population of about [419,000](#) people, uses a computer to scan all ballot envelopes and compare the signatures on those envelopes to signatures in the voters' records. If the computer cannot match a signature, then, according to the county supervisor of elections, the ballot envelope is directed to "human sets of eyes" that are required to determine "beyond a reasonable doubt that this isn't the voter's signature" for it to be challenged (per [interview](#) between ABC Action News and Ron Turner, Sarasota County's supervisor of elections, 9/18/20). If a ballot is challenged because of a signature mismatch, county election officials will send a letter to the voter with a cure affidavit; they will also attempt to alert the voter by mail, text message, or telephone call, if the county has that additional contact information.

Observers: In Florida, the public may inspect or examine official ballots as long as the ballots are in the custody of the supervisor of elections or the county canvassing board ([Fla. Stat. §101.572](#)). Any eligible voter may be present for the canvass of votes. If an observer believes an unopened ballot (still in the envelope) is "illegal due to any defect apparent on the voter's certificate," the observer may file a "protest against the canvass of such ballot, specifying the

reason he or she believes the ballot to be illegal” ([Fla. Stat. §101.6104](#)). The observer files that protest with the canvassing board. In addition to the public, candidates and their representatives are allowed to be present for inspection and may also file protests with the canvassing board ([Fla. Stat. §101.572](#)). Once a ballot is removed from the return mailing envelope, no party may challenge it ([Fla. Stat. §101.6104](#)).

Rejection Rates Due to Signature Defects

As of the time of writing, Florida has not published the total number of rejected mail ballots in the 2020 general election. According to an ABC News [article](#), the total rejection rate in the 2020 general election represented a “dramatic decrease” over the rejection rate in the 2016 general election. According to the article, in the 2020 general election, at least 14,000 ballots were rejected statewide for signature issues and missed deadlines, and about half of all rejected ballots were due to signature issues.

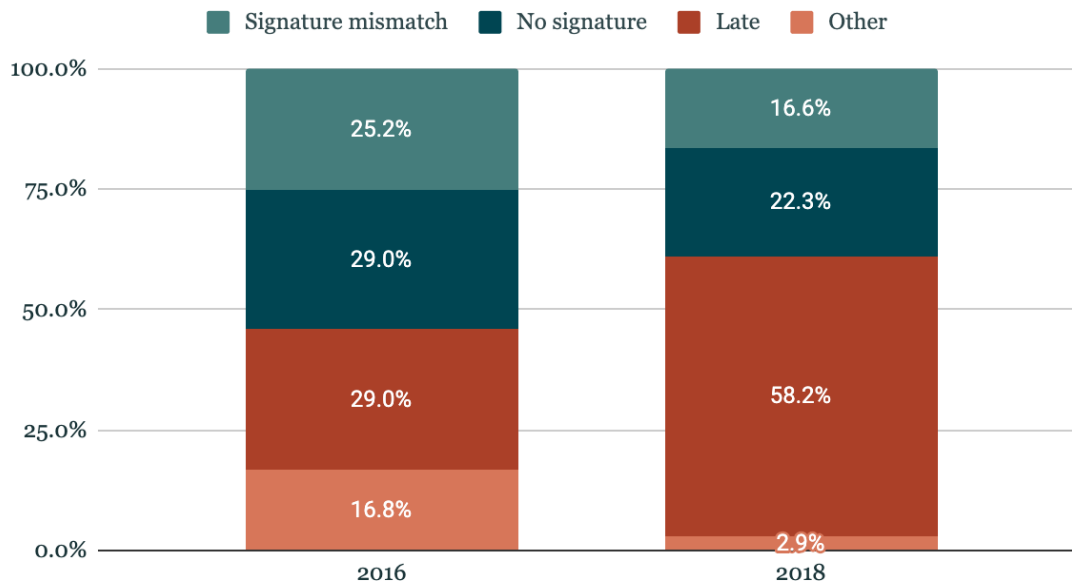
As displayed in *Table 6* below, in 2016, signature defects on ballot envelopes accounted for 54% of ballot rejections across the state. In 2018, signature defects accounted for approximately 39% of ballot rejections. The rejection rate for late ballots increased from 29% in 2016 to 58% in 2018. In 2020, about [one-third](#) of the vote-by-mail ballots in the state arrived late (many election offices do not consider late arrivals in rejection counts).

Since the 2018 election, two changes to Florida state law could potentially account for the reduced rejection rate of mail ballots due to signature defects in the 2020 general election. Enacted in 2019, a new law extended Florida’s deadline for voters to cure mismatched or missing signatures to 5 p.m. on the second day after Election Day ([Fla. Stat. §101.68\(3\)\(b\)](#)), when the prior deadline had been by 5 p.m. the day before the election. ([Fla. Stat. §101.68\(4\)\(a\)](#)). Additionally, in 2019, the state began providing a training program on signature verification and matching to supervisors of elections and county canvassing board members ([Fla. Stat. § 97.012\(17\)](#)). This training might have helped signature reviewers reduce the rate of erroneous mismatch determinations.

Table 6. Rejection Rates in Florida Due to Late Ballots, Missing Signatures, or Signature Mismatches.

	<i>Total ballots cast</i>	<i>Total VBM ballots counted</i>	<i>Total VBM ballots rejected</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>	<i>Rejected for signature mismatch</i>
2016 General (#)	9,613,669	2,679,049	21,973	6,381	6,372	5,545
2016 General (%)		27.9%	0.8%	29.0%	29.0%	25.2%
2018 Midterm (#)	8,355,817	2,604,544	30,540	17,780	6,803	5,081
2018 Midterm (%)		31.2%	1.2%	58.2%	22.3%	16.6%

(2016 and 2018 EAVS data; [Florida Department of State](#))

Figure 4. Reason for ballot rejections in Florida in 2016 and 2018.

Florida Signature Verification Litigation

There was no litigation about signature verification in Florida in the leadup to or after the 2020 general election.

Michigan Signature Verification

Michigan uses signature verification for both absentee ballot applications and absentee ballots. After a civic organization sued the state for lack of statewide standards for signature verification, Secretary of State Jocelyn Benson issued statewide [“Signature Verification and Voter Notification Standards”](#) on October 6, 2020. The Standards instructed local election officials to “presum[e] that the voter’s [absentee voter] application or envelope signature is his or her genuine signature.” It also required that ballots be rejected for mismatched signatures only if there were “multiple, significant, and obvious differences” between the ballot signature and the reference signature on file. The guidance was in effect for the 2020 presidential election, but on March 9, 2021, a state court of claims [ruled](#) that the guidance was invalid because it was issued in violation of the state Administrative Procedures Act.

Relevant Laws, Policies, and Deadlines

- **Canvassing start date:** The canvass of absentee ballots begins at 10 a.m. the day before Election Day ([SB 757](#)), but election clerks can begin verifying signatures **as soon as they receive absentee ballots** (per conversation with Tracy Wimmer, director of media relations for Michigan’s secretary of state, 9/29/20).
- **Comparing signatures:** State law requires election officials to compare and verify signatures twice: when the voter applies for an absentee ballot and again when the voter submits the absentee ballot. In both cases, the city or township clerk is required to compare the voter’s signature on the ballot application or on the envelope of the ballot envelope itself, as the case may be, to the voter’s **digitized reference signature stored in the state’s Qualified Voter File (QVF) database** and **to determine if the two signatures “agree.” When signatures on applications and return envelopes do not “agree sufficiently” with those on file, they are to be rejected.** ([Mich. Comp. Laws § 168.761](#)).
- The QVF database stores the most recent digitized signature of the voter, as may be captured from the voter’s voter registration application or driver’s license ([Mich. Comp. Laws § 168.509q](#)). If the QVF signature is unavailable, the clerk instead uses the signature on the “master card” as the reference signature, which is the voter’s registration form ([Mich. Comp. Laws § 168.759](#), [Mich. Comp. Laws § 168.766](#), [Mich. Comp. Laws § 168.767](#)).
- In the case of an absentee ballot, in some jurisdictions, once the local election clerk determines that the signature on the absentee ballot envelope and the reference signature in the file “agree,” the clerk sends the absentee ballot to the board of election inspectors, which again compares the voter’s signature on the absentee ballot envelope with the reference signature to “to determine the genuineness of a signature.” ([Mich. Comp. Laws § 168.766\(1\)\(a\), \(2\)](#)). If the board of election inspectors agrees that the signature is genuine, the ballot is counted.
- **Signature-matching guidance in statute:** The state election statutes do not include standards or guidance on how to determine whether signatures match. They state only

that the election officials must determine if the signatures “agree,” “agree sufficiently,” or if the voter signature is “genuine.”

- **Training:** The secretary of state is required to “establish a curriculum for comprehensive training and accreditation” and a “continuing election education program” for election officials ([Mich. Comp. Laws § 168.31](#)). The [training and accreditation process](#) cover the “Absent Voter Process” and [Election Day processing of absentee ballots](#), but it does not spell out how to determine if two signatures “agree.” State law does not require local election officials (neither clerks nor the board of election inspectors) to undergo training in signature or handwriting analysis.
- **Lawsuit alleged lack of statewide signature verification standards.** A civic organization called [Priorities USA](#) [sued](#) the state in December 2019 (before the pandemic), alleging that the state lacked uniform standards for reviewing and comparing signatures and that many officials engaging in the matching process did not have sufficient training and skills to compare signatures accurately. The lawsuit said these deficiencies allowed election officials throughout the state to employ arbitrary and diverging criteria in the matching process.
- **Secretary Benson’s signature verification guidance.** In April 2020, the Michigan secretary of state released new [signature verification guidance](#), and plaintiffs dropped their [lawsuit](#). The secretary released substantially similar guidance on October 6, 2020, which was in effect for the 2020 presidential election. The new guidance did not eliminate the practice of signature verification altogether, but it implemented a statewide standard designed to reduce erroneous rejections. It instructed clerks to:
 - **“presum[e] that the voter’s [absentee voter] application or envelope signature is his or her genuine signature.”** It said that a signature should be considered questionable “only if it differs in multiple, significant and obvious respects from the signature on file. **Slight dissimilarities should be resolved in favor of the voter whenever possible.**” The presence of “any redeeming qualities,” such as “distinctive flourishes” and “more matching features than non-matching features” should render the signature valid.
 - The guidance also included examples of matching and non-matching signatures and lists permissible inconsistencies.
- **Notice:** Pursuant to an [October 6, 2020, amendment to the elections code](#), if the election clerks determine that the signature on the absent voter ballot application or on the absent voter ballot return envelope “does not agree sufficiently” with the reference signature, they must, “as soon as practicable, but in no event later than **48 hours** after determining the signatures do not agree sufficiently or that the signature is missing, or by **8 p.m. on the day before Election Day**, whichever occurs first, notify the elector of the rejection by mail, telephone, or electronic mail” ([Mich. Comp. Laws §168.765a\(6\)](#), [Mich. Comp. Laws § 168.761](#), [SB 757](#)).
- **Cure:** If a ballot envelope is missing a signature, a voter can provide the signature in person at the clerk’s office until the close of polls ([Election Officials’ Manual, Ch. 6](#)). If a ballot envelope suffers from a signature mismatch, there is no “cure” process set forth in law, but voters can submit a **written request to spoil their original ballot and receive a replacement**. Voters can request and receive a new ballot **by mail** until 2

p.m. on October 31, 2020, and in person at the clerk's office until **4 p.m. on November 2, 2020** ([Mich. Comp. Laws § 168.765b](#)).

- **Bill that did not pass.** A proposed state bill, [HB 5991](#), sought to require clerks to notify voters of signature mismatches by 10 days before election certification and allow voters to cure the defect through a signature verification statement until three days before certification. The bill did [not leave](#) committee.
- **Court ruled that Secretary Benson's October 6, 2020, signature verification guidance was invalid.** On March 9, 2021, in *Genetski v. Benson*, a Michigan court of claims [ruled](#) that the signature verification guidance Secretary Benson issued on October 6, 2020, was invalid because the guidance constituted a "rule" as defined by the state Administrative Procedures Act (APA) but was issued without following the formal rule-making procedures required by the APA. Thus, though the guidance was in effect for the 2020 presidential election, it will not be in effect for future elections, unless Secretary Benson complies with the procedural requirements of the APA.

The Signature Matching Process

Michigan law requires a signature verification process in place for election officials to evaluate both absentee ballot *applications* and absentee ballots. The state requires voters to sign applications for absentee voter ballots in order to receive a ballot. In addition, the state's election laws require voters who choose to vote by absentee ballot to sign their absentee ballot return envelopes in order to have their ballots counted. The signatures on the applications and the ballot return envelopes are compared against reference signatures in the Qualified Voter File (QVF) or those that appear on the "master registration card" in order to determine whether the signatures match. Signatures on applications or return envelopes that do not "agree sufficiently" with those on file are to be rejected. Effective [October 6, 2020](#), Senate Bill 757 (also known as [2020 Public Act 177](#)) amended existing state election law to give notice to voters whose signatures do not "agree sufficiently" that their absent voter ballot application or absentee ballot has been rejected. The purpose of the notice is to give voters the opportunity to correct problems with absentee voter signatures. The state's election law does not define what it means for signatures to "agree" or to "agree sufficiently" for purposes of comparing the signature on file with the signature on a received absent voter ballot application or ballot.

The envelope signature is typically compared with the digital signature stored in the state's Qualified Voter File (QVF), by law and in practice. During training of election clerks, the Michigan Bureau of Elections (MBE) recommends that election clerks also compare the envelope signature with an additional signature—the signature from the voter's application for an absentee ballot or, in some cases, with the signature from the voter registration (called the "master card").³ In Detroit, clerks typically turn to physical paper records only if there is a question of mismatch. There is no statewide move towards using automated software for

³ Unless specified otherwise, information in this section was obtained from conversations with David Foster and other elections specialists at the Michigan Bureau of Elections, Alecia Brown at the Detroit Department of Elections, and Tracy Wimmer at the Secretary of State's office, 9/18/20 - 9/29/20.

signature verification, but Detroit is in the early stages of exploring systems to help automate aspects of signature verification.

State statutes do not indicate how election officials should determine whether signatures “agree.” In April 2020, and then again on October 6, 2020, Secretary Benson issued [guidance](#) that instructed election officials, when comparing signatures, [to presume the voter signed their ballot](#). The guidance also offered additional tips and criteria for how to compare signatures and provided illustrative examples. Some election officials were unfamiliar with these recommendations, but they were in use at the Detroit Department of Elections during the 2020 elections. On March 9, 2021, a Michigan court [ruled](#) that the October 6, 2020, guidance was invalid because it was issued without following the rule-making procedures required by the state Administrative Procedures Act (APA). Thus, though the guidance was in effect for the 2020 presidential election, it is no longer in effect.

Signature verification is a concern in Michigan’s hiring and training of election clerks. Each of Michigan’s 1,773 election jurisdictions (towns and cities) has an election clerk. When election clerks enter office, they undergo a two-day training for [accreditation](#) that includes signature verification training. The Michigan Board of Elections (MBE) also holds in-person [refresher training](#) during election years. In 2020, the state conducted training primarily on the virtual Elections ELearning platform. Jurisdictions could hire and train temporary staff to do signature verification but, ultimately, it was the responsibility of the election clerk to finalize the determination of a mismatch and notify the voter. In Detroit, there were intermediate supervisors below the city clerk level who could declare a mismatch. The MBE primarily communicated with counties to provide training materials and other resources (eg. PPE), but it also worked directly with election clerks of larger jurisdictions.

When election clerks are required to contact voters about a signature mismatch or missing signature, they do so as soon as possible, by phone, email, or regular mail. Once notified, voters can sign their unsigned ballot envelope in person at the clerk’s office. In case of a signature mismatch, the voter must spoil their original ballot and request a new one. The [secretary of state’s guidance](#) says that voters can visit the local clerk’s office “to provide the omitted signature or corrected signature, or have a new AV ballot issued immediately.” The statute itself does not set forth a procedure to cure a defective ballot; it simply requires that ballots be spoiled and the voter issued a new ballot. The secretary of state’s office encouraged voters to either mail their ballots before October 19, 2020, or to deliver them in person to ensure there would be sufficient time for notice and cure, if necessary.

While the Michigan Election Officials’ Manual does not expressly mention the right of challengers to observe the signature verification process, it states that challengers were permitted to “observe all election procedures being carried out.” One appointed election challenger per eligible group was permitted to observe the conduct of the “absent voter counting board,” which processed absentee votes starting the day before Election Day. If a challenger believed an absentee ballot was submitted by a person unqualified to vote in their precinct, the challenger was permitted to challenge that ballot. Additionally, members of the public were also permitted to observe the conduct of the board ([Election Officials’ Manual](#)).

Rejection Rates Due to Signature Defects

When a state trial court ruled in September (in [Michigan Alliance for Retired Americans v. Benson](#)) that the receipt deadline for completed absentee ballots would be extended from Election Day to 14 days after Election Day, as long as ballots were postmarked by November 2, scholars predicted that the rejection rates for lateness would drop in the November 2020 general election. After all, 60 percent of all absentee ballots rejected in the August primary were rejected for being late. But on October 16, the Michigan Court of Appeals [overruled the lower court](#) and reinstated the Election Day receipt deadline.

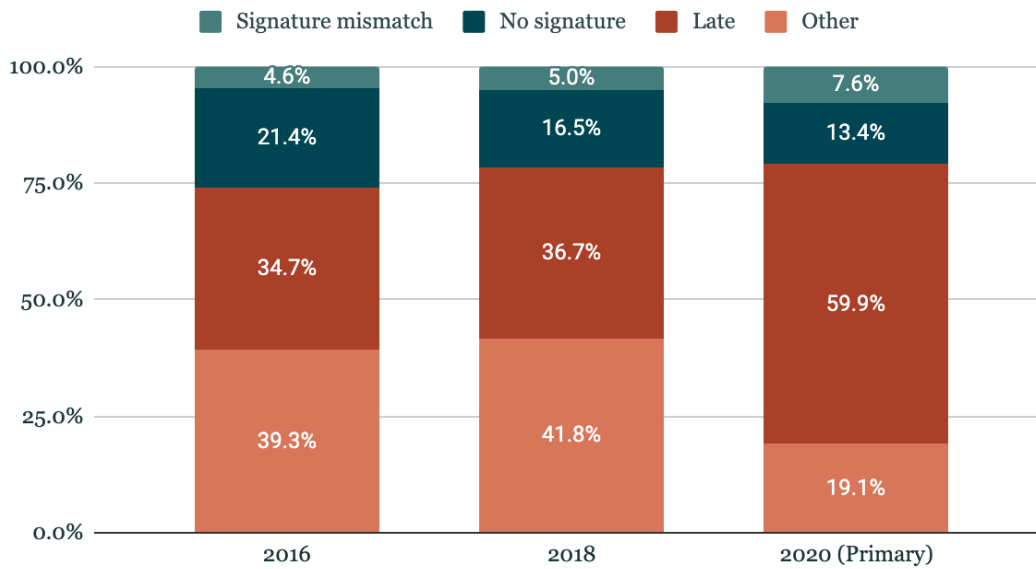
Nonetheless, as seen in *Table 7* below, a smaller percentage of mail ballots was rejected in the 2020 general election as compared with prior years, a fact that is largely attributable to a substantial decrease in the percentage of *late* ballots. As a share of overall rejected ballots, the percentage of rejections for lateness fell dramatically, the percentage of rejections due to missing signatures declined slightly, and the percentage of rejections due to signature mismatch increased slightly.

Senate Bill 757, signed into state law on October 6, 2020, implemented a new notice and cure rule that required clerks to notify voters within 48 hours if their mail-in ballot was missing a signature or had a mismatched signature. As of the time of writing, the state had not released the number of voters who cured ballot signature defects (by ballot spoliation or otherwise), so it is difficult to assess the impact of the new notice and cure procedure implemented by SB 757 or Secretary Benson's signature matching guidance ([which was invalidated by a court ruling on March 9](#)).

Table 7. Rejection Rates in Michigan Due to Ballots, Missing Signatures, or Signature Mismatches.

	<i>Total ballots cast</i>	<i>Total VBM ballots counted</i>	<i>Total VBM ballots rejected</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>	<i>Rejected for signature mismatch</i>
2016 General (#)	4,874,619	1,260,218	6,171	2,140	1,319	283
2016 General (%)		25.9%	0.5%	34.7%	21.4%	4.6%
2018 Midterm (#)	4,341,340	1,061,835	6,013	2,207	990	300
2018 Midterm (%)		24.5%	0.6%	36.7%	16.5%	5.0%
2020 Primary (#)	2,520,850	1,600,000	10,694	6,405	1,438	787
2020 Primary (%)		63%	0.7%	59.9%	13.4%	7.4%
2020 General (#)	5,568,097	3,300,000	15,302	3,328	1,852	1,400
2020 General (%)		59%	0.5%	21.7%	12.1%	9.1%

(2016 and 2018 EAVS data; 2020 [primary](#) and [general](#) data from Michigan Secretary of State)

Figure 5. Reason for ballot rejections in Michigan in 2016 and 2018.

(2016 and 2018 EAVS data)

Michigan Signature Verification Litigation

Pre-Election Litigation

Priorities USA v. Benson, No. 3:19-cv-13188-RHC-APP (E.D. M.I.)

Plaintiffs alleged that Michigan's signature matching regime imposed a severe burden on the right to vote because (i) it called for election workers to reject ballots for mismatched signatures without providing statewide standards or signature-analysis training, and (ii) it did not require election officials to give voters any notice or opportunity to cure ballots rejected for mismatched signatures. *Priorities USA* [voluntarily withdrew](#) its suit after the secretary of state issued [new guidance](#) in April 2020. This new guidance elaborated on signature matching criteria and encouraged clerks to notify voters by the end of the next business day if their ballot was not in compliance. (On October 6, 2020, the secretary renewed the guidance and it was in effect for the 2020 presidential election. After the general election, however, a court ruled that the guidance was invalid because it was issued without following the rule-making procedures required by the state Administrative Procedures Act. *See Genetski v. Benson* below).

Michigan Alliance for Retired Americans v. Benson, No. 2020-000108-MM (Mich. Ct. Claims)

On September 18, 2020, a state court [ruling](#) extended the ballot receipt deadline and ordered that ballots postmarked by the day before Election Day and received within 14 days of Election Day must be counted, as requested by plaintiffs. The Republican-controlled legislature appealed the order to the Michigan Court of Appeals, which [reversed](#) the lower court.

Post-Election Litigation

[*King v. Whitmer*](#), No. 2:20-cv-13134-LVP-RSW (E.D. Mich.)

Six Michigan voters filed suit, alleging that election officials, in violation of the state election code, counted ineligible ballots with no signatures or postmarks on the ballot envelope. They asked the court either to decertify Michigan's results showing Democratic presidential candidate Joe Biden the winner or certify the election results for Republican presidential candidate Donald Trump. The court [held](#) that the lawsuit was barred by the Eleventh Amendment of the U.S. Constitution, that the case was moot, that the doctrine of laches applied because plaintiffs waited too long to bring their claims, that the abstention doctrine applied because parallel state proceedings were ongoing, and that plaintiffs failed to establish an injury sufficient to meet standing requirements. On December 11, 2020, plaintiffs filed a [petition for certiorari](#) at the United States Supreme Court, which the Court denied on [February 22](#).

[*Costantino v. Detroit*](#), No. 20-014780-AW (Mich. Cir. Ct., Wayne County)

Two Wayne County voters filed suit, alleging that Detroit election officials instructed election workers not to verify signatures on absentee ballots, to backdate absentee ballots, and to process such ballots regardless of their validity. Plaintiffs sought an audit, an order to stop the count, an injunction against certifying election results, an order voiding the November 3, 2020, election results, and an order that a new election be held. On November 13, 2020, the court [found](#) that the affidavits supplied by plaintiffs were "rife" with generalizations, speculation, and hearsay and that the supplied evidence supported no credible finding of fraud. Furthermore, the injunctive relief plaintiffs asked for, said the court, would amount to judicial activism, in light of the other remedies available. The court denied the injunction. On November 16, 2020, the Michigan Court of Appeals [denied](#) both the application for reversal and the application for appeal. On November 23, 2020, the Michigan Supreme Court [denied an appeal](#) as moot (since the state board of elections had already certified the election results).

[*Genetski v. Benson*](#), No. 20-000216-MM (Mich Court of Claims)

On March 9, 2021, in *Genetski v. Benson*, a state court of claims [ruled](#) that the signature verification guidance issued by Secretary of State Jocelyn Benson on October 6, 2020, was invalid because the guidance constituted a "rule" as defined by the state Administrative Procedures Act (APA) but was issued without following the formal rule-making procedures required by the APA. Benson's guidance set forth statewide standards and guidelines for how local election officials should conduct signature verification and instructed workers to approach signature verification with a presumption that the signature on the ballot or the ballot application is the voter's genuine signature. The court ruled that this state guidance constituted a rule under the APA because it is generally applicable and requires local election officials to apply a presumption of validity.

North Carolina Signature and Witness Requirements

North Carolina does not have a signature matching requirement but does require the signatures of both the absentee voter and a witness. In the months before the general election, the rules relating to the notice and cure processes for defects with the voter or witness signature changed four times, based on at least four court rulings. After a U.S. Supreme Court action on October 28, 2020, however, the rules were finalized: The state would not allow voters to cure a ballot submitted without a *witness* signature, but it would allow cure of all other signature defects, including a missing *voter* signature or a witness signature placed on the wrong line.

Relevant Laws, Policies, and Deadlines

Source of Law: In the months leading up to the general election in 2020, the bipartisan North Carolina State Board of Elections (NCSBE), the board with general supervisory authority over elections, disseminated its rules for “reviewing and processing” absentee ballots. Its August 21 memo underscored the need to ensure that voters were provided “every opportunity to correct certain deficiencies” and that election officials were able to complete their processing and counting of votes in a timely manner. But before Election Day, the memo from the NCSBE had to be revised three times, each time prompted by a court ruling in ongoing litigation. In addition to the [August Memo](#), there was the [September Memo](#), the [October 4 Memo](#), and the [October 17 Memo](#).

Three rules remained the same in all four memos: 1) the starting date for canvassing mail-in ballots (the fifth Tuesday before Election Day, or September 29, 2020) ([N.C.G.S.A. § 163-230.1](#) and [163-234](#)); 2) the requirement that each absentee voter mark their ballot in the presence of one witness ([S.L. 2020-17](#)); and 3) notice of the change, made pursuant to a [federal court order](#), that the NCSBE eliminated signature matching and that election officials should *not* compare a voter’s signature on the ballot return envelope with their signature on file.

Five other rules varied from memo to memo, including rules governing 1) which ballot deficiencies could be cured, 2) which deficiencies could not be cured, 3) the notification to voters of absentee ballot deficiencies that require their curing, 4) the deadline for curing a missing signature, and 5) the process for curing a missing signature. These specific rule changes in each memo are detailed in *Table 8* below. Officials of the national and state Republican Party challenged the state board’s memos from September and October, saying they amounted to an “administrative rewrite” of duly enacted laws passed by the state legislature. They asked the U.S. Supreme Court to enjoin the state board from enforcing the rules enumerated in the October 17 memo. The Supreme Court denied the request, leaving the October 17 memo undisturbed for the remaining weeks of the 2020 general election.

Table 8. North Carolina's Changing Legal Landscape for VBM in 2020 General Election.

October 17 NCSBE Memo Rules	October 4 NCSBE Memo Rules	September NCSBE Memo Rules	August NCSBE Memo Rules
(In effect as of October 17, 2020, to implement Judge Osteen's October 14, 2020, order)	(In effect October 4-16, 2020, to implement Judge Dever's October 3, 2020, temporary restraining order)	(In effect September 22-October 3, 2020, to implement the September 22, 2020, settlement agreement)	(In effect from August 21 -September 21, 2020, following Judge Osteen's August 4, 2020, order)
Five deficiencies can be cured via affidavit: 1) a voter failing to sign the Voter Certification; 2) a voter signing in the wrong place; 3) a witness or assistant failing to print their name; 4) a witness or assistant failing to print their address; and 5) a witness or assistant signing on the wrong line.	No deficiencies can be cured via affidavit	Six deficiencies can be cured via affidavit : 1) a voter failing to sign the Voter Certification; 2) a voter signing in the wrong place; 3) a witness or assistant failing to print their name; 4) a witness or assistant failing to print their address; 5) a witness or assistant failing to sign; and 6) a witness or assistant signing on the wrong line .	Two deficiencies can be cured via affidavit : 1) a voter failing to sign the Voter Certification, and 2) a voter signing in the wrong place.
There are three deficiencies that <u>cannot be cured by an affidavit and which result in the ballot being spoiled</u> : 1) if the witness or assistant did not sign; 2) if the envelope is unsealed upon arrival at the county board office; and 3) if the envelope indicates the voter is requesting a replacement ballot.	All ballot deficiencies result in the ballot being stored and not considered by the county boards until pending litigation is resolved and/or a new guidance is issued.	There are two deficiencies that <u>cannot be cured by an affidavit and which result in ballots being spoiled</u>: 1) if the envelope is unsealed upon arrival at the county board office, and 2) if the envelope indicates the voter is requesting a replacement ballot .	There are five deficiencies that <u>cannot be cured by an affidavit and which result in the ballot being spoiled</u> : 1) a witness or assistant failing to print their name; 2) a witness or assistant failing to print their address; 3) a witness or assistant failing to sign; 4) a witness or assistant signing on the wrong line; 5) the envelope, upon arrival at the county board office, is unsealed or appears to have been opened and resealed.

<u>October 17 NCSBE Memo Rules</u> (In effect as of October 17, 2020, to implement Judge Osteen's October 14, 2020, <u>order</u>)	<u>October 4 NCSBE Memo Rules</u> (In effect October 4-16, 2020, to implement Judge Dever's October 3, 2020, <u>temporary restraining order</u>)	<u>September NCSBE Memo Rules</u> (In effect September 22-October 3, 2020, to implement the September 22, 2020, <u>settlement agreement</u>)	<u>August NCSBE Memo Rules</u> (In effect from August 21 -September 21, 2020, following Judge Osteen's August 4, 2020, <u>order</u>)
<u>Notice:</u> North Carolina requires the county board offices to contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency and enclose either a cure affidavit or new ballot. If the voter did not provide an email address, the county board is required to call the voter to inform them that their cure affidavit or new ballot has been sent.	<u>Notice:</u> The entire notice and cure process is temporarily suspended . No voters will be notified of deficient ballots, and any deficient ballot will be stored without being considered by the county boards until a new guidance is issued .	<u>Notice:</u> North Carolina requires the county board offices to contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency and enclose either a cure affidavit or new ballot. If the voter did not provide an email address, the county board is required to call the voter to inform them that their cure affidavit or new ballot has been sent.	<u>Notice:</u> North Carolina requires the county board offices to contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency and enclose either a cure affidavit or new ballot . If the voter did not provide an email address, the county board is required to call the voter to inform them that their cure affidavit or new ballot has been sent.
<u>Cure Deadline:</u> Absentee/mail ballot signature cure deadline is 5 p.m. November 12, 2020 , for both civilian and UOCAVA voters. The ballot cure deadline is determined by the ballot receipt deadline.	<u>Cure Deadline:</u> Because the notice and cure process is temporarily suspended, there is currently no cure deadline.	<u>Cure Deadline:</u> Absentee/mail ballot signature cure deadline is 5 p.m. November 12, 2020 , for both civilian and UOCAVA voters.	<u>Cure Deadline:</u> Absentee/mail ballot signature cure deadline is November 6, 2020 , for civilian ballots postmarked by 5 p.m. on Election Day.
<u>Cure Process:</u> The cure affidavit can be submitted to the county board office by fax, email, in person, or by mail or commercial carrier. If a voter shows up in person at the county board office, they may also be given a new cure affidavit to fill out . The cure affidavit may be returned only by the voter, the voter's near relative, or legal guardian, or by a multipartisan assistance team (MAT).	<u>Cure Process:</u> The cure process is temporarily suspended and voters will not be notified of or able to cure any deficient ballots.	<u>Cure Process:</u> The cure affidavit can be submitted to the county board office by fax, email, in person, or by mail or commercial carrier. If a voter shows up in person at the county board office, they may also be given a new cure affidavit to fill out. The cure affidavit may be returned only by the voter, the voter's near relative, or legal guardian, or by a multipartisan assistance team (MAT).	<u>Cure Process:</u> The cure affidavit can be submitted to the county board office by fax, email, in person, or by mail or commercial carrier. If a voter shows up in person at the county board office, they may also be given a new cure affidavit to fill out. The cure affidavit may be returned only by the voter, the voter's near relative, or legal guardian, or by a multipartisan assistance team (MAT).

The Signature Matching Process and Standards

North Carolina does not have a signature matching verification process, but county board staff do inspect envelopes to ensure they are signed by the voter and the witness and that the witness information is provided ([October 17 Memo](#)). The North Carolina State Board of Elections (NCSBE) requires the county board staff to confirm that the voter has signed the voter certificate in the correct place on the return envelope and that the witness or assistant has provided their name and address, signed on the correct line, sealed the ballot envelope, and that the voter has not indicated on their ballot that the voter is requesting a replacement ballot ([October 17 Memo](#)). The NCSBE gives specific instructions guiding county board staff on what sort of missing information does and does not require a cure ([October 17 Memo](#)). Specifically, the county board office must contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency and enclose either a cure affidavit or new ballot. Five deficiencies can be cured via affidavit: 1) a voter failing to sign the Voter Certification; 2) a voter signing in the wrong place; 3) a witness or assistant failing to print their name; 4) a witness or assistant failing to print their address; and 5) a witness or assistant signing on the wrong line. But the failure of a witness to sign at all is a defect that cannot be cured. The only way to remedy a missing witness signature is to spoil the ballot altogether and have the voter vote again from scratch—a more onerous process available only on or before Election Day.

County boards are involved in the review of ballot deficiencies when they are first noticed, including when there is no ballot or more than one ballot in the official return envelope. If, by majority vote in a board meeting, the county board rejects a return envelope due to a deficiency, the voter is notified of the deficiency in accordance with the notification process.

North Carolina does not allow observers for its signature verification process ([N.C.G.S.A. § 163 45](#)).

Rejection Rates Due to Signature Defects

In the 2020 general election, the overall mail ballot rejection rate in North Carolina was lower than it was in the 2016 general election. The absolute number of rejections increased significantly from 4,861 rejected ballots in 2016 to [12,272 ballots](#) (an increase of about 150%), but the total number of mail ballots increased from about 174,000 in 2016 to [just over a million](#) in 2020 (an increase of more than 500%). As of the time of writing, the number rejected for each reason was not publicly available.

The elimination of the signature matching requirement in 2020 was not expected to significantly reduce the overall rejection rate of mail ballots, as signature mismatches comprised less than one percent of all rejected mail ballots in both the 2016 and 2018 elections. On the other hand, the notification and cure process established for missing signatures and some witness-related errors, by the NCSBE's [October 17 Memo](#), had the potential to significantly reduce the vote-by-mail rejection rate, as both deficiencies were

common reasons for ballot rejections in the 2016 and 2018 elections. Similarly, the decision to extend the absentee ballot receipt deadline from November 6 to November 12 (provided the ballot was postmarked on or before Election Day) may have helped to reduce ballot rejection rates in North Carolina.

Historically, vote-by-mail has made up only a small fraction of ballots cast in North Carolina, but state election officials reported that [18.1% of votes](#) were cast by mail in the 2020 general election.

According to an analysis by ProPublica, in the 2018 election, [Black voters' ballots were more than twice as likely to be rejected as those sent in by white voters](#). The 2020 general election followed the same trend. As of October 27, 2020, Black voters' ballots in North Carolina had been [rejected](#) at more than [2.5 times](#) the rate of white voters. These numbers included ballots rejected for all reasons, and the vast majority of ballot rejections were due to [incorrect or missing witness information](#).

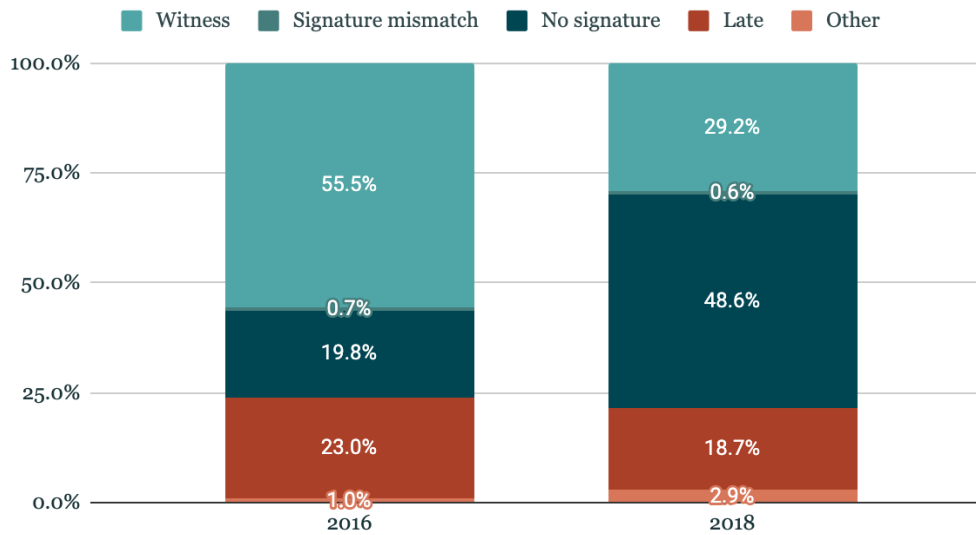
Table 9. Rejection Rates in North Carolina Due to Late Ballots, Missing Signatures, or Signature Mismatches.

	<i>Total ballots cast</i>	<i>Total VBM ballots counted</i>	<i>Total VBM ballots rejected</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>	<i>Rejected for signature mismatch</i>	<i>Rejected for witness info incomplete</i>
2016 General (#)	4,690,195	174,402	4,861	1,119	963	32	2,700
2016 General (%)		3.8%	2.7%	23%	19.8%	0.7%	55.5%
2018 Midterm (#)	3,754,895	89,711	5,835	1,089	2,835	33	1,701
2018 Midterm (%)		2.4%	6.1%	18.7%	48.6%	0.6%	29.2%
2020 General (#)¹	5,545,848	1,001,596	12,221	1,084	5,090*	29	5,938
2020 General (%)		18.1%	1.2%	8.8%	41.6%*	0.2%	48.6%

(2016 and 2018 EAVS data)

¹Source: [North Carolina State Board of Elections 2020 Absentee File](#)

*5,090 rejections were labeled “pending cure.” Five deficiencies were subject to cure that collectively can be categorized as voter signature errors or witness or assistant errors: 1) a voter failing to sign the Voter Certification; 2) a voter signing in the wrong place; 3) a witness or assistant failing to print their name; 4) a witness or assistant failing to print their address; and 5) a witness or assistant signing on the wrong line. Because the latter three categories were separately reported, we surmise that most of those reported as “pending cure” were voters failing to sign or signing in the wrong place.

Figure 6. Reason for ballot rejections in North Carolina in 2016 and 2018.

North Carolina Signature Verification Litigation

Pre-Election Litigation

[*Stringer v. The State of North Carolina*](#), No. 20-CVS-5615 (N.C. Super. Ct., Wake County.)

In May 2020, six North Carolina citizens filed a lawsuit, alleging that the state was “woefully underprepared for the rapid expansion of absentee voters.” The complaint alleged that the state’s practices infringed on citizens’ right to participate in free and fair elections and placed an undue burden on the right to vote in violation of the North Carolina Constitution.

The suit asked for election officials to be prevented from rejecting ballots based on signature mismatches unless the voter was notified in advance and given “an opportunity to cure the alleged signature defect.” The notice and cure relief sought in this case was granted on August 4, 2020, by another court in *Democracy North Carolina v. North Carolina State Board of Elections* (see immediately below) and ultimately unnecessary for signature mismatches because the North Carolina Election Board eliminated the practice of signature matching in its August Memo, a change that stuck for the general election.

[*Democracy North Carolina v. North Carolina State Board of Elections*](#), No. 1:20-cv-457 (M.D.N.C.); No. 20-2104 (4th Cir. 2020) (en banc)

Democracy North Carolina, the League of Women Voters of North Carolina, and eight voters [sued](#) several state agencies in May 2020 over alleged violations of voters’ First and Fourteenth Amendment rights. The plaintiffs argued that the state voting laws, within the context of the

pandemic, would significantly restrict North Carolinians' right to vote in the upcoming election. On August 4, 2020, U.S. District Court Judge William Osteen granted a [preliminary injunction](#), enjoining the state from rejecting absentee ballots without allowing voters an opportunity to cure the deficiencies. The court denied the plaintiffs' motion for a preliminary injunction against the witness requirement for absentee voting but granted a preliminary injunction giving voters the chance to cure a number of issues, such as a missing signature or witness related errors. Following the preliminary injunction, the NCSBE issued its [August Memo](#) (on August 21, 2020), which eliminated the practice of signature matching and, as ordered by the court, established a notification and cure process for other ballot defects. The August Memo required election officials to allow voters to cure missing or misplaced voter signatures by affidavit and to cure witness deficiencies by ballot spoliation and return of a new, reissued ballot. The August Memo was amended on [September 22, 2020](#), as part of a settlement of [a separate suit](#) between the state and the North Carolina Alliance for Retired Americans (below). That settlement extended the time period for cure by affidavit from November 6 to November 12 and expanded the list of deficiencies that could be cured by affidavit to include witness deficiencies.

However, on September 30, 2020, Judge Osteen [warned](#) that the rule changes in the [September Memo](#) did not comply with his August 4 preliminary injunction. He [stated](#) "[n]othing about this court's preliminary injunction order can or should be construed as finding that the failure of a witness to sign the application and certificate as a witness is a deficiency which may be cured with a certification after the ballot has been returned." Judge Osteen held a hearing to consider how the September Memo related to both his initial injunction and to two separate lawsuits that were also related to the September Memo, [Wise v. North Carolina State Board of Elections](#) and [Moore v. Circosta](#). The two additional cases were transferred to him by Judge James C. Dever III, so that Judge Osteen could simultaneously consider and resolve all three pending and related federal lawsuits. On October 4, 2020, the NCSBE issued [guidance](#) that temporarily suspended its notice and cure process altogether pending clear judicial guidance. During this suspension, ballots with deficiencies were simply stored.

On October 14, 2020, Judge Osteen issued an [injunction](#) preventing the state from curing absentee ballots that were missing witness signatures. Per his order, all other cures could go forward, and the extended deadline (to November 12, 2020, if the envelope was postmarked by or before November 3) remained in place. On October 17, 2020, the NCSBE issued [guidance](#) that reestablished the notice and cure process in North Carolina as stipulated by the October 14 order. Following Judge Osteen's order, the plaintiffs in *Wise* and *Moore* sought an emergency motion for injunction pending appeal to the U.S. Court of Appeals for the Fourth Circuit. They asked the appeals court to block the extension for accepting ballots. On October 20, 2020, the Fourth Circuit [declined](#) to block the extension, in a [12-3 ruling](#) where all 15 of the court's active judges participated. The opinion noted that, if the court forced the state to shorten the deadline, it would violate a legal principle (articulated in *Purcell*) that limits how federal courts intervene in ballot rules close to Election Day. The three dissenting judges [urged the appellants](#) to take the issue to the U.S. Supreme Court, and the appellants did so. The [Trump campaign](#) and the [GOP leadership](#) both filed separate applications to the Supreme Court for injunctive relief. On October 28, 2020, the Supreme Court, in a 5-3 decision, denied both applications.

[North Carolina Alliance for Retired Americans v. North Carolina](#), No. 20 CVS 08881 (N.C. Super. Ct., Wake Cnty.)

Plaintiffs, an organization for retired persons, brought suit against North Carolina and the State Board of Elections. They challenged the state's alleged failure to provide in-person voting opportunities that complied with health recommendations during the pandemic, as well as the state's enforcement of absentee voting restrictions. The challenged provisions included limitations on early voting, requirements that absentee ballots be signed by a witness, a failure to provide pre-paid postage for mail ballots, the receipt deadline for absentee ballots, rejection of ballots for signature defects, a ban on voter assistance, and limits to ballot delivery aids. The parties reached a [settlement agreement](#) on September 22, 2020, in which defendants agreed to: (1) to extend the deadline for receipt of absentee ballots to nine days after Election Day to match the UOCAVA deadline, as long as the ballots were mailed on or before Election Day; (2) to implement a revised cure process; and (3) to establish separate absentee ballot “drop off stations” staffed by elections officials at each early voting site and at each county board of elections to reduce the congestion and crowding at early voting sites and county board offices. The court approved the settlement agreement on October 2, 2020.

[Democratic Senatorial Campaign Committee v. North Carolina State Board of Elections](#), No. 20CV09947 (Gen. Ct. Justice, Super. Ct. Division, Wake County.)

This state court lawsuit challenged the state’s lack of a process for curing an absentee ballot with a defect in the witness requirement. As discussed above, however, this issue was ultimately resolved in a separate suit, [North Carolina Alliance for Retired Americans v. North Carolina](#), when a state court approved, on October 2, 2020, a September 22 settlement agreement approved unanimously by the bipartisan NCSBE. Pursuant to the settlement agreement, NCSBE revised its [August Memo](#) on [September 22, 2020](#), and made deficiencies related to the witness requirement curable via an affidavit. (The settlement also extended the date that county boards would accept ballots to [5 p.m. on November 12](#), if they were postmarked on or before Election Day.) However, the rule changes that were established in the settlement and memorialized in the September Memo were halted by the temporary restraining order issued by Judge Dever in federal court and the associated October 4, 2020, guidance issued by the NCSBE. Consistent with Judge Osteen’s [order](#), all aspects of the settlement *except for* the ability to cure via affidavit missing witness or assistant signatures were memorialized and adopted in the [October 17 Memo](#). The memo clarified that voters were not permitted to cure witness signatures via affidavit and that ballot spoliation was the only option for curing a missing witness signature.

[Wise v. North Carolina State Board of Elections](#), No. 5:20-cv-505 (E.D.N.C.) and **[Moore v. Circosta](#)**, No. 4:20-CV-182 (E.D.N.C.); No. 20-2104 (4th Cir. 2020) (en banc)

Plaintiffs filed two separate lawsuits in federal court on September 26, 2020, to block officials in North Carolina from enforcing the guidance set forth in the NCSBE’s [September Memo](#). One

[suit](#) was filed by President Trump's campaign committee and the RNC, and the other was [filed](#) by the GOP leaders of the North Carolina General Assembly.

Following the rule changes established by the September Memo, members of the [North Carolina Republican Party expressed their displeasure](#) with the settlement agreement that led to the NCSBE's September Memo, even though both Republican members of that board agreed to the settlement. The two Republican members [resigned](#) after the settlement was finalized, asserting after the fact that they had been misled about its substance.

On October 3, 2020, U.S. District Court Judge Dever granted a [temporary restraining order](#) that temporarily enjoined the NCSBE from enforcing its [September Memo](#) or any similar memoranda/policy statement.

Because of Judge Dever's October 3 [temporary restraining order](#) in this case and Judge Osteen's September 30, 2020, statement in a different case—that the guidance in the September Memo was inconsistent with Judge Dever's preliminary injunction—the NCSBE issued an [October 4 Memo](#) that temporarily suspended the notice and cure process set forth in its earlier memos, until the ongoing litigation could be resolved. Following Judge Osteen's order, the plaintiffs in *Wise* and *Moore* sought an emergency motion for an injunction, pending appeal to the U.S. Court of Appeals for the Fourth Circuit. The emergency motion sought to block the extension of the ballot receipt deadline (and the associated extension of the time to cure ballot defects). But on October 20, 2020, the Fourth Circuit [declined](#) to block the extension, in a [12-3 ruling](#) in which all 15 of the court's active judges participated.

The multiple lawsuits resulted in nearly daily changes in vote-by-mail rules for voters in North Carolina, during the 2020 early voting period. These two cases were transferred from Judge Dever to Judge Osteen and consolidated with [Democracy North Carolina v. North Carolina State Board of Elections](#). A hearing for all three cases took place on October 7, 2020.

As noted above, on October 14, 2020, Judge Osteen issued an [injunction](#), preventing the state from allowing voters to cure absentee ballots with missing witness signatures. Per Judge Osteen's order, all other cures at issue were permitted, and the extended ballot receipt deadline of November 12, 2020, remained in place. (By state statute, the ballot receipt deadline is also the deadline for cure of ballot defects.) On October 17, 2020, the NCSBE issued [guidance](#) that reestablished the notice and cure process in North Carolina as stipulated by Judge Osteen's order. Following that decision, both the Trump campaign (in *Wise v. Circosta*) and state Senate Republican Leader Thomas Moore (in *Moore v. Circosta*) applied for injunctive relief. They asked the U.S. Supreme Court to stay the Fourth Circuit order that maintained the extended deadline. On October 28, 2020, the Supreme Court, in a 5-3 decision, [denied](#) the linked applications for injunctive relief and maintained the November 12 extended deadline.

Pennsylvania Signature Verification

Due to litigation, the office of the Pennsylvania Secretary of the Commonwealth advised its county election officials *not* to reject ballots based solely on signature mismatches in the 2020 general election. Officials still verified whether ballot envelopes were *missing* a signature and rejected such ballots on that basis. The Pennsylvania Supreme Court ruled that election officials should also reject ballots if the voters failed to insert their ballots into a secrecy sleeve. Some stakeholders [estimated](#) this ruling might result in the rejection of an additional 100,000 mail-in ballots in November, but such estimates proved to be significantly overstated. After the election, multiple lawsuits challenged various county procedures related to verifying, curing, and observing voter signatures and related requirements (to write addresses and printed names), but almost all failed, and the few wins were relatively insignificant.

Relevant Laws, Policies, and Deadlines

- **Canvassing start date:** Neither processing nor tabulation of received mail-in ballots was allowed to commence before Election Day. The secretary of the commonwealth had urged the state legislature to amend the election code to add a pre-canvass deadline of 21 days before Election Day, but the legislature did not change the law.
- **Training:** No evidence of any state-issued guidance or training for the evaluation of ballot envelope signatures.
- **Comparing signatures:** Pennsylvania did not engage in signature verification or matching for absentee ballots in the 2020 general election.
 - In prior elections, Pennsylvania election officials compared the signature on the ballot envelope to the signature stored in the voter file and rejected ballots that election officials determined did not match.
 - As a result of litigation alleging a lack of statewide signature verification standards or training, Secretary of the Commonwealth Kathy Boockvar published new guidance on September 11, 2020. ([PA DoS Examination of Absentee and Mail-In Ballot Return Envelopes](#), 2020)
 - The new guidance prohibited any of the 67 county boards of elections from rejecting “returned absentee or mail-in ballots based solely on signature analysis.”
 - The guidance was challenged in court but, on [October 23, 2020](#), the Pennsylvania Supreme Court granted the secretary’s request for a declaration that counties could not reject absentee ballots based on signature comparison.
- **Ballot Requirements:**
 - The ballot envelope does not have a witness or notary requirement.
 - The ballot envelope requires a voter signature, printed name, date, and address.
 - According to the new guidance, the only causes for challenging or rejecting ballots are address discrepancies, missing signatures, duplicate ballots, or the death of the voter before the polls open on Election Day.

- The Pennsylvania [Supreme Court ruled](#) on September 17, 2020, ruled that any mail-in ballot postmarked by Election Day and received up to three days later (November 6, 2020, by 5 p.m.) must be counted. The Republican leaders of the Pennsylvania Senate [asked](#) the U.S. Supreme Court for an emergency stay of the state supreme court ruling. On October 19, 2020, in a 4-4 vote, [the Supreme Court rejected the application](#) for stay, allowing Pennsylvania to count ballots received up to three days after Election Day.
- **Notice and cure:** The state has no requirement that election officials notify voters and afford them the chance to cure any ballot defects, such as a missing signature, unless the ballot is subject to a formal ballot challenge by the representative of a party or candidate during an election board's formal canvassing process. [25 P.S. § 3146.8\(3\), \(5\) & \(6\)](#). The statute indicates that, when the ballot has undergone a formal challenge, "notice shall be given where possible to all absentee electors and mail-in electors thus challenged and to every individual who made a challenge."
 - There is also no clear prohibition against publicizing the names of voters whose ballots were rejected and, in the November 2020 election, some counties notified political parties of the names of voters whose ballots were rejected (so the parties could encourage them to cure their ballots); other counties did not, which led to some post-election litigation.
- **Poll Observers:** Pennsylvania [statutes](#) allow partisan poll watchers to observe mail ballot verification and allow public participation when overseeing ballot tabulation. For more information on election observers see the Stanford-MIT Healthy Elections Project report [Election Observer Rules and Litigation](#).

The Stanford-MIT Healthy Elections Project team reached out by phone to the Philadelphia County Elections Office (the most populous county in the state) and spoke with the Elections Compliance Specialist, on September 15, 2020. The elections specialist informed the team that, due to ongoing litigation, they were unable to discuss signature verification. The specialist said he did not believe there was any statewide guidance on assessing and comparing signatures on ballot envelopes or for training volunteers.

The Signature Matching Process and Standards

As of September 2020, Pennsylvania election officials no longer engaged in signature matching to verify a voter's identity for a ballot. According to Secretary Boockvar's [September 11 guidance](#) on signature verification, "Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections." However, there were still laws in place that addressed signatures and signature matching from before the new guidance. Those pre-existing laws did not provide any clear standards for assessment of signatures, other than to say there should be a comparison of a voter's signature with the signature on the district register ([§ 1210](#)). Election officials should also examine the ballot envelope to ensure it has been signed.

In the event a ballot was missing a signature, Secretary Boockvar [directed counties to cancel the voter's ballot](#), which would then trigger an automatic email notification to the voter (for voters with an email on file) that their ballot was cancelled and could be cured by casting a provisional ballot. However, not all counties followed the directions, and different counties managed defective ballots differently. For example, in Montgomery County, Pennsylvania, election officials did not cancel ballots but instead proactively reached out to voters `` to tell them they can come in and complete any missing information on their envelopes, request a replacement ballot, or use a provisional ballot.” In Allegheny County, election officials mailed flawed ballots back to voters without canceling or otherwise marking them in the system.

The state code regarding observers does not specifically state whether observers can observe or challenge the signature matching process, and the question became moot when signature matching no longer existed in Pennsylvania. According to Pennsylvania Election Code § 2687 and the 2008 Commonwealth of Pennsylvania document, “[Rights of Watchers, Candidates & Attorneys](#),” partisan citizen observers can have access to pre-election, Election Day, or post-election procedures in the state. Furthermore, in Section 310(c), “Any candidate, attorney or watcher present at a recount or recanvass is entitled to examine the ballots and raise objections regarding such ballots.” Counties’ boards of elections can reasonably issue regulations on the behavior and duties of observers ([25 P.S. 2687 section 417](#) (Act 2004-97); 52 Pa. Code 102.2, 102.4; 34 Pa. Code 95.52).

Rejection Rates Due to Signature Defects

In the 2020 general election, the overall rejection rate of absentee ballots in Pennsylvania was lower than it was in the 2016 general election. Though the absolute number of rejected absentee ballots increased from about 2,500 ballots in 2016 to an estimated [7,400 ballots](#) in 2020 (almost triple), the total number of absentee ballots increased from about 266,000 to over [2.6 million](#) (an increase of almost 10-fold). As of the time of writing, an official accounting of rejected mail ballots, and the number rejected for various reasons, was not publicly available.

In response to a court ruling that absentee ballots submitted without secrecy sleeves had to be rejected, the Chairwoman of Philadelphia City Commissioners expressed concern that an estimated [100,000 absentee ballots](#) might be rejected for lack of secrecy sleeve. Her fear did not materialize. While the number of absentee ballots rejected for lack of a secrecy sleeve is not public at the time of writing, the total number of ballots rejected in Pennsylvania in the 2020 general election was 7,400 ballots.

Several factors likely contributed to the reduced rejection rate of mail ballots in Pennsylvania in the 2020 general election. The secretary of the commonwealth removed the signature-matching requirement, a move [upheld](#) by the Pennsylvania Supreme Court. And publicity around the importance of including the secrecy sleeve and mailing ballots early also likely contributed.

A review of the rejection rates in Pennsylvania from the 2016 general election and 2018 Midterm reveals a few observations:

- The bulk of rejections in 2018 were due to late-arriving ballots to county election offices.
- The [rejection rate of VBM ballots in the June 2020 primary](#) was 1.7% (about 26,000 of 1,500,000 rejected ballots).
- The number of VBM ballots increased 750% from the 2018 midterm election to the June 2020 primary. This was largely due to the passage of [Act 77](#) in 2019, which expanded access to mail-in balloting by eliminating the need for an “excuse,” combined with increased voter demand for mail voting due to the pandemic.

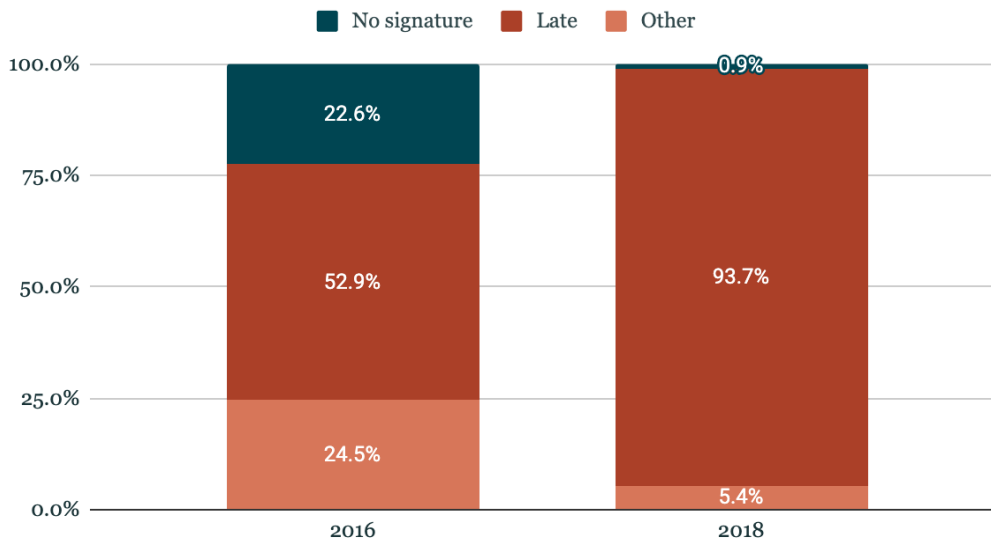
Table 10. Rejection Rates in Pennsylvania Due to Late Ballots or Missing Signatures.

	<i>Total ballots cast</i>	<i>Total VBM ballots counted</i>	<i>Total VBM ballots rejected</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>
2016 General (#)	6,223,150	266,208	2,534	1,341	573
2016 General (%)		4.3%	1.0%	52.9%	22.6%
2018 Midterm (#)	5,057,630	195,953	8,714	8,162	77
2018 Midterm (%)		3.9%	4.4%	93.7%	0.9%
2020 General (#)	6,835,095 ¹	2,637,065 ¹	7,411 ²	Data Not Available	Data Not Available
2020 General (%)		38.6%	0.28%	Data Not Available	Data Not Available

(2016 and 2018 EAVS data)

¹Source: [Pennsylvania's Election Stats](#)

²Source: [Pennsylvania Early Voting Statistics](#)

Figure 7. Reason for ballot rejections in Pennsylvania 2016 and 2018.

Pennsylvania Signature Verification Litigation

Pre-Election Litigation

[*League of Women Voters of Pennsylvania v. Boockvar*](#), No. 2:20-cv-03850 (E.D. Pa.)

[*Donald J. Trump for President, Inc. v. Boockvar*](#), No. 2:20-cv-00966 (W.D. Pa.)

[*In Re: November 3, 2020, General Election*](#), No. 149 MM 2020 (Penn. Sup. Ct.)

In Pennsylvania in August 2020, the League of Women Voters of Pennsylvania [challenged](#) the state's practice of signature matching in federal court, alleging the state failed to require any handwriting training or provide any statewide standards or guidelines to aid election officials in their signature analysis. Plaintiffs alleged violation of both equal protection and procedural due process, as well as infringement on the fundamental right to vote. Plaintiffs [dropped their lawsuit](#) after Secretary of the Commonwealth Kathy Boockvar [issued guidance](#) on September 11, 2020, prohibiting all of the state's county boards of elections from rejecting returned absentee or mail ballots "based solely on signature analysis."

The issue did not end there, however. In [*Trump For President v. Boockvar*](#), the Trump campaign challenged the secretary's new guidance in federal court. The court [dismissed](#) the lawsuit on October 10, 2020, holding that Pennsylvania's "Election Code does not impose a signature-comparison requirement for mail-in and absentee ballots" and that the lack of signature matching did not violate the due process or equal protection clauses of the U.S. Constitution.

Finally, on October 23, 2020, in response to Secretary Boockvar's [request for declaratory relief](#), the Pennsylvania Supreme Court [unanimously held](#) that "county boards of elections are

prohibited from rejecting absentee or mail-in ballots based on signature comparison conducted by county election officials or employees, or as the result of third-party challenges based on signature analysis and comparisons.” The court explained that the state’s election code permits use of signature matching to verify in-person voters and provisional ballots but not for absentee or mail-in ballots. The court clarified, however, that absentee ballots could be rejected for the voter’s failure to sign and date the “declaration envelope” altogether.

Crossey v. Boockvar, No. 266-MD-2020 (Penn. Commonw. Ct.)

Plaintiffs **argued** that Pennsylvania’s vote by mail process violated the Pennsylvania Constitution because it did not require the state to: (1) provide prepaid postage for all absentee and mail-in ballots; (2) establish emergency procedures to ensure that ballots delivered after 8 p.m. on Election Day due to mail service delays or disruptions would be counted, to the extent otherwise eligible to be counted; (3) allow voters to designate a third party to assist them in collecting and submitting absentee or mail-in ballots and ensure that all such ballots would be counted, if otherwise eligible; or (4) provide uniform guidance and training to election officials involved in verifying mail ballots and implement procedures to ensure that voters received reasonable notice and an opportunity to cure signature-related defects on absentee or mail-in ballots before any ballot was rejected.

On September 17, 2020, a state court **dismissed** as moot the petitioner’s request to extend the ballot receipt deadline for mail-in ballots because the court **granted** such an extension in *Pennsylvania Democratic Party v. Boockvar*. The court also dismissed as moot the petitioner’s request that prepaid postage be provided on mail-in ballots given that the department of state announced that it will provide funds to county election boards for postage on mail-in ballots. Finally, the court denied the petitioner’s request that voters be permitted third-party assistance with the return of mail-in ballots. The court did not order the state to provide signature verification guidance for election officials, likely because Secretary Boockvar ordered on September 11 that no county should reject ballots on the basis of handwriting analysis alone.

Pennsylvania Democratic Party v. Boockvar, No. 407 MD 2020 (Commonwealth Ct. Pa.); No. 133 MM 2020 (Pa. Sup. Ct.)

Plaintiffs’ lawsuit, filed in July, requested (i) declaratory judgment that secure ballot drop boxes be permitted; (ii) an injunction requiring that mail-in and absentee ballots be counted if they are postmarked by 8 p.m. on Election Day (or by the deadline set by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) for eligible voters); (iii) an injunction requiring boards to contact voters whose mail-in ballots contained facial defects and provide an opportunity to cure such defects by the UOCAVA deadline; (iv) a declaratory judgment that boards must “clothe” and count naked ballots and an injunction against boards from excluding such ballots; and, (v) a declaratory judgment that the poll watcher residency requirement does not violate the law.

On September 14, 2020, the Pennsylvania Supreme Court (i) **ruled** that the state election code permits drop boxes; (ii) extended the absentee and mail-in ballot received-by deadline to 5 p.m. on November 6, 2020, if the ballot envelope was postmarked by 8 p.m. November 3, 2020; (iii)

denied the plaintiffs' request that the board of elections contact individuals whose mail-in or absentee ballots contained a minor facial defect and provide them an opportunity to cure those defects; (iv) denied the request to count ballots returned without the secrecy envelope instead of invalidating them; and, (v) ruled that the poll watcher residency requirement was constitutional.

On October 19, 2020, in a 4-4 tie vote, [the U. S. Supreme Court](#) denied a petition from the Republican Party to stay the September state supreme court ruling. That denial meant the state would count mail-in ballots received up to three days after the November 2020 election. Neither side of the court explained its position.

Post-Election Litigation

[*Metcalfe v. Wolf*](#), No. 636 MD 2020 (Penn. Commonw. Ct.)

Eleven Pennsylvania voters filed suit in state court against the governor, the secretary of the commonwealth, and Pennsylvania's slate of Democratic presidential electors, alleging that local Democratic Party officials and the Pennsylvania Supreme Court violated numerous portions of the election code related to ballot signatures, secrecy envelopes, and poll observers. Plaintiffs sought a writ of mandamus directing the governor to withdraw the certification of the 2020 presidential election. On December 9, 2020, the court [held](#) that plaintiffs were not entitled to relief because their complaint was "an improper and untimely election contest" filed in an improper venue and within an improper time frame.

[*Zicarelli v. Allegheny County Board of Elections*](#), No. GD-20-11654/No. 1161 CD 2020 (Penn. Commonw. Ct.) and No. GD-20-011793/No. 1162 CD 2020 (Penn. Commonw. Ct.)

A candidate for Pennsylvania state senate appealed two decisions of the Allegheny County Board of Elections. First, the plaintiff appealed the board's decision to accept 2,349 absentee ballots containing undated or otherwise incomplete voter declarations. On November 23, 2020, the Pennsylvania Supreme Court held that the election code did not require boards of elections to disqualify mail or absentee ballots submitted by qualified voters who signed the declaration on their ballot's outer envelope but did not handwrite their name, address, and/or date. The court also held that the state election code did not require tossing out absentee ballots where no fraud or irregularity has been alleged. And the court affirmed the lower courts' decisions to count the ballots, citing Pennsylvania precedent to construe the law to save, not void, ballots.

Second, the plaintiff appealed the Allegheny County Board of Election's decision to accept 270 provisional ballots that had only one signature from the voter, instead of the requisite two. The court of appeals [prohibited](#) the 270 provisional ballots from being counted on the grounds that the plain language of the applicable statute required both a ballot signature and affidavit signature. On November 23, 2020, the Pennsylvania Supreme Court [refused to hear an appeal](#) of the case.

[Donald J. Trump for Pres., Inc. v. Secretary of the Commonwealth of Pennsylvania](#), No. 4:20-cv-02078 (M.D. Pa.)

The Trump campaign [alleged](#) in federal district court that the Pennsylvania Secretary of the Commonwealth and county boards of election violated the federal Elections Clause, did not allow for sufficient poll observation of absentee ballot counting, and “did not undertake any meaningful effort to prevent the casting of illegal or unreliable absentee or mail-in ballots.” It further alleged that the purported lack of uniform statewide standards for curing mistakes violated voters’ equal protection and due process rights. As a remedy, plaintiffs sought an injunction prohibiting Pennsylvania from certifying the election results statewide or, in the alternative, from including in its certification the tabulation of absentee and mail-in ballots which plaintiffs’ watchers were allegedly prevented from observing and those which some counties allegedly improperly permitted to be cured. On appeal, the Third Circuit U.S. Court of Appeals [held](#) that an injunction to undo Pennsylvania’s certification was not warranted, since “the number of ballots...challenged is far smaller than the roughly 81,000-vote margin of victory,” and that plaintiffs’ lawsuit “never claimed fraud or that any votes were cast by illegal voters.”

[In re: Canvass of Absentee and Mail-In Ballots of November 3, 2020. General Election](#), No. 2020-05627 (Penn. Ct. Common Pleas, Bucks Cnty.)

The Trump campaign sued in state court to overturn the five following Philadelphia County Board of Elections decisions: to count 1,211 ballots where the voter affixed their signature to the declaration envelope but provided no other information, preventing signature verification; to count 1,259 ballots where the voters did not date their signature but all other information was complete; to count 553 ballots where all the information was complete except for the voter’s printed name; to count 860 ballots missing a street address; and to count 4,466 ballots where the voters signed and dated but did not print their name and street address. The [state supreme court held](#) November 18, 2020, that the election code did not require boards of elections to disqualify absentee ballots submitted by qualified voters who signed the declaration on their ballot’s outer envelope but did not handwrite their name, their address, and/or date, where no fraud or irregularity has been alleged. It affirmed the common pleas court’s decision to count the ballots, citing Pennsylvania precedent to construe state law to save, not void, ballots.

[Barnette v. Lawrence](#), No. 2:20-cv-05477-PBT (E.D. Pa.)

A Republican congressional candidate alleged in federal court that Montgomery County, Pennsylvania, illegally pre-canvassed mail-in ballots and contacted some voters whose mail ballots had defects (such as a missing signature) to give them a chance to correct the problem. The plaintiff sought an order requiring election officials to discard and sequester defective ballots that were cured and to stop election officials from allowing voters to cure defects. On November 6, 2020, the U.S. district court [denied the motion](#) for a Temporary Restraining Order, saying it would not order the county to toss out ballots that initially contained errors that were later cured.

Hamm v. Boockvar, No. 600 MD 2020 (Pa. Comm. Ct.)

Petitioners Joseph Hamm (a candidate for the Pennsylvania State House of Representatives) and Mike Kelly (a candidate for U.S. Congress), and others sought injunctive relief (i) to block Secretary Boockvar from permitting absentee and mail-in ballots that were submitted with errors to be “cured” by the submission of provisional ballots, and (ii) prohibit the state from disclosing identifying information about voters who submitted defective ballots (to prevent party and candidate representatives from reaching out to such voters to help them cure their ballots). Petitioners argued that Secretary Boockvar’s guidance allowing election officials to provide such information to parties and candidate representatives violated Pennsylvania law (25 P.S. Sec. 3146.8) and the Pennsylvania Supreme Court’s decision in *In re November 3, 2020, General Election* (Pa. Oct. 23, 2020), by allowing voters an opportunity to cure ballot defects. On November 6, 2020, the state court [granted in part and denied in part](#) the petitioners’ requests. The court ordered that all provisional ballots cast on Election Day (in cases where the voter’s absentee or mail-in ballot was timely received) be segregated and secured from other provisional ballots pending the legal determination of whether such provisional ballots are valid and may be counted.

Wisconsin Signature and Witness Requirements

Wisconsin does not have a signature matching requirement but does require the signature of [both](#) the voter and a witness, and the address of the witness.

Relevant Laws, Policies, and Deadlines

- **Canvassing Start Date:** November 3, 2020
- **Training:** Because Wisconsin does not have signature verification requirements, there is no training on this particular issue.
- **Comparing signatures:** Wisconsin **does not currently have a signature verification procedure to compare a voter's signature on a ballot envelope to a signature on record.** However, Wisconsin requires voters to sign their ballots along with a witness. The witness must also include their address information. ([Wisconsin Statute Section 6.87\(3\)](#)). Wisconsin voters and witnesses must complete all lines within each form, [as a missing address or signature is grounds for ballot rejection](#).
- The stringent witness requirements have produced at least one hotly contested lawsuit in the state, discussed in detail below.
- **Notice and Cure:** Voters are allowed to provide a corrected signature envelope until polls close at 8 p.m. on Election Day. Notice and cure practices across Wisconsin [vary widely](#). In some counties, election officials make an effort to [call every voter](#) whose ballot does not meet witness requirements and help them fix the ballot. In other counties, only a small number of ballots that failed to meet the witness requirements [were counted](#).

Witness Verification Process and Ballot Cure

Wisconsin does not engage in signature matching, but it does have a process to verify that the voter has signed the ballot envelope and has complied with the requirements of the witness form. Wisconsin absentee voters must complete their absentee ballots, [sign the ballot in front of a witness](#) who is an adult U.S. citizen, fill out an elector witness certification form, and have the witness sign that certificate to accompany the ballot. Amid the coronavirus pandemic, the Wisconsin Elections Commission [provided additional guidance](#) for securing a ballot witness while social distancing. The Commission urged voters to find a family member, mail delivery person, or grocery store employee to serve as a witness. If a certificate is missing the witness's address or signature, the ballot may not be counted.

Wisconsin statutes do not provide explicit instructions for how to verify witness certificates. The [statute indicates](#) only that, "if a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits the elector to correct the defect and return the ballot within the period

authorized under sub.” ([Wisconsin Statute Section 6.87\(9\)](#)). Wisconsin’s [statewide guidance](#) for clerks indicates that clerks should “examine the certificate envelope for sufficiency.” The guidance [further specifies](#) that clerks “should review the certificate envelopes to see if there are any deficiencies that could cause the ballot to be rejected and bundle those together for a more individualized review by the inspectors.” But the guidance does not provide any standards for judging ballot “sufficiency” and does not provide additional detail on when a ballot might be subject to “individualized review by the inspectors.”

If a municipal clerk receives an absentee ballot that fails to include all of the information required for the certificate (e.g., address, signature) or a ballot is submitted with no certificate, the clerk may return the ballot to the voter with a new envelope “whenever time permits the elector to correct the defect and return the ballot.” ([Wisconsin Statute Section 6.87\(9\)](#)).

While [Wisconsin law](#) allows for observation of the “absentee ballot voting process,” it does not specify any process for observers to watch the witness-form verification process in particular.

Rejection Rates Due to Ballot Defects

While the 2020 EAVS data is not available as of the time writing, it appears that the overall rejection rate for absentee ballots submitted by mail in Wisconsin increased slightly from 0.2% in the 2016 general election to about 0.33% in the 2020 general election. The number of rejected mailed-in absentee ballots increased from 284 in 2016 to [4,270](#) in 2020 (a 15-fold increase). The total number of mailed-in absentee ballots increased from about 139,000 to about [1.3 million](#) (a 10-fold increase). Some press reports indicate a lower rejection rate of absentee ballots in 2020 (including articles at [fivethirtyeight.com](#) and [USA Today](#)) because they include absentee ballots cast early in-person. This approach masks the higher rejection rate for absentee ballots that are cast by mail versus those cast early in-person.

As of the time of writing, the percentages of mail ballot rejections for different reasons is not publicly available. In the 2020 primary election, [60%](#) of absentee ballots rejected by Wisconsin clerks were rejected for issues related to witness certification (shown in *Table 11*).

According to an [analysis in USA Today](#) that relied on data from the Wisconsin Elections Commission, the absentee ballot rejection rates in Wisconsin (inclusive of absentee ballots cast early in person) varies depending on the month of the election. From the period 2008 to 2020, clerks rejected an average of 0.62% absentee ballots in elections that took place in *November*, but rejected between 1.4% to 2.2% of absentee ballots in elections that took place in August, April and February. According to the head of the Milwaukee Election Commission, the lower rate of ballot rejections in November elections is primarily because of how people vote. “November elections bring a surge in early voting, which is still counted as absentee but takes place in a clerk’s office with the clerk as the witness. This eliminates chances that their ballot will be rejected for an insufficient (witness) certification,” she said.

Also according to [the article](#), the rejection rate of absentee ballots in November elections has steadily dropped over time, decreasing every November except in November 2016, which was an outlier due to a change in state law. In 2016, the state legislature passed a law that required the rejection of absentee ballots that are missing the *address* of the witness. As a result, the absentee rejection rate jumped from 0.31% in November 2014 to 1.35% in November 2016. The rejection rate declined again after the election commission voted to advise clerks to fix missing address components based on “reliable information.” The guidance passed in October 2016, but too close to the November 2016 election to be widely adopted, according to a WEC spokesperson. Once clerks had time to incorporate the new guidance, she said, the November rate resumed its descent. Thus, the high rate of rejections in November 2016 is an outlier.

Table 11. Rejection Rates in Wisconsin Due to Late Ballots, Missing Signatures, or Signature Mismatches.

	<i>Total ballots cast</i>	<i>Total VBM ballots counted (excludes early in-person absentee ballots)</i>	<i>Total VBM ballots rejected</i>	<i>Rejected for lateness</i>	<i>Rejected for insufficient witness certification</i>
2016 General (#)	2,993,000	138,542	284	19	N/A
2016 General (%)		4.63%	0.2%	6.7%	N/A
2018 Midterm (#)	2,688,341	147,597	2,517	1,445	N/A
2018 Midterm (%)		5.5%	1.7%	57.4%	N/A ¹
2020 Primary (#)²	1,555,263	964,433	23,196	8,185 ³	14,042
2020 Primary (%)²		62%	2.0%	35.28%	60.55%
2020 General (#)	3,297,524 ⁴	1,300,000 ⁵	4,270 ^{6*}	1,045 ⁶	1,434 ⁶
2020 General (%)		39.4%	0.33%*	24.47%	33.58%

(2016 and 2018 EAVS data, [Wisconsin Absentee Voting Data](#))

¹ N/A indicates that no data was available for that particular datapoint.

² Source: [Wisconsin Absentee Voting Data](#)

³ Includes ballots rejected because they were postmarked after Election Day and/or received by clerks after the 4 p.m. April 13 deadline.

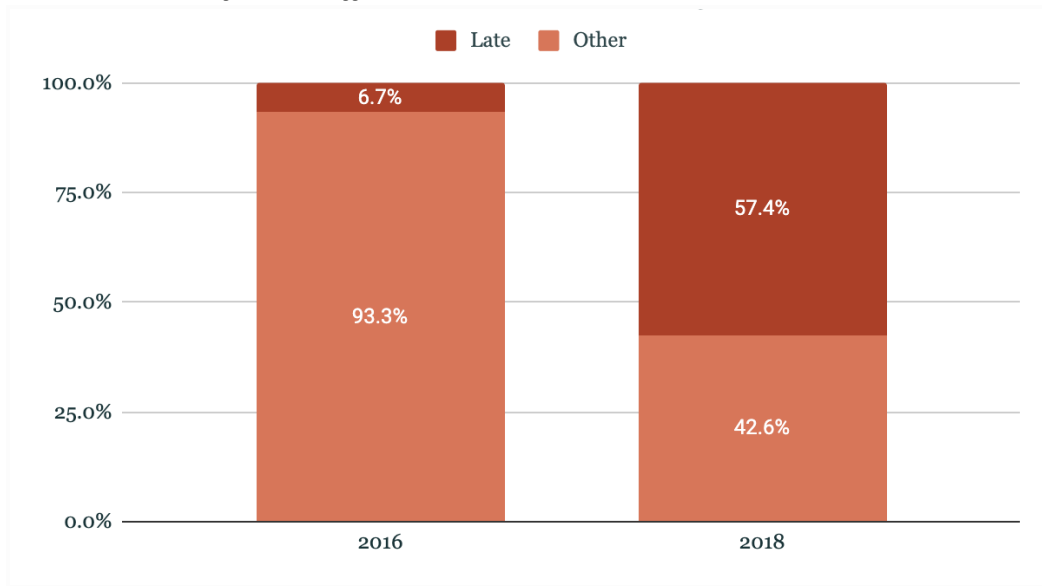
⁴ Source: [Wisconsin Voter Turnout Statistics](#)

⁵ Source: [Absentee Ballot Report - November 3, 2020 General Election](#)

⁶ Source: [Wisconsin Election Commission Election Data Report for November 3, 2020](#)

*This number includes *all* absentee ballot rejections, including early in-person ballots. Historically, almost all of the absentee ballots rejected are mailed ballots and the number of rejected early in-person absentee ballots is statistically insignificant.

Figure 8. Reason for ballot rejections in Wisconsin in 2016 and 2018 (2020 data excluded because it came from a different source).



Wisconsin's Witness Requirement Litigation

This section summarizes litigation related to Wisconsin's absentee ballot witness rules. Just as signature mismatches resulted in ballot rejections in many other states, Wisconsin's witness requirements—that all mail-in ballots be completed in front of a witness who must fill out and sign the witness forms that accompany the ballot—provided ample cause for ballot rejection. In March 2020, the Democratic National Committee initiated a lawsuit aimed at, among other things, eliminating the witness requirement amid the current coronavirus pandemic.

Pre-Election Litigation

[*DNC v. Bostelmann*](#), No. 3:20-cv-249 (W.D. Wis.), No. 20-1539, 20-1539, 20-1545, 20-1546, 20-2835 (7th Cir.)

The Democratic National Committee filed suit in federal district court, challenging numerous voting requirements related to Wisconsin elections. Among those practices, the lawsuit challenged Wisconsin's requirement that a voter must have a witness certify the veracity of the voter's identifying information. In a flurry of legal actions in the days before the primary election, a U.S. district court [ruled](#) that, in light of the pandemic, voters could cast their mail-in ballots without a witness. However, the Seventh Circuit [promptly overturned](#) that ruling, stating that the district court gave "no effect to the state's substantial interest in combating voter fraud."

Post-Election Litigation

[Trump v. Evers](#), No. 2020AP1971-OA (Wis. Sup. Ct.)

President Trump and Vice President Mike Pence filed a petition in the state supreme court, seeking to void Wisconsin's election certification that the Democratic ticket had won the state's electoral votes. Petitioners asked the court to reject early in-person absentee votes in Milwaukee and Dane counties, especially where absentee ballots were allegedly missing the witness's address. The Wisconsin Supreme Court held that petitioners had initiated their claim in the incorrect venue.

[Trump v. Biden](#), No. 2020CV007092 (Wis. Super. Ct., Milwaukee Cnty.)

The Trump campaign objected to four different categories of ballots in Dane and Milwaukee counties. One of the categories involved absentee ballots the campaign claimed were invalid because municipal officials allegedly improperly added witness information on the absentee ballot certifications. The Wisconsin Supreme Court held that the campaign was not entitled to the relief it sought. With respect to ballots challenged over witness issues, the court held that the challenge failed under the doctrine of laches. The U.S. Supreme Court denied certiorari on February 22, 2021.

[Trump v. Wisconsin Elections Commission](#), No. 2:20-cv-01785 (E.D. Wis.)

Plaintiff, Donald Trump, alleged that defendants, local government officials in Wisconsin, violated several election laws, including that they "eliminated state laws requiring that voters provide information on the mail-in ballot envelope," permitted election workers to alter ballots, and failed to provide adequate access for poll observers. Plaintiff claimed that the alleged conduct violated both the Elections and Electors Clauses. As a remedy, plaintiff requested that the result of the Wisconsin election be remanded to the Wisconsin state legislature. The district court held that Trump failed to prove that the WEC violated his rights under the Electors Clause. The court found that the record showed Wisconsin's presidential electors were "determined in the very manner directed by the Legislature, as required by Article II, Section 1 of the Constitution." With respect to Trump's complaint about the corrections to witness addresses, the court held that this was not a challenge to the "manner" of Wisconsin's appointment of presidential electors but rather a disagreement over election administration. The court held that Defendant WEC, in fact, conducted the election in the manner directed by the state legislature, in accordance with the Electors Clause. The Seventh Circuit affirmed. The U.S. Supreme Court denied the petition for certiorari on March 8, 2021.

Conclusion

An unprecedented number of voters cast their ballots by mail in 2020, spurred on by the coronavirus pandemic. This phenomenon created a risk that a large number of absentee ballots, and a higher percentage than usual, would be rejected due to mistakes by first-time absentee ballot voters. Mistakes could include failing to procure a required witness signature and forgetting to sign their ballot envelope—or just the increased likelihood of ballots being rejected for signature mismatches as election officials scrambled to examine the dramatically increased volume of absentee ballots. In the end, as a result of many factors, including litigation, legislative action, and guidance from statewide election officials, many states were able to clarify their signature matching requirements and practices ahead of the November 2020 election and help educate voters to reduce voter errors and confusion. Several states also instituted notice and cure procedures and extended the deadline to fix ballots with deficient or missing signatures, giving voters a chance to cure ballot defects that, previously, might have resulted in their vote not counting. Despite the uncertainties stemming from legal challenges in the leadup to and aftermath of the 2020 general election, the actions that state election officials took to ensure that voters could safely and effectively cast their ballots by mail appear to have enhanced the ability of the states to successfully conduct a presidential election with record turnout despite a global pandemic.

Pre-Election Mail Voting Litigation in the Coronavirus Pandemic

March 10, 2021

Authors: Connor Clerkin, Lane Corrigan, Zahavah Levine, Aviel Menter, Christopher Meyer, Alexander Perry, and Theodora Raymond-Sidel

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Introduction

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The increase in the rates of mail voting over the last two decades accelerated significantly during the coronavirus pandemic. The November 2020 general election set a new record for vote-by-mail turnout. Approximately 46% of all votes—approximately 73 million ballots—were cast by mail or absentee ballots (the terms are used interchangeably here), more than double the percentage of vote-by-mail turnout in the 2016 general election, according to the Survey of the Performance of American Elections.

Heading into the election, it was clear that more Americans were eligible to vote by mail in the general election of 2020 than [in any general election in U.S. history](#). States such as [Utah](#) and [Hawaii](#) joined universal mail voting states Colorado, Oregon, and Washington for their first presidential elections as universal mail voting states. Several states, such as [Nevada and New Jersey](#), sent mail ballots to all voters solely in response to the pandemic. Many other states [expanded access to mail voting](#) in other ways in response to the pandemic. More than [90 million](#) Americans received mail or absentee ballots. It was also clear that millions of voters would be voting by mail for the first time, largely to avoid the health risks posed by in-person voting during the pandemic. They would be using unfamiliar processes to apply for, complete, and return their ballots, relying on infrastructure that, in many cases, was [never designed to handle](#) such a massive volume.

To address the surge in demand for mail voting, election officials across the United States scrambled to scale up their vote-by-mail systems and operations. They worked with state legislatures, governors, and secretaries of state to adapt existing rules and procedures for mail voting during the coronavirus pandemic. Many state-level initiatives sought to accommodate the increased demand, and even encourage it, by relaxing rules that created obstacles to mail voting. Other initiatives sought to slow the growth of vote-by-mail and limit accommodations, citing the need to deter voter fraud. Sometimes those forces collided within an individual state, as political parties within the same state pursued different approaches, leading to heated political debate, deadlock, and an enormous amount of litigation.

Disputes over the rules of mail voting played out in the courts, triggering an avalanche of litigation regarding the appropriate ways to adapt, apply, and administer elections during the pandemic. Since March 2020, more than [400](#) election-related lawsuits were filed in federal and state courts in almost every state, marking what was perhaps [the most litigated election season](#) in the past two decades. And [most](#) of this litigation, particularly before Election Day, related to the rules associated with mail voting.

To promote public awareness of the stress the pandemic placed on election and voting laws across the country, a team of us at the [Stanford-MIT Healthy Elections Project](#) compiled,¹ summarized, and categorized the 2020 election cases that arose from, or took on increased importance in light of, the coronavirus pandemic. We organized the data in our publicly available [COVID-Related Election Litigation Tracker](#). The tracker is designed to help election officials, legislators, scholars, and the interested public find, sort, and better understand the large volume of election-related lawsuits in 2020. Users can [search](#) cases in the tracker by [issue](#), state, date, and party name. Each case includes a short summary, key-issue tags, and links to key court documents.

For readers who want a broad run-through of the litigation, without skimping on the important details, this five-part report, “Mail Voting Litigation During the Coronavirus Pandemic,” discusses and contextualizes many of the cases in the [Stanford-MIT COVID-Related Litigation Tracker](#). It outlines the various types of legal challenges to mail voting practices and procedures brought between March 2020 and November 3, 2020 (Election Day), largely in response to the pandemic.² Most of the lawsuits discussed here were brought against states and counties and their respective officials responsible for the mail voting rules.

This survey of litigation reveals a wide array of legal claims and challenges regarding absentee and mail voting. Most cases sought to expand the availability of, or loosen restrictions associated with, mail voting. But some cases challenged the expansion of vote-by-mail and proposed or defended restrictions. They argued that the restrictions were reasonable or necessary to reduce fraudulent votes that could dilute the weight of genuine votes, or that state election officials and/or courts were acting outside of their authority in adopting various accommodations to address voting during a public health crisis. There was [no evidence of widespread fraud](#) in mail voting in 2020, even though it was widely alleged by President Trump and some of his allies.

Plaintiffs challenged every aspect of mail voting, from the application process to state eligibility requirements, from ballot receipt deadlines to voter verification practices. Plaintiffs alleged a variety of violations—federal and state constitutional violations, statutory violations of the federal Voting Rights Act and the Americans with Disabilities Act, and various state statutory violations.

¹ We gratefully acknowledge the generous contribution of Professor Justin Levitt in helping to compile the election cases and court documents in our tracker.

² For an analysis and summary of the post-Election Day lawsuits, see the Stanford-MIT Healthy Elections Project report [Post-Election Litigation Analysis and Summaries](#).

This five-part report is organized loosely according to the stages in which absentee ballots are cast by voters and processed and counted by elections officials: application for a ballot, the proper completion of the ballot, options for returning the ballot, verification of absentee voters' identities by election officials, and challenges to absentee ballots. The report does not discuss every one of the hundreds of cases that addressed mail balloting in 2020, but it discusses the trends and the major cases.

Parts I through IV relate to various efforts to expand mail voting or make it more accessible; Part V relates to efforts to curb such expansion.

Part I covers lawsuits related to the availability of absentee or mail voting, including challenges to eligibility requirements (in states which do not allow all registered voters to vote by mail) and to the ballot application processes. Overall, plaintiffs who sought to relax restrictions around the availability of absentee ballots were unsuccessful. Courts were hesitant to overturn the judgment of elected political officials and, instead, chose to uphold absentee ballot restrictions under rational basis or *Anderson-Burdick* review. Going forward, the increasingly conservative tilt of federal courts suggests that expansions to absentee voting availability will need to come from the legislative branches.

Part II explores claims related to the rules governing the submission and return of completed mail ballots. In particular, it explores litigation challenging four types of ballot-submission-related state rules: requirements that absentee ballots be *received* by Election Day (instead of *postmarked* by Election Day), requirements that the marked absentee ballot be placed into an inner envelope known as a "secrecy sleeve," requirements that the voter supply postage for return mail ballots, and the sufficiency of measures taken by election officials to provide reasonable accommodations for voters with disabilities who seek to complete absentee ballots. On the whole, plaintiffs did not see much success in their challenges to ballot submission procedures. Courts often determined that certain rules—such as those requiring voters to pay for ballot postage—did not place heavy burdens on the right to vote. Plaintiffs did have some limited success in Election Day deadline-related litigation, as the U.S. Supreme Court permitted court-ordered extensions of ballot receipt deadlines in North Carolina and Pennsylvania to stand.

Part III surveys legal challenges designed to expand options for mail ballot drop-off and delivery. It explores challenges to restrictions on collecting and returning ballots for other voters (sometimes referred to as "ballot harvesting" by Republicans and "ballot collecting" by Democrats), challenges to limits on the number or location of absentee ballot drop-off locations, and challenges to operational changes made by the [U.S. Postal Service \(USPS\)](#) that many plaintiffs viewed as a threat to mail voting. The USPS cases were unique, because they

were the only cases seeking to expand or protect mail voting that were not directed at state officials. Rather, they were filed against the federal government and the postmaster general. Plaintiffs were largely unsuccessful in ballot collection and delivery challenges, as courts generally found that such restrictions did not place a severe burden on voters. Some district courts were receptive to challenges against attempts to limit the availability of drop boxes, though federal appellate courts stayed some of the district court injunctions. Plaintiffs were most successful in USPS-related litigation, winning nationwide injunctions against the Postal Service's operational changes that risked delaying ballot delivery.

Part IV surveys legal challenges to the processes used by election officials to verify that the person who submitted a mail ballot was the duly registered and intended voter. These processes include signature verification (a practice that entails comparing the signature on a ballot return envelope with an image of the intended voter's signature on file at the elections office to see if they match) and the requirement, in some states, that one or more witnesses sign a voter's mail ballot or return envelope, attesting to the voter's identity. Although outcomes were mixed, litigants were generally successful in pushing states to implement "notice and cure" procedures to allow voters to remedy defective absentee ballots so they were not rejected. Interestingly, the 2020 election did not see a significant spike in the percentage of ballots rejected for errors, suggesting that broader public education and voter awareness succeeded even where litigation had mixed results.

Whereas Parts I through IV focus on legal efforts to expand vote-by-mail and make it more accessible to more voters, Part V focuses on cases that sought the opposite—cases that challenged the expansion of mail voting and the relaxation of the associated restrictions. These cases sought to halt various vote-by-mail accommodations and restrict the use of mail voting. The suits typically challenged policy modifications on one or both of two grounds: that mail voting increases voter fraud and/or that the officials implementing the challenged policies are not authorized by law to do so. Primarily brought by the Trump campaign and Republican Party operatives, these cases challenged decisions by state officials to send vote-by-mail applications or actual mail ballots to all voters in a state, to provide ballot drop-off locations that made it more convenient for voters to return their ballots, to relax voter verification procedures, and to extend the deadlines for the receipt of mail ballots because of the pandemic. The fraud-related challenges were uniformly unsuccessful, with federal and state judges routinely dismissing the claims for lack of standing or insufficient evidence.

Most of the cases challenging the authority of various actors to change the rules of mail voting alleged *ultra vires* executive action—executive action beyond authority granted. The outcome of these cases was largely fact-dependent and varied based on the measure taken, the authority of the official who took it, and the particular state law at issue.

The most significant case alleging lack of authority related to the ability of state courts to expand mail voting access to protect rights guaranteed by a state's constitution. Vote-by-mail opponents appealed a decision of the Pennsylvania Supreme Court, revitalizing an argument endorsed by three concurring justices in *Bush v. Gore*, that *only* the state legislature is permitted to alter state voting procedures in elections for federal office—not state executives acting to address an emergency or state courts seeking to redress violations of state constitutional law. They argued that the Pennsylvania Supreme Court's extension of a mail ballot receipt deadline during the pandemic violated the [Elections Clause](#) of Article I of the U.S. Constitution, which states that the "Times, Places, and Manner" of elections to federal office "shall be prescribed in each State by the Legislature thereof"

On October 19, an equally divided U.S. Supreme Court [denied](#) the GOP's application to stay the decision. With one U.S. Supreme Court seat vacant, due to the death of Justice Ruth Bader Ginsburg, the court's 4-4 tie on the issue left the Pennsylvania Supreme Court decision intact. Thus, the high court has yet to decide this issue on the merits. If widely adopted, the GOP's argument would significantly hamper the ability of state courts to alter election requirements to protect the right to vote under state constitutions, as the Pennsylvania Supreme Court (and other state courts) did during the 2020 election cycle.

Part I: Efforts to Expand Applications For and Eligibility to Vote By Mail

Author: Aviel Menter

In 2020, most states and the District of Columbia [allowed any registered voter](#) to vote via an absentee ballot without providing an excuse. However, several states made absentee voting available only to certain classes of voters, typically those more likely to have difficulty reaching the polls, such as the elderly, or those who expected to be out of town on Election Day. During the 2020 election, the coronavirus pandemic made many voters unable or reluctant to vote in person for fear of contracting the virus that causes COVID-19, a serious respiratory illness. Thus, litigants in a number of states brought lawsuits to compel states to give more voters access to the absentee ballot.

This report considers four categories of lawsuits that sought to expand vote-by-mail application and eligibility.

First, litigants challenged the application processes for mail ballots. In some states, the coronavirus pandemic had increased demand for vote-by-mail applications beyond the capacity of existing infrastructure, leading voters to file suits to ensure that states provided sufficient opportunity for voters to apply for a mail-in ballot. Other lawsuits pushed back on state initiatives that would have made the application process for mail-in voting more difficult.

Second, some complaints sought to make absentee voting available to any registered voter, even in states where the law restricted mail voting to certain enumerated groups. These complaints generally argued that limitations on who can vote absentee unduly burdened the right to vote, particularly during the pandemic, when in-person voting risked exposing voters to the coronavirus.

Third, some plaintiffs filed lawsuits arguing that state laws allowing absentee voting in cases of illness or disability should include voters who lack immunity to the coronavirus. But courts were reluctant to extend these statutory provisions to the [vast majority of the electorate](#) that still, at that time, lacked immunity to the virus.

Finally, several lawsuits challenged state restrictions that limited absentee voting to seniors above a certain age. They argued that such state law restrictions violated the Twenty-sixth Amendment's prohibition on using age as a basis to deny or abridge a citizen's right to vote. These arguments prevailed in several state courts, but federal courts uniformly refused to find that age restrictions violated the U.S. Constitution.

Overall, lawsuits challenging absentee ballot application procedures and eligibility requirements were almost universally unsuccessful. Courts were unwilling to strike down voting restrictions during a politically fraught campaign, choosing instead to defer to legislative or executive fact-finding. This reluctance carried over into the courts' legal analysis, with state and federal courts either subjecting voting restrictions to rational basis review or finding that the restrictions minimally burdened the right to vote. Thus, the 2020 election highlighted an overarching judicial skepticism about intervening with state absentee voting laws, particularly in the shadow of an impending election.

Applying to Vote by Mail

Before a voter's eligibility to vote by mail is determined, the voter must usually apply for an absentee ballot. Plaintiffs in some states challenged the process by which voters received and submitted applications to vote by mail.

In [*LULAC of Iowa v. Pate*](#), two plaintiff groups in Iowa challenged a law that made the application process more difficult. For decades, election officials in Iowa had been authorized to use, and had been using, available voter database information to insert missing data or fix incorrect data on voters' applications for absentee ballots, and then sending absentee ballots to those voters. But in June 2020, the Iowa legislature passed a law that prohibited officials from looking in voter databases and supplying missing or corrected information. Instead, officials were required to retrieve the missing information by contacting the voters themselves, often by mail. This change converted a simple and routine process into a more arduous and time-consuming one, at a time when the number of absentee ballot applications was expected to skyrocket, especially from voters unfamiliar with the absentee process. Plaintiff groups argued that the law imposed a severe burden on the right to vote because it prevented voters from receiving and submitting ballots in time to vote in the election. The Iowa Supreme Court [rejected](#) the plaintiffs' challenge, reasoning that the law did not impose a severe burden and was justified by the state's interests in protecting the security and integrity of the absentee ballot system and preventing voter fraud.

Enforcement of this law resulted in a substantial disruption to absentee voting applications. Pursuant to this new law, Iowa's secretary of state issued a directive prohibiting county election officials from sending out absentee ballot request forms pre-populated with any of the voter's information. When some county officials did anyway, the Republican National Committee (RNC) and the Trump campaign [sued](#), asking an Iowa state court to enjoin the county election officials from processing these forms. The court granted the injunction, thereby [invalidating](#) approximately 64,000 absentee ballot applications that had already been submitted by voters.

The state Democratic Party filed its [own lawsuit](#), seeking to strike down the secretary of state's directive as inconsistent with Iowa administrative and constitutional law. But the Iowa Supreme Court [rejected](#) this challenge, finding that the secretary of state's directive was authorized by state law.

The vote-by-mail application process was contentious in other states as well, particularly in states where the coronavirus pandemic struck just before the deadline to apply for absentee ballots. Some of these states resolved their issues relatively swiftly. In Idaho, for example, a surge in vote-by-mail applications caused the state's online application portal to crash. A federal district court then [granted](#) an emergency injunction, extending the application deadline by a week. Similarly, plaintiffs in Ohio [challenged](#) the state's deadline for applying for an absentee ballot, arguing that the timing of the deadline violated their right to vote. Their claim was dismissed as moot, after the Ohio state legislature passed a bill changing vote-by-mail procedures in light of the coronavirus pandemic.

Plaintiffs in some states brought lawsuits seeking to require the state to send vote-by-mail applications to *all* eligible voters. These challenges generally failed. In [Alaska](#), plaintiffs brought such a suit after the state sent mail-in applications only to elderly voters. The federal district court denied the plaintiffs' requested injunction, finding that their right to vote had not been abridged because any registered voter in Alaska could fill out an online or paper application to vote by mail. A state court in [Pennsylvania](#) also denied a request for a similar injunction, finding that the plaintiffs had not demonstrated that the injunction was necessary to prevent them from suffering irreparable harm.

Absentee Balloting Without an Excuse

Although most states allowed any registered voter to vote by mail in the elections of 2020, some states required voters to have one of several pre-defined acceptable "excuses" for voting absentee. Plaintiffs in several states with such requirements brought legal challenges, seeking to make absentee voting available without excuse to every eligible voter in the state. These claims generally asserted that the right to vote—protected by either the state's constitution or the U.S. Constitution—requires that *all* voters be eligible to vote by mail, at least during the pandemic. Overall, these claims were unsuccessful.

In [NAACP v. Missouri](#), a Missouri state court rejected a challenge to the excuse requirement for voting absentee brought under state law. The [Missouri Constitution](#) states that "[q]ualified electors of the state who are absent . . . may be enabled by general law to vote at all elections by the people." The court interpreted this language as permitting but not requiring absentee

voting. The court explained that “[t]he word ‘may’ denotes discretion, not an obligation,” and it pointed to an earlier Missouri Supreme Court decision that held that absentee voting was a “special privilege,” not a right. The court concluded that the Missouri Constitution does not guarantee a “constitutional right to cast an absentee ballot in any election for any reason.” It also found that “strict compliance with the statutory requirements for absentee voting” was necessary to combat what the state claimed were absentee voting’s “unique risks of fraud and abuse.” The Missouri Supreme Court [affirmed](#) the decision.

Some state trial courts initially ruled the other way, only to be overturned on appeal. In [Fisher v. Hargett](#), a Tennessee state court initially interpreted the Tennessee Constitution to guarantee a universal right to vote by mail. The trial court ruled that voting was a fundamental right under the Tennessee Constitution. The court evaluated the alleged infringement on the state constitutional right to vote under the *Anderson-Burdick* test, the test widely used by federal courts to assess the constitutionality of voting restrictions.

The *Anderson-Burdick* test comes from the U.S. Supreme Court’s decisions in [Anderson v. Celebrezze](#) and [Burdick v. Takushi](#)—the former was a case in which an independent presidential candidate challenged state laws that prevented him from appearing on the ballot, and the latter challenged Hawaii’s write-in voting prohibition. Since then, however, the test has been applied more generally to assess challenges to a wide variety of election laws alleged to infringe on the right to vote under the U.S. Constitution. The *Anderson-Burdick* test is a balancing test that requires the court to balance the burden that a voting regulation imposes on the electorate against the state’s interests in the regulation. The *Anderson-Burdick* standard does not fit neatly into the traditional tiered review of equal protection claims. Courts generally (but not uniformly) adopt a [sliding scale approach](#): the greater the burden a law places on the franchise, the more robust the state’s justification for the law must be. Reasonable nondiscriminatory restrictions generally require only that the state have an important regulatory interest to justify it. But severe restrictions or burdens are subject to strict scrutiny and must be narrowly tailored to advance a compelling state interest. For restrictions falling in between these extremes, the court weighs the burden imposed by the regulation against “the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.”

After extensive factual findings, the trial court in *Fisher* determined that Tennessee’s law on absentee voting, which extended mail-in ballots only to those physically unable to vote in person, was not sufficiently justified by its interests. The court found that the state could easily process and verify absentee ballots from more voters and that absentee voting did not pose a special risk of voter fraud. Moreover, the court found that the state’s restrictions imposed a

substantial burden on voters because it required voters to show up at polling places during a pandemic that could pose a serious health risk.

The Tennessee Supreme Court promptly reversed, finding only a minimal burden under the *Anderson-Burdick* test. The court held that most voters had no unique vulnerability to COVID-19 and could still safely show up at the polls. The court declined to do its own analysis of the state's justifications for the restrictions on absentee balloting. It deferred instead to the legislature's stated reasons—that the limits imposed furthered the state's interests in “1) prevention of fraud; 2) fiscal responsibility; and 3) feasibility.”

The most significant federal court decision on the issue of eligibility for absentee voting came out of the U.S. Court of Appeals for the Fifth Circuit. In [Texas Democratic Party v. Abbott](#), the plaintiffs argued that the Fourteenth Amendment required Texas to implement universal no-excuse absentee balloting. Plaintiffs saw initial success in the federal district court, which invalidated Texas's restrictions on absentee voting during the pandemic, characterizing the restrictions as a return to the “yesteryear of the Divine Right of Kings.” However, in a more rhetorically tempered opinion, the Fifth Circuit stayed the lower court's injunction.

The Fifth Circuit [declined](#) to apply the *Anderson-Burdick* test, initially finding that the U.S. Supreme Court's earlier decision in [McDonald v. Board of Election Commissioners](#) controlled instead. In *McDonald*, the Supreme Court upheld a state law that denied certain incarcerated individuals the ability to vote by mail. The court held that this law did not implicate the right to vote because it did not “absolutely prohibit[]” the affected individuals from voting but, instead, simply denied them access to one particular mechanism designed to make voting easier. Applying *McDonald*, the Fifth Circuit held that the U.S. Constitution does not require universal absentee voting. It found that Texans had not been “absolutely prohibited” from voting because, the coronavirus pandemic notwithstanding, they could still vote in person. The Fifth Circuit reviewed Texas's excuse-required mail voting laws under rational basis review, probing only whether the challenged laws had some “rational” connection to a “legitimate government interest.” A subsequent Fifth Circuit panel [vacated](#) the trial court's injunction entirely. But that court noted that it was “hesitant” to apply *McDonald* and ruled that the previous stay of injunction had no precedential value.

The U.S. Court of Appeals for the Seventh Circuit followed the Fifth Circuit's approach. In [Tully v. Okeson](#), plaintiffs in Indiana brought a challenge under the Fourteenth Amendment, alleging that Indiana's mail voting system abridged their right to vote. Indiana, like Texas, required voters to have an excuse from a predefined list in order to vote absentee. Voters are eligible to vote by mail in Indiana only if they fall into one of 13 statutorily enumerated categories. Citing *McDonald*, the Seventh Circuit found that limitations on absentee voting did not fall within the

scope of the right to vote because they do not absolutely prevent the plaintiffs from voting. The court also rejected the plaintiffs' equal protection claim, holding that Indiana's scheme satisfied both rational basis review and the *Anderson-Burdick* test. The court found that the denial of absentee balloting was a minimal burden on the plaintiffs' ability to vote and that this minimal burden was justified by the state's interest in "ensuring safe and accurate voting procedures."

Fear of Contracting COVID-19 as an Excuse

Several states allowed citizens to vote by mail only if they had an illness or disability that made it difficult to vote in person. During the 2020 election, the global pandemic made it potentially dangerous for almost anyone to show up at the polls, which have often involved large groups of people waiting in long lines. Plaintiffs in various states asked courts to interpret the excuse provisions of absentee voting laws to include anyone susceptible to COVID-19. However, most of these claims failed, with courts concluding that the mere chance of contracting COVID-19 was not enough.

This issue was litigated most extensively in [Texas](#). In March, the Texas Democratic Party (TDP) filed a suit in state court, seeking a declaration that a lack of immunity to coronavirus that caused the dangerous respiratory illness known as COVID-19 should constitute a "disability" under the Texas Election Code. The party argued that anyone without immunity to the coronavirus should be permitted to vote by mail. (For all intents and purposes, in March 2020, this would have included all voters, as no one was known to have immunity at that time.) The [Texas Election Code](#) defines a disability as "a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health." The Texas Democratic Party (TDP) argued that lack of immunity to the coronavirus disease met this definition. It is a "physical condition," the TDP argued, that could easily "injur[e] the ... health" of a voter who is exposed to the coronavirus at a polling place.

The trial court agreed with the TDP, holding that any qualified voter who lacked immunity to the coronavirus would be eligible to vote by mail. However, the Texas attorney general then issued an order directing election officials not to accept absentee ballots from voters whose only excuse for voting by mail was that they lacked immunity to COVID-19. This appeared to run afoul of the trial court's holding, which barred the state from issuing any guidance that prevented counties from accepting mail-in ballots based on COVID-19-related disability claims. An intermediate Texas appellate court reinstated the trial court's injunction pending appeal. The state then [petitioned](#) the Texas Supreme Court for a writ of mandamus to compel election officials to deny mail-in ballots based on a COVID-19-related disability.

The Texas Supreme Court denied the petition. It agreed with the state that voters were not eligible to vote by mail just because they lacked immunity to the coronavirus disease. The majority opinion reasoned that an absence of immunity to disease was not a “physical condition” under the Election Code because it did not result in a unique “incapacity” relative to the general population. But the court did make one important clarification. It explained that voters applying for an absentee ballot did not need to explain or provide proof of their disability; they simply needed to check a box on the application indicating that they had a disability. The court found that state election officials had no “duty ... to look beyond the application” or “investigate each applicant’s disability.”

Courts in other jurisdictions have reached similar results. In [Missouri v. NAACP](#), for example, the state conference of the NAACP asked a state court to declare that Missouri law permits absentee voting for any voter who fears contracting COVID-19 at a polling place. Missouri allows a citizen to vote by mail if the voter “expects to be prevented from going to the polls to vote on election day due to” a host of factors, including “[i]ncapacity or confinement due to illness or physical disability.” The plaintiffs argued that voters who refused to go to the polls for fear of contracting COVID-19 were “confine[d] due to illness or physical disability.”

The state circuit court rejected this reading, explaining that the plaintiffs’ construction of the statute would allow citizens to vote by mail if they feared contracting *any* illness, not just COVID-19. According to the court, such a reading would broaden the availability of absentee voting far beyond the Missouri legislature’s expressed intent. The Missouri Supreme Court reversed the ruling, however, instructing the trial court to reconsider its decision after Missouri’s legislature [passed a law](#) expanding vote-by-mail to voters in specified at-risk groups. On remand, the trial court again denied the plaintiffs’ requested injunction, finding that voters without COVID-19 did not suffer from “incapacity or confinement due to illness” under the updated statute.

Not every state interpreted its law so narrowly. In [Fay v. Merrill](#), a Connecticut state court considered a challenge to the governor’s order allowing any eligible voter to vote by mail. The Connecticut Constitution allows the legislature to authorize voting by mail only for particular groups of qualified voters, including those “unable to appear at the polling place on the day of the election ... because of sickness or disability.” The court construed this constitutional provision to permit absentee voting for any qualified voter concerned about contracting COVID-19 during the pandemic. The court found that the words “because of sickness” did not require the voter to suffer from the sickness. Instead, the “existence of a raging global pandemic” was justification enough. The court distinguished its ruling from that of the Texas Supreme Court, arguing that the Texas Election Code contained distinct language permitting absentee voting only when the voter has contracted the sickness.

Age Limits

Several states limit no-excuse absentee voting to qualified voters over a certain age—usually drawing the line at 60 or 65. Plaintiffs brought lawsuits challenging these age limits, seeking to make absentee voting universally available to younger voters as well. These claims asserted that the age limits violated younger citizens' right to vote and that they discriminated on the basis of age, in violation of the Twenty-sixth Amendment. The [Twenty-sixth Amendment](#) says: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

These age claims were consistently rejected by state and federal courts. Although the U.S. District Court for the Western District of Texas initially [granted](#) a preliminary injunction on an age discrimination claim, the U.S. Court of Appeals for the Fifth Circuit reversed the lower court in [Texas Democratic Party v. Abbott](#). In addition to its claims under state law and under the Fourteenth Amendment, the Texas Democratic Party also challenged Texas's absentee voting law under the Twenty-sixth Amendment. It argued that the law unconstitutionally discriminated on the basis of age. The plaintiffs argued that the law should be subject to strict scrutiny, pointing to the text of the Twenty-sixth Amendment, which states that the right to vote "shall not be denied or abridged ... on account of age." The circuit court, relying on *McDonald*, reasoned that, if limits on absentee voting do not deny or abridge the right to vote at all, then neither could they deny or abridge the right to vote "on account of age." The court, therefore, refused to apply strict scrutiny and applied only rational basis review, which the challenged law easily survived. The U.S. Supreme Court [refused](#) to stay the Fifth Circuit's decision, but Justice Sonia Sotomayor remarked that the underlying issue was "weighty but seemingly novel."

Courts that applied the *Anderson-Burdick* test upheld age limits on no-excuse absentee voting as well. The U.S. Court of Appeals for the Seventh Circuit considered a Twenty-sixth Amendment challenge in Indiana in [Tully v. Okeson](#). The court first found that *McDonald* controlled and that the age limit on absentee voting did not implicate the right to vote. But the court also held, in the alternative, that the age limit would survive review under the *Anderson-Burdick* test. The court found that many younger voters would still be eligible to vote by mail because they could meet other vote-by-mail requirements and that any minimal burden on voters who had to show up at a polling place was justified by the state's interest in "ensuring safe and accurate voting procedures."

Similarly, in [Disability Law Center of Alaska v. Meyer](#), the plaintiffs challenged a decision by the Alaska state government to mail absentee voting *applications* to all registered voters over the age of 65. The federal district court denied the plaintiffs' request for an injunction that would

require the state to send applications to all registered voters. The court found that younger voters' rights had not been "abridged" within the meaning of the Twenty-sixth Amendment because, even though they would not be mailed applications proactively, they could still fill out online or paper applications to vote by mail. The Ninth Circuit [refused](#) to stay the lower court's decision pending appeal.

Sending Mail Ballots To All Voters

Plaintiffs in several states brought lawsuits seeking to require election officials to send mail ballots to all eligible voters. But few courts ruled on the merits of these claims. In one example, the city of [Green Bay, Wisconsin](#), brought a constitutional claim, arguing that, in light of the pandemic, state election officials should be required to send ballots automatically to all eligible voters. But the case was dismissed for lack of subject matter jurisdiction under a doctrine that holds that municipal organizations lack standing to bring an equal protection challenge against their own state government. Plaintiffs in another case, in Connecticut, voluntarily [dismissed](#) their claims. And a federal district court in Georgia [dismissed](#) various challenges to state election and absentee voting procedures, including the failure to send mail-in ballots to all registered voters. The court found that the claims all presented nonjusticiable political questions.

Part I Conclusion

Despite the wave of litigation over the application process and eligibility requirements for voting by mail, courts were reluctant to get involved. Litigants asserted claims under nearly every relevant source of law—local, state, and federal; administrative, statutory, and constitutional. But the courts were generally unwilling to wade into the political thicket. The *Anderson-Burdick* test, along with the U.S. Supreme Court's decisions in *McDonald* and *Purcell*, provided convenient doctrinal escape valves for state and federal judges who were unwilling to issue politically contentious decisions on voting access. The resulting precedent is likely to hamper efforts to expand mail or absentee voting access in future elections.

Part II: Challenges to Barriers to Submission of Mail Ballots

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Part II addresses litigation surrounding the submission of mail-in ballots. It surveys lawsuits brought by voting rights advocates during the pandemic, arguing that various mail-ballot submission rules illegally burdened the right to vote. It focuses specifically on legal challenges that aimed to remove four types of barriers to submitting a vote via mail ballot: (i) Election Day deadlines for receipt of returned ballots, (ii) requirements that ballots be returned in a “secrecy sleeve,” (iii) requirements that voters incur the cost of postage to return mail ballots, and (iv) the lack of accommodations for voters with disabilities. In general, the claims were based on the Constitution, but plaintiffs also employed some statutory arguments.

Overall, plaintiffs had little success on the ballot postage claims or the highly publicized secrecy sleeve litigation in Pennsylvania, but they did see mixed results in accessibility challenges and Election Day receipt deadlines.

Ballot Receipt Deadlines

Litigation challenging absentee ballot receipt deadlines was some of the most active election litigation in 2020. Some states, such as [Florida](#), [Oklahoma](#), [Georgia](#), [Maine](#), [Michigan](#), [Pennsylvania](#), and [Texas](#), had laws that mandated absentee ballots be *received* by election officials no later than Election Day in order to be counted. Other states, such as [California](#), [Illinois](#), and [Nevada](#), required that mail ballots be *postmarked* by Election Day and received by election officials within some specified number of days after, typically two to seven days. In practice, Election Day ballot receipt deadlines can result in tens of thousands of ballots being rejected. In the 2020 primaries, for example, more than [50,000 ballots](#) were rejected for arriving late, including more than [20,000](#) in Florida alone. According to data from the [2018](#) and [2016](#) Election Administration and Voting Survey, late receipt was the number-one cause nationwide of mail ballots being rejected.

Some plaintiffs challenging ballot receipt deadlines initially won injunctive relief at the federal district court level, only to see appellate courts stay those injunctions. However, plaintiffs did obtain extensions of deadlines for ballot receipt in North Carolina and Pennsylvania, when the U.S. Supreme Court declined to block extensions granted or approved by lower courts. Plaintiffs brought at least four types of federal law challenges to Election Day ballot receipt deadlines, three under the U.S. Constitution and one under the Voting Rights Act.

Federal Constitutional Claims

Plaintiffs articulated at least three different types of U.S. constitutional claims over mail ballot receipt deadlines during the pandemic. They argued that deadlines requiring that absentee ballots be received by Election Day (i) constituted an undue burden on the right to vote under the *Anderson-Burdick* test, (ii) violated the Fourteenth Amendment by denying procedural due process, and (iii) violated the Fourteenth Amendment by denying equal protection of the law. Plaintiffs initially saw some success on the constitutional claims, with district courts granting plaintiffs' requests for preliminary injunctions in Georgia and Wisconsin and with a state court in Minnesota approving a consent decree extending the ballot receipt deadline. However, appellate courts subsequently stayed these injunctions, and the U.S. Supreme Court largely supported these appellate court stays, as in the case of *DNC v. Wisconsin State Legislature*, discussed below.

The [*New Georgia Project v. Raffensperger*](#) case, filed in May 2020, illustrates the undue burden and procedural due process arguments in operation. For their undue burden claims, plaintiffs relied on the *Anderson-Burdick* balancing test. Plaintiffs [argued](#) that Georgia's requirement that mail ballots be received on or before Election Day posed a severe burden on the right to vote by requiring voters to learn the deadline, request and receive their ballots with enough time to complete and return them, and accurately estimate the number of days it would take their ballots to reach election officials through the mail service. Plaintiffs further argued that even those voters who met the deadline suffered a burden on their right to vote because they were deprived of the ability to consider their choice of candidate right up until Election Day, the same as in-person voters, due to the requirement their ballots be in the mail soon enough to reach election officials by the Election Day ballot receipt deadline.

In addition, plaintiffs [argued](#) that Georgia's Election Day ballot receipt deadline violated the due process clause under the [*Mathews*](#) test articulated by the U.S. Supreme Court in [*Mathews v. Eldridge*](#). The *Mathews* test calls for the consideration of three factors: (i) the importance of the individual's liberty interest affected by official action, (ii) the risk of an erroneous deprivation of that interest with the procedure in question and the value of additional or substitutional safeguards, and (iii) the government's interest in the challenged regulation, including the fiscal and administrative burdens that the additional or substitute procedures would entail. Plaintiffs argued that Georgia's failure to count any ballots received after Election Day and its requirement that mail voters cast their votes early, deprived the mail voters of their protected liberty interests "to vote and have that vote count." They argued it also deprived them of the ability to "cast a meaningful and informed vote," because they would have "incomplete information" when they had to mail their ballots sooner than in-person voters. Plaintiffs claimed the state could address its interests by counting mail ballots *postmarked* by Election

Day and received within five business days of the election. Because “Georgia is not required to finalize its election results until seventeen days after the election,” plaintiffs [argued](#), the state could extend its deadline by five days without putting “an administrative burden” on the state.

In other cases, plaintiffs argued that Election Day receipt deadlines violated the Fourteenth Amendment’s equal protection clause. Plaintiffs in [Lewis v. Hughs](#), for example, argued that Texas’s Election Day receipt deadline resulted in disparate treatment of voters because different counties enforced the deadline with differing degrees of strictness. A federal district court in Texas [determined](#) that plaintiffs “adequately alleged their equal protection claims,” allowing their claims to survive a motion to dismiss. The Fifth Circuit summarily [affirmed](#) the lower court decision but not on the merits of the equal protection claim; it simply agreed plaintiffs’ claims were not barred by the doctrine of sovereign immunity. But a month later, the Fifth Circuit [withdrew](#) its affirmance and agreed to hear the state’s appeal. (As of the time of writing, the case is still pending.)

In [Gallagher v. New York State Board of Elections](#), a federal district court in New York considered similar equal protection claims in more depth than the *Lewis* court. The *Gallagher* plaintiffs [argued](#) that, given two voters who mail their ballots on the same day, it is possible that only one of those votes might be counted, due only to differences in the U.S. Postal Service’s operations and mail delivery times across different areas of the state. The court [granted](#) a preliminary injunction, requiring local boards of elections to accept ballots received one day after the deadline, or two days if the ballots were postmarked by the deadline.

Some federal district courts were receptive to plaintiffs’ constitutional claims, but federal appellate courts subsequently stayed district courts’ injunctions. For instance, the district court in *New Georgia Project* [granted](#) the relevant part of a preliminary injunction on August 31, determining that plaintiffs demonstrated a likelihood of success on the merits of their *Anderson-Burdick* and procedural due process claims and effectively extending Georgia’s ballot receipt deadline. But in early October, an Eleventh Circuit U.S. Court of Appeals panel [stayed](#) the injunction. The appeals panel found that the district court “erred on two analytical fronts: first, in finding that Georgia’s Election Day receipt deadline severely burdened the right to vote; and second, in improperly weighing the State’s interests against this burden.” The Eleventh Circuit also criticized the district court for “accepting the plaintiffs’ novel procedural due process argument,” noting that, “even if we could choose to innovate a new approach (which we cannot), we would see no reason to do so.”

Similarly, in [DNC v. Bostelmann](#), in response to a challenge to Wisconsin’s Election Day ballot receipt deadline during the state’s primary elections, a federal district court ruled that the state’s interest did not outweigh the severe burden the deadline placed on absentee voters.

The court [ordered](#) the state to accept all ballots postmarked within six days of the election. However, the U.S. Supreme Court [stayed](#) this order, reasoning that it was issued too close to the election and was, therefore, likely to cause confusion among voters. Five months later, in late September, the district court [granted](#) a preliminary injunction in four consolidated lawsuits, including *DNC v. Bostelmann*. The injunction extended the absentee ballot receipt deadline in the general election to November 9, provided the ballots were postmarked by Election Day, November 3. But on appeal, in early October, the Seventh Circuit [stayed](#) the district court's injunction, citing the earlier U.S. Supreme Court stay and agreeing with the Wisconsin legislature's contentions that a federal court should not change rules so close to an election and that political, not judicial, officials should decide when a pandemic justifies changes to otherwise valid rules.

On October 26, 2020, just eight days before Election Day, the U.S. Supreme Court, in a 5-3 vote, [rejected](#) the request of the DNC and voting rights groups to lift the Seventh Circuit's stay. The court did not issue a majority opinion but, in multiple concurrences, Chief Justice John Roberts Jr. and Justices Neil Gorsuch and Brett Kavanaugh criticized the federal district court's intervention in state election procedures. Chief Justice Roberts leveled criticism not only at the district court that ordered an extension of Wisconsin's receipt deadline but at district courts more broadly. In describing the Wisconsin court's deadline extension as "improper," Roberts noted that, "[i]n this case, as in several this Court has recently addressed, a District Court intervened in the thick of election season to enjoin enforcement of a State's laws." Justice Gorsuch similarly found the district court's order inappropriate on the basis of both separation of powers and voter confusion concerns. Under the Constitution, according to Justice Gorsuch, judges cannot "improvise with their own election rules in place of those the people's representatives have adopted." He stressed the measures already taken by the Wisconsin legislature to respond to the coronavirus pandemic to illustrate his view that the district court was simply complaining that "the state hasn't done *enough*." Gorsuch voiced concern that there were no clear rules for a judge to use in determining exactly when a ballot receipt deadline would be acceptable. Additionally, Gorsuch raised the possibility that "[l]ast-minute changes" to election procedures run the risk of "confusion and chaos and eroding public confidence in electoral outcomes."

In his concurring opinion, Justice Kavanaugh articulated three reasons why the district court's injunction extending the ballot receipt deadline was unwarranted. First, the injunction violated the *Purcell* principle by altering state election laws close to an election. Justice Kavanaugh explained that the *Purcell* principle serves to ensure that the "rules of the road" are clear leading up to the election, reducing voter and election official confusion, promoting efficiency, and giving citizens confidence in the election result. Apparently anticipating that critics might argue there is irony in barring the earlier district court decision so close to Election Day in the name of

Purcell, but allowing the federal appellate court to overturn the district court even closer to Election Day, Kavanaugh said the appeals court action was necessary to correct the lower court's violation of *Purcell*.

Second, Justice Kavanaugh stated that the district court's injunction "misapprehended the limited role of the federal courts in COVID-19 cases" because it is the role of the state legislature to "address the health and safety of the people." He cited recent cases in which the Supreme Court had stayed federal court injunctions that "second-guessed state legislative judgments about whether to keep or make changes to election rules during the pandemic" and noted that federal courts lack the expertise required to change election laws due to the pandemic.

Third, Justice Kavanaugh wrote that "the District Court did not sufficiently appreciate the significance of election deadlines." Under the *Anderson-Burdick* test, he said, a state's "reasonable deadlines" for voting procedures do not raise constitutional issues because "a State cannot conduct an election without deadlines." He asserted that states with Election Day receipt deadlines "want to avoid the chaos and suspicions of impropriety that can ensue if thousands of absentee ballots flow in after election day and potentially flip the result of an election." He further noted that quick election results help to preserve the stability of elections.

In a footnote, Justice Kavanaugh endorsed a view articulated by Chief Justice William Rehnquist in his concurring opinion in 2000 in *Bush v. Gore*, that state courts are limited in their ability to "rewrite state election laws for federal elections" because the Elections Clause of Article II states that rules in presidential elections are to be established by state legislatures. Some understand Justice Kavanaugh's footnote to embrace Chief Justice Rehnquist's legal theory in *Bush* that state courts do not have authority to strike down state statutes regulating elections for federal offices—a theory that would eliminate the ability of state courts to remedy state election statutes that violate state constitutions. If adopted by the Court, this interpretation of the Elections Clause would have far-reaching implications for the balance of power within states to regulate presidential elections.

In dissent, Justice Elena Kagan took issue with what she deemed Justice Kavanaugh's and the Seventh Circuit's "misunderstanding of *Purcell*'s message." She stated that *Purcell* instructed courts to "consider all relevant factors, not just the calendar." While some autumn injunctions might run the risk of confusing voters, she wrote, "there is not a moratorium on the Constitution as the cold weather approaches." The federal district court was correct in issuing its order, Kagan argued, since, in this case, a ballot receipt deadline extension would not confuse voters about how to cast their ballots or discourage Wisconsin voters from exercising their right to vote. The majority opinion, Kagan emphasized, would have detrimental effects on Wisconsin voters' enfranchisement. "Tens of thousands of Wisconsin voters, through no fault of

their own, may receive their mail ballots too late to return them by Election Day,” Kagan wrote. “Without the district court’s order, they must opt between ‘brav[ing] the polls,’ with all the risk that entails, and ‘los[ing] their right to vote.’”

Just three days after the Supreme Court’s decision in *DNC v. Bostelmann*, a three-judge panel of the Eighth Circuit, responding to a similar challenge and using similar reasoning, [blocked](#) the extension of Minnesota’s absentee ballot receipt deadline, in *Carson v. Simon*. As a result of litigation earlier in the year regarding the state’s Election Day deadline, Minnesota Secretary of State Steve Simon had voluntarily entered into a [consent decree](#), directing election officials to count absentee ballots received up to a week after Election Day, provided they were postmarked on or before Election Day. Plaintiffs, the Minnesota Alliance for Retired Americans Education Fund and some of its members (the “Alliance”), had alleged the receipt deadline was unconstitutional under the First and Fourteenth Amendments because it could disenfranchise thousands of voters who would timely mail their ballots but not have them count because the ballots were not received by the receipt deadline. This was a concern that was driven by the coronavirus pandemic and an anticipated increase in absentee ballots overwhelming the U. S. Postal Service. The consent decree was approved by a state court. A Republican state legislator and a Republican activist, both of whom would also [serve](#) as presidential electors, challenged the consent decree in a federal district court, which dismissed the case on the grounds that the plaintiffs lacked standing.

But just five days before the general election, an Eighth Circuit panel [ruled](#) that appellants did have standing to challenge the consent decree, and the court proceeded to rule on the merits. The Eighth Circuit panel reversed the lower court and granted plaintiffs’ preliminary injunction, concluding that the extension of Minnesota’s ballot receipt deadline “likely” violated the Electors Clause of Article II of the U.S. Constitution “because the Secretary extended the deadline for receipt of ballots without legislative authorization.” Under Article II, Section 1 of the U.S. Constitution, the court reasoned, the secretary of state cannot “override” the state legislature, stating that “[t]here is no pandemic exception to the Constitution.”

Despite recognizing that the *Purcell* principle instructs that “judges should normally refrain from altering [election rules] close to an election,” the panel determined that its decision—issued less than a week before the election—was supported by *Purcell*. The *Purcell* principle “is a presumption against disturbing the status quo,” the court explained, and here, “the Minnesota Legislature set the status quo, the Secretary upset it, and it is [the court’s] duty, consistent with *Purcell*, to at least preserve the possibility of restoring it.” The court instructed the secretary of state to “identify, segregate, and otherwise maintain and preserve all absentee ballots” received by mail after 8 p.m. on Election Day. The court strongly hinted at the possibility of the rejection of all ballots received after the Election Day deadline, directing the state to separate late ballots

“in a manner that would allow for their respective votes . . . to be removed from vote totals.” Following the court’s order, Minnesota Secretary of State Simon [announced](#) that the state would not seek a stay of the Eighth Circuit’s decision at the U.S. Supreme Court, even though the state “disagree[d] with the court’s decision.” The secretary’s statement emphasized “that there is no court ruling yet saying [that ballots received after Election Day] are invalid” and that “[w]e absolutely reserve the right to make every argument after Election Day that protects voters.”

Finally, a notable federal case arising out of the New York June 23, 2020, primary, [Gallagher v. N.Y. State Board of Elections](#), illustrated the interplay between ballot deadlines and postal service operations. The court in that case found violations of both the *Anderson-Burdick* balancing test and the equal protection clause. In response to the pandemic, the New York State Legislature [modified](#) the Election Day ballot receipt deadline to require that “absentee ballots postmarked on or before Election Day be counted,” provided the ballot arrived by June 30, a week after Election Day. Thousands of absentee ballots for the June 23 primary were mailed in and delivered prior to June 30 but, for some reason, were never *postmarked* by the post office. Thus a large number of absentee ballots, especially in New York City, were [invalidated](#) because they lacked a postmark. Plaintiffs brought suit in federal court, claiming violations of their First and Fourteenth Amendment rights, as well as corresponding rights under the New York Constitution.

Applying *Anderson-Burdick*, the U.S. District Court for the Southern District of New York [found](#) the burden on plaintiffs’ right to vote to be “exceptionally severe” because “a large number of ballots will be invalidated . . . based on circumstances entirely out of voters’ control.” Having found a severe burden, the court applied strict scrutiny, concluding that the state’s interest in ensuring ballots were cast before polls closed on Election Day was valid but that the postmark requirement was “grossly overinclusive,” covering ballots that “cannot possibly have been put in the mail later than June 23.”

In assessing plaintiffs’ equal protection clause claim, the court also examined whether the postmark requirement “created a voting process where the state ‘by later arbitrary and disparate treatment, value[s] one person’s vote over that of another.’” The court determined that whether an individual’s vote would be counted might depend on “something completely arbitrary—their place of residence.” In particular, the court found that votes were valued differently in two ways. First, the U.S. Postal Service handled postmarks for ballots differently across the state. Second, because ballots travel through the mail at different speeds, ballots mailed at the same time on the same day might, by chance, be treated differently—one might be counted and the other might not. The court held that this arbitrary treatment did not meet

“sufficient guarantees of equal treatment” and was the type of “differential treatment that the Supreme Court has found to violate the ‘one person, one vote’ principle.”

Having found a substantial likelihood of success on the merits, as well as a strong public interest in granting an injunction, the court determined that the equities tipped in plaintiffs’ favor. In early August, the court [granted](#) a preliminary injunction [requiring](#) local elections boards to count otherwise valid absentee ballots which were “(1) received by June 24, 2020 without regard to whether such ballots are postmarked by June 23, 2020 and (2) received by June 25, 2020, so long as such ballots are not postmarked later than June 23, 2020.” In September, plaintiffs [asked](#) the court to extend the injunction to all future elections, including November’s general election, but the court [denied](#) plaintiffs’ request, determining that plaintiffs lacked standing.

Federal Statutory Claims - Voting Rights Act

In addition to claims arising under federal constitutional law, plaintiffs also challenged ballot receipt deadlines under Section 2 of the Voting Rights Act. For example, plaintiffs in [Middleton v. Andino](#) [argued](#) that South Carolina’s ballot receipt deadline “abridge[s] and in some cases entirely den[ies] the rights of African American voters,” due in part to structural inequities in South Carolina, which leave Black voters disproportionately vulnerable to serious complications should they contract COVID-19. The federal district court [denied](#) plaintiffs’ motion for a preliminary injunction extending the receipt deadline on these grounds.

In [Yazzie v. Hobbs](#), plaintiffs were also unsuccessful in bringing a challenge, in a federal district court in Arizona, under the Voting Rights Act. Plaintiffs in that case, six members of the Navajo Nation, live on their reservation in Apache County, Arizona. Most members [residing](#) in the Navajo Nation “do not have access to home [mail] delivery,” and there are only about two dozen post offices and postal provider offices to serve the entire 11,000-square-mile county. As such, plaintiffs [argued](#) that the Election Day absentee ballot receipt deadline violated Section 2 of the VRA in denying members of the Nation the “same rights of other members of the electorate to participate in the political process and elect representations of their choice.” After the district court denied an injunction, the Ninth Circuit [ruled](#) that plaintiffs lacked standing because they failed to plead a “concrete and particularized injury.” The Ninth Circuit also found that a favorable decision would not redress plaintiffs’ alleged injury because it would be infeasible for election officials to identify and separate mailed ballots cast by on-reservation Navajo Nation members from those cast by other voters.

State Law Claims

Plaintiff victories were more likely to survive appeals in federal courts when the decisions were rooted in state law grounds. In a closely watched case at the Pennsylvania Supreme Court, plaintiffs secured an extension of the vote-by-mail ballot deadline for the general election by relying on state constitutional grounds. But four members of the U.S. Supreme Court expressed support for a novel interpretation of the Elections Clause of Article I of the U.S. Constitution, which, if adopted by the U.S. Supreme Court, could dramatically alter the balance of powers within states for regulating presidential elections.

On September 8, in [*Pennsylvania Democratic Party v. Boockvar*](#), the Pennsylvania Supreme Court voted 4-3 to [extend](#) the state's statutory Election Day ballot receipt deadline and "adopt the Secretary's informed recommendation of a three-day extension of the absentee and mail-in ballot received-by deadline to allow for the tabulation of ballots mailed by voters via the USPS and postmarked by 8 p.m. on Election Day to reduce voter disenfranchisement." The majority justified the decision as necessary due to pandemic conditions to protect voters' rights under the Free and Equal Elections Clause of the state constitution.

In late September, Republican state legislators and the Republican Party of Pennsylvania [filed](#) emergency applications at the U.S. Supreme Court for a stay of the Pennsylvania Supreme Court's order pending a final decision by the Supreme Court on the merits. They [argued](#) that the receipt deadline extension granted by the Pennsylvania Supreme Court violated federal law that requires holding "all elections for Congress and the Presidency on a single day throughout the Union." They said it also violated the Elections Clause of the U.S. Constitution by "seizing the authority to set the times, places, and manner of federal elections from the state legislature." The legislators argued that the Elections Clause grants direct authority to the Pennsylvania General Assembly to regulate federal elections in Pennsylvania and that only Congress, not the Supreme Court of Pennsylvania, can alter the General Assembly's election regulations.

In response, [Secretary of the Commonwealth Kathy Boockvar](#) and [Pennsylvania Democrats argued](#) that the legislators' stay request raised concerns of federalism. "This Court should not second-guess the Pennsylvania Supreme Court's straightforward construction of the Commonwealth's constitution," Boockvar stated in her brief. The secretary urged that "state courts be left free and unfettered by [this Court] in interpreting their state constitutions." In addition to federalism implications, the brief noted that a decision by the U.S. Supreme Court to grant the legislators' stay request could result in the rejection of thousands of ballots, an outcome that could potentially decide the results of the 2020 presidential election in the battleground state in which Trump won in 2016 by a narrow margin of just 44,000 votes.

In mid-October, the U.S. Supreme Court denied Republicans' emergency request for a stay, effectively [permitting](#) Pennsylvania officials to count ballots received up to three days after the election. At the U.S. Supreme Court, there must be five votes to issue a stay, but there was a vacancy on the court due to Justice Ruth Bader Ginsberg's death, and the Court was [tied](#), 4-4, with Chief Justice Roberts siding with the court's more liberal justices. Neither side of the court explained its position. Following the Supreme Court's denial of a stay, Pennsylvania Republicans [applied](#) to the U.S. Supreme Court for expedited consideration of the merits of their challenge, which the court unanimously [declined](#) on October 28. However, in the only opinion published, Justices Samuel Alito, Clarence Thomas, and Neil Gorsuch stated that "there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution" and that "[t]he provisions of the Federal Constitution conferring on state legislatures, not state courts, the authority to make rules governing federal elections would be meaningless if a state court could override the rules adopted by the legislature simply by claiming that a state constitutional provision gave the courts the authority to make whatever rules it thought appropriate for the conduct of a fair election." They said "[i]t would be highly desirable to issue a ruling . . . before the election," but they reluctantly concluded that "there is simply not enough time at this late date to decide the question before the election." Justice Alito, writing for himself and Justices Thomas and Gorsuch, noted that the petition for certiorari was still pending and that the court could potentially rule on the case after the election. He also invited petitioners to seek an order from the Supreme Court that Pennsylvania election officials segregate ballots that arrive after Election Day. Newly confirmed Justice Amy Coney Barrett did not [participate](#) in the decision, according to the court's press office, "because of the need for a prompt resolution" of the question "and because she has not had time to fully review the parties' filings."

On November 6, three days after Election Day, Pennsylvania Republicans accepted the invitation of Justices Alito, Gorsuch and Thomas, and [filed](#) an emergency application for an injunction. They asked the U.S. Supreme Court to require state election officials "to log, to segregate, and otherwise not to take any action related to any ballots" that arrived after 8 p.m. on Election Day and within the three-day extension window. The state of Pennsylvania opposed the Republicans' emergency application, arguing it sought an "injunction ordering Pennsylvania's counties to do that which the Commonwealth has already directed counties to do and which the counties are already doing." Justice Alito, the supervising justice for the Third Circuit, which includes Pennsylvania, granted Republicans' request in part, issuing an [order](#) directing Pennsylvania officials to segregate ballots arriving after 8 p.m. on Election Day. The Court did not, however, direct election officials to stop counting the ballots. On February 22, the Supreme Court [denied certiorari](#), with Justices Thomas and Alito dissenting.

In a different decision, from North Carolina, the U.S. Supreme Court also [declined](#) to block an extension of the state's absentee ballot receipt deadline in late October. In September, the

North Carolina State Board of Elections [extended](#) the state's ballot receipt deadline by six days to allow ballots postmarked by Election Day and received through November 12 to be counted (the prior deadline for receipt had been November 6). The extension was made pursuant to a [consent decree](#) in a state court that was subsequently [upheld](#) by a federal district court. Republicans appealed the district court decision to the Fourth Circuit U.S. Court of Appeals, but the appeals court, sitting en banc, [denied](#) an emergency stay of the district court's order by a vote of 12-3. Republicans appealed the Fourth Circuit's decision, and the U.S. Supreme Court, in a 4-3 decision, [allowed](#) North Carolina's absentee ballot receipt deadline extension to stand. Once again, Justices Thomas, Alito, and Gorsuch dissented, saying that they would have blocked the extension agreed to by the North Carolina State Board of Elections in the consent decree. They said "a state court and the Board [of Elections] worked together to override a carefully tailored legislative response" to COVID-19 in violation of the Elections Clause of the U.S. Constitution. The dissenting justices pointed to the court's decision from just a few days earlier in [Bostelmann](#), the Wisconsin case, as the guiding principle. Justice Barrett did not participate in the decision.

Plaintiffs also brought state law claims mirroring federal undue burden claims, with mixed results. For instance, plaintiffs in [Alliance for Retired Americans v. Dunlap](#) challenged Maine's ballot receipt deadline as an undue burden under both the federal and state constitutions. The court denied plaintiffs' motion for a preliminary injunction, [stating](#) that, "even in 2020, [the Election Day ballot receipt deadline] imposes only a modest burden on the right to vote." The Maine Supreme Judicial Court [affirmed](#) the superior court's denial of injunctive relief.

Michigan state courts were initially split on how the Michigan state constitution applied to this issue but ultimately found no state constitutional grounds to alter the Election Day ballot receipt deadline. In [League of Women Voters of Michigan v. Benson](#), the Michigan Court of Appeals rejected a claim that the Michigan Constitution required a "postmarked by Election Day" rather than "received by Election Day" ballot deadline for the primary election. The Michigan Supreme Court [denied](#) plaintiffs leave to appeal, on July 31. Six weeks later, however, in [Michigan Alliance for Retired Americans v. Benson](#), a different Michigan state court [enjoined](#) enforcement of Michigan's Election Day ballot receipt deadline, holding that, "as applied to plaintiffs . . . the ballot receipt deadline violates plaintiffs' constitutional rights" under Article II, Section 4 of the Michigan Constitution. It ruled that an "absent voter ballot that is postmarked by no later than November 2, 2020, and received within 14 days after the election, is eligible to be counted." However, in mid-October, a state appellate court [reversed](#) that ruling, citing *League of Women Voters of Michigan v. Benson* for the proposition that the Election Day receipt deadline complied with the state's constitution.

Ballot Secrecy Sleeve Requirements

Another salient category of vote-by-mail litigation concerned ballot “secrecy sleeve” rules—rules that require absentee voters to place their completed ballots into an inner envelope (often called a “secrecy sleeve”) and then enclose that inner envelope into the outer, or return, envelope. The purpose of secrecy sleeves is to separate the voter’s identifying information from the ballot itself, in order to protect the voter’s privacy. (Some states have voters fill out personal identifying information directly onto the outer return envelope, but other states do not, so as to avoid exposing voter information to mail and election workers in the delivery and sorting processes.) At least 16 [states](#) have laws requiring election officials to provide absentee voters with secrecy sleeves but, in many of those states, use of the secrecy sleeve is optional and failure to use it is not grounds to reject the ballot. For a detailed analysis of individual state rules regarding secrecy sleeves, see the Stanford-MIT Healthy Elections Project report [Secrecy Sleeves and the Naked Ballot](#).

In a high profile case in Pennsylvania, *Pennsylvania Democratic Party v. Boockvar*, plaintiffs argued that a voter’s failure to use the secrecy sleeve (meaning the voter placed the completed ballot directly into the outer return envelope) should not, by itself, result in rejection of the ballot. In fact, most Pennsylvania counties [accepted](#) so-called “naked ballots” during the state’s June 2020 primary. Plaintiffs [argued](#) that the language of Pennsylvania’s secrecy sleeve statute did not require rejection of “naked ballots.” On September 17, 2020, the Pennsylvania Supreme Court [held](#) that election officials must reject naked ballots in the November general election. The court [determined](#) that the language of the statute is “neither ambiguous nor unreasonable.” It reached what it called “the inescapable conclusion that a mail-in ballot that is not enclosed in the statutorily-mandated secrecy envelope must be disqualified.”

After the ruling, Philadelphia’s City Commissioner Lisa M. Deeley [predicted](#) that over 100,000 ballots across the state could be rejected for missing secrecy sleeves. The Pennsylvania Supreme Court’s decision “[sparked](#) a flurry of voter education efforts from nonprofit organizations and political campaigns to highlight the now-required secrecy envelope.” In the end, only 7,411 absentee ballots were rejected in Pennsylvania for any reason, including lack of a secrecy sleeve, during the 2020 general election. The low number of voters forgetting to use the secrecy sleeve was likely due at least in part to the publicity around the secrecy sleeve lawsuit and the educational efforts to help voters understand the requirement.

Cost of Postage for Mailing Ballots

Another set of legal challenges in 2020 targeted states' failure to cover the costs of mailing completed mail-in ballots. About 17 [states](#) provided mail voters with postage-prepaid ballot return envelopes—including Hawaii, Oregon, and Washington, which [regularly conduct](#) all elections by mail. But most states do not. In these states, voters were required to pay for postage to return their completed ballots by mail.

Plaintiffs brought suit in several states, including [Georgia](#), [Florida](#), [Oklahoma](#), [Maine](#), [South Carolina](#), [North Carolina](#), [Texas](#), and [Pennsylvania](#). The lawsuits typically alleged one or both of two constitutional violations. First, plaintiffs argued that requiring voters to pay for postage to cast their votes or to apply for ballots constituted a poll tax in violation of the Fourteenth and Twenty-fourth Amendments. Since 1966, the U.S. Supreme Court has [held](#) poll taxes violated the equal protection clause of the Fourteenth Amendment. The Twenty-fourth Amendment [provides](#) that the right to participate in an election for federal office “shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.” Second, plaintiffs asserted that forcing voters to pay for stamps is an impermissible burden under the *Anderson-Burdick* balancing test. Plaintiffs were universally unsuccessful in their claims challenging the ballot postage requirement. Courts largely denied plaintiffs' motions for preliminary injunctions on both their poll tax and *Anderson-Burdick* ballot postage claims, generally finding that paying for postage is not a poll tax and that burdens on voters do not outweigh the state's interest in requiring voters to incur the cost.

The case of [Black Voters Matter Fund v. Raffensperger](#) provides an illustrative example of the postage-as-poll-tax argument. Georgia law [allows](#) voters to vote absentee for any reason after [applying](#) for an absentee ballot. Plaintiffs sued Georgia's secretary of state, challenging the requirement that voters pay postage for both the application for absentee ballots and to return the completed absentee ballot. Plaintiffs [contended](#) the cost of stamps is tantamount to a poll tax, even though there are no “statutes or regulations that require government officials to charge voters postage on absentee ballot applications.” They argued that the pandemic made it unrealistic for many voters to cast ballots in-person, so the requirement essentially forced such voters to pay in order to participate in democracy. The suit sought a preliminary injunction to require election officials to provide prepaid returnable envelopes for absentee ballots and absentee ballot applications, arguing that election officials know how to do this because state law already requires them to provide prepaid postage on return envelopes for other purposes.

A federal district court [dismissed](#) plaintiffs' poll tax claim in early August. Although the court [recognized](#) that in-person voting is “potentially a difficult” option for many voters, “particularly

during a pandemic,” the court [held](#) that, because in-person voting “theoretically remains an option,” “stamps are not poll taxes under the Twenty-fourth Amendment prism.” In September, plaintiffs [appealed](#) the district court’s poll tax ruling to the Eleventh Circuit. As of the time of this report, there has been no movement in response to plaintiffs’ appeal.

Other plaintiffs challenging postage requirements as poll taxes met a similar fate. In [Nielsen v. DeSantis](#), a U.S. district court summarily [dismissed](#) plaintiffs’ claim that a Florida [statute](#) requiring voters to pay postage for mail ballots constituted a poll tax. The court said that “[r]equiring a voter to pay for postage to mail a registration form or ballot to a Supervisor of Elections is not unconstitutional or otherwise unlawful.” In [Alliance for Retired Americans v. Dunlap](#), a Maine state court [denied](#) plaintiffs’ motion for a preliminary injunction in late September, similarly concluding that requiring postage on a mail-in ballot is not a poll tax. And a federal district court in Oklahoma reached the same conclusion in [DCCC v. Ziriaux](#).

In one outlier case, [Lewis v. Hughs](#), the U.S. District Court for the Western District of Texas [held](#) that it was sufficient, at the motion to dismiss stage, for plaintiffs to have alleged that a Texas [law](#) requiring voters to pay for ballot postage constituted a fee voters must pay if they wished to avoid risking “harming their health to vote in person.” The district court’s decision that plaintiffs’ claims were not barred by the doctrine of sovereign immunity was [appealed](#) to the Fifth Circuit (which summarily [affirmed](#) and then [withdrew](#) its affirmance), but the court has not reached the merits of the poll tax claim as of the time of writing.

A lawsuit in Pennsylvania may have contributed to the state deciding to cover the costs of postage for mail-in and absentee ballots. In [Crossey v. Boockvar](#), the Supreme Court of Pennsylvania dismissed plaintiffs’ postage claims as moot after Secretary Boockvar [announced](#) that the Pennsylvania Department of State would provide funding to county boards of election for postage on mail-in and absentee ballots at no cost to the voter for the 2020 general election.

Plaintiffs also brought claims that postage requirements are an impermissible burden on the right to vote, under the *Anderson-Burdick* balancing test. Parties alleged a variety of burdens, many of which they asserted were exacerbated by the pandemic. Plaintiffs in [Black Voters Matter Fund v. Raffensperger](#), for instance, [alleged](#) that a failure to provide prepaid postage burdened the right to vote by requiring voters who are least able to afford stamps (such as people who lack internet access, credit cards, or a means to travel to the post office) to risk their safety by going to the post office during a pandemic to purchase postage for their ballot. Plaintiffs in [Lewis](#), [Alliance for Retired Americans](#), and [New Georgia Project](#) made similar arguments, asserting that the government interest in saving money was insufficient to justify these burdens.

As with poll tax claims, plaintiffs' *Anderson-Burdick* claims generally failed. In denying plaintiffs' motion for a preliminary injunction in *Black Voters Matter Fund*, the federal district court in Atlanta [noted](#) that plaintiffs failed to demonstrate "a substantial likelihood of success on their argument that the burden of the postage requirement outweighs the cost to the state of the requested relief." While plaintiffs [appealed](#) the court's poll tax ruling to the Eleventh Circuit, they declined to appeal the court's *Anderson-Burdick* holding. In *DCCC v. Ziriox*, a district court in Oklahoma denied plaintiffs' motion for injunctive relief, [stating](#) that paying for postage is a "light" burden on voters and that the "state's fiscal interests are sufficient to justify its not allocating funds to prepay for postage for absentee ballots." Similarly, in *Alliance for Retired Americans*, a superior court in Maine denied a preliminary injunction, [finding](#) that "paying for postage to return an absentee ballot by mail represents, at most, a moderate burden and, more likely, only a slight burden that is outweighed by the State's interest."

Finally, in addition to federal constitutional law claims, plaintiffs brought postage requirement suits grounded in state constitutional law. For example, plaintiffs in *Stringer v. North Carolina* alleged, among other claims, that a postage requirement for mail ballots violates the Free Elections Clause of the North Carolina Constitution, which [states](#) that "[a]ll elections ought to be free." Plaintiffs dropped this postage claim, without any concession from the state on this issue, as part of a larger [settlement](#) with the state involving another related case, in which plaintiffs obtained concessions on other claims.

In sum, plaintiffs' claims that requiring voters to incur the costs and burden of supplying postage on mail ballots or mail ballot applications violated the U.S. and state constitutions failed on the merits.

Failure to Provide Accommodations for Voters with Disabilities

[Plaintiffs](#) in some [states challenged](#) the lack of accessibility of mail voting procedures, alleging that absentee voters with disabilities face unnecessary obstacles. Generally, these cases were brought by or on behalf of visually- or manually-impaired individuals who were unable to transmit, mark, and/or return mail-in ballots in accordance with state procedures.

Voting by mail typically entails filling out a paper ballot by hand and placing the completed ballot in the mail. While existing mail voting processes may allow individuals without disabilities to vote secretly and independently, voters with visual or manual disabilities are likely to need assistance to read and mark their paper absentee ballots, stripping them of the privacy available to non-disabled voters. Some plaintiffs [described](#) their dilemma as having to make the "unconscionable choice of either leaving their homes in order to receive in-person assistance

with voting at the closest polling place—thereby facing the threat of severe illness or death [during the pandemic]—or staying home and foregoing the right to vote privately and independently (if third-party assistance is available), or the right to vote entirely (if it is not).”

These cases were largely brought in federal court, asserting violations of Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. [Title II](#) of the ADA requires public entities to provide individuals with disabilities an equal opportunity to access the entity’s services or benefits. Similarly, [Section 504](#) of the Rehabilitation Act forbids organizations that receive federal financial assistance from denying people with disabilities an equal opportunity to enjoy the organization’s benefits or services.

In [Rivero v. Galvin](#), a federal district court case in Massachusetts, plaintiffs brought [claims](#) under both Title II of the ADA and Section 504 of the Rehabilitation Act. Plaintiffs were a group of people with disabilities and organizations advocating on behalf of people with disabilities. They [alleged](#) that, under Massachusetts’s accessible vote-by-mail program, the process voters had to follow to cast their electronic ballots was “replete with barriers to accessibility for Plaintiffs and similarly situated voters who are blind or have low vision, mobility/dexterity disabilities, or other disabilities that make it difficult or impossible for them to effectively access standard printed text.” Plaintiffs argued that the state’s program violated Title II of the ADA because plaintiffs “cannot vote privately and independently by remote means, while others can.” Similarly, plaintiffs alleged that the program violated Section 504 because the state failed to meet its “obligations to provide voters with print disabilities meaningful access to vote that is equal to the opportunity provided to other voters.”

Both Title II and Section 504 claims centered on the failure of states to offer reasonable accommodations to voters with disabilities. Plaintiffs in disability cases sought several different accommodations, including online ballot marking tools. For instance, disability rights advocates in New York [urged](#) the state to implement ballot marking tools available in other states. Similarly, after a Pennsylvania state court [ruled](#) that the state’s mail-in ballot process violated the ADA and Rehabilitation Act, Pennsylvania implemented an online ballot marking tool. And the court in *Rivero* [ordered](#) the state to provide voters with disabilities the option of completing an accessible electronic ballot operated by VotingWorks.

Some plaintiffs sought a different accommodation for blind voters: an electronic ballot delivery system that some states use for military and overseas citizens, to comply with the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). Michigan, for example, voluntarily entered into a [consent decree](#) to make its UOCAVA PDF ballots available to blind voters for the state’s May primary election. Although Michigan does not currently permit all voters to

electronically transmit completed ballots, it did allow voters with disabilities to use such technology to increase accessibility of voting for such voters.

On the whole, plaintiffs had more success in bringing claims alleging failure to accommodate voters with disabilities than in some other areas of litigation, as evidenced by the numerous orders directing states to implement online ballot systems to expand accessibility.

Part II Conclusion

Voters brought a wave of challenges against ballot submission requirements, including mail ballot receipt deadlines, the required use of secrecy sleeves, and the requirement to pay for postage. With a few exceptions, most of these claims did not succeed in court on the merits. Though some plaintiffs won preliminary injunctions at the lower court level, they saw most of those wins reversed by appellate courts—both state and federal. Plaintiffs did see two successes on the absentee ballot deadline issue. In Pennsylvania and North Carolina, the U.S. Supreme Court declined to block extensions of Election Day receipt deadlines by lower courts based on state law. Both decisions were close, however, and were made without participation by the high court's newest member, Justice Amy Coney Barrett. The Pennsylvania decision was a 4-4 tie, and the North Carolina decision was 5-3. Apart from those wins, plaintiffs generally failed in their efforts to extend ballot receipt deadlines, as well as in their challenges to postage requirements and secrecy sleeve requirements. Plaintiffs had a bit more success in obtaining accommodations for voters with disabilities seeking new ways to vote at home independently.

Part III: Challenges Seeking to Expand Return Ballot Delivery Options

Authors: Lane Corrigan, Christopher Meyer, and Alexander Perry

As a [record](#) number of voters requested and returned mail ballots in the 2020 general election, states faced the challenge of using mail voting infrastructure that, in many cases, was [not designed](#) to handle such an increased volume. Coping with the surge in demand and the high number of [first-time mail voters](#), states confronted three challenges associated with the return of completed mail ballots.

First, states needed a ballot collection system that could handle the rapid growth in mail-in ballots. Some states chose to [expand](#) the infrastructure for the return of completed absentee ballots through the use of drop boxes and other ballot drop-off locations, seeking to meet the increased demand and protect public health during the pandemic. Other states [limited](#) ballot drop-off options, typically asserting that expanding drop-off options could exacerbate election fraud.

Second, states considered absentee voter assistance rules—that is, how much and what kind of assistance voters should be allowed to receive when filling out and returning their absentee ballots. To what extent should third parties be allowed to collect completed ballots from absentee voters and deliver them to a drop box or to an elections office on the voters' behalf? And to what extent could third parties be allowed to help voters in need of assistance, such as voters with certain disabilities, to complete their ballots? Although some states made it [easier](#) for third parties to assist voters in the vote-by-mail process, others [defended](#) bans or limitations on third-party assistance (particularly on ballot collection, which is often pejoratively labeled “ballot harvesting”).

Third, states had to consider the role of the U.S. Postal Service in delivery of mail ballots. The postal service is responsible for receiving and delivering mail ballots across the country. Private carriers, such as FedEx or UPS, do not deliver or receive mail ballots.

Part III surveys litigation in 2020 regarding efforts to expand or improve options for the return and delivery of mail ballots. Specifically, it reviews lawsuits that challenged (i) state laws that prohibit third parties from helping absentee voters complete or deliver their ballots (“absentee voter assistance”), (ii) the adequacy of ballot drop-off locations, and (iii) operational changes at the U.S. Postal Service that risked delays in the delivery of mail ballots in [almost every state](#).

Challenges to laws restricting assistance to absentee voters generally failed. Courts were reluctant to strike down state voting regulations without clear evidence that they placed a severe burden on the right to vote. Lawsuits regarding ballot drop box availability had mixed results. As in Election Day ballot receipt deadline litigation, plaintiffs saw some success at the district court level, but several appellate courts stayed lower court injunctions. Litigation challenging operational changes at the U.S. Postal Service was more successful, as plaintiffs in these cases secured favorable rulings from several federal courts.

Bans and Restrictions on Absentee Voter Assistance

Laws that ban or restrict the ability of third parties to assist absentee voters include laws that [restrict](#) the type of person from whom the voter may seek assistance, [criminalize](#) the acceptance of compensation for helping return an absentee ballot, [limit](#) the number of ballots that a third-party assistant may collect, and [narrow](#) the circumstances in which an absentee voter may seek assistance. Plaintiffs had mixed success in 2020 challenging these limiting statutes under the U.S. Constitution or the Voting Rights Act of 1965. On the flip side, some courts upheld permissive ballot collection statutes in the face of legal challenges.

Plaintiffs challenging restrictions on assistance to absentee voters alleged two federal constitutional violations. First, plaintiffs argued that restrictions on third-party assistance to absentee voters were an undue burden on the fundamental right to vote. Courts often evaluate laws alleged to burden the franchise under the [Anderson-Burdick balancing test](#), which balances the burdens that a voting regulation imposes on the electorate against the state's interests in the regulation. Courts generally found that voter assistance restrictions do not place a severe burden on the electorate under *Anderson-Burdick*. In [American Federation of Teachers v. Gardner](#), a New Hampshire state court refused to enjoin the state's restrictions on ballot collection and delivery—such as limitations on who could serve as a third-party agent to deliver an absentee ballot—concluding that it was “not persuaded” that the law “even impose[d] a burden on a voter.” In [Memphis A. Phillip Randolph Institute v. Tre Hargett](#), a federal district court in Tennessee upheld a state law that, among other things, barred a person who was not a member of the state election commission from delivering an unsolicited mail-in ballot request form to a voter. The court found that these restrictions imposed a “moderate,” but not “severe,” burden on voters. In [Middleton v. Andino](#), a federal district court in South Carolina similarly declined to find that a “candidate collection ban,” which prohibited political candidates or paid campaign staff from collecting and returning completed absentee ballots, posed a severe burden on the right to vote. The court determined that the ban was “rationally related to the government's interest in preserving the integrity of elections and preventing voter fraud” and that “[t]he restriction is therefore likely to be upheld as constitutional.”

Courts took a skeptical view of challenges to voter assistance bans even without resorting to an *Anderson-Burdick* analysis. For example, the Pennsylvania Supreme Court [refused](#) to enjoin state officials from banning third-party delivery of absentee ballots. Although the plaintiffs in that case raised an *Anderson-Burdick* argument in their [complaint](#) and [brief](#), the court simply pointed to [past](#) cases that had upheld the state ban on voter assistance. The *Anderson-Burdick* standard does not appear in the court's per curiam opinion.

Second, plaintiffs filed claims alleging that state restrictions on assistance to absentee voters infringed on civic and political organizations' First Amendment rights of free speech and association. Some courts were not receptive to these claims either. Plaintiffs in [New Georgia Project v. Raffensperger](#), for instance, argued that third-party ballot delivery and collection was protected as expressive conduct under the First Amendment. They claimed that Georgia's ban on ballot delivery and collection programs, in which local organizations delivered absentee ballots to and collected them from Georgia voters, inhibited civic organizations' ability to express their views on the importance of voting. The district court rejected this argument, noting that both the [Fifth](#) and [Ninth](#) Circuits had held that collection of ballots and voter applications is not expressive conduct. Because the court found Georgia's limitations on ballot collection did not implicate the First Amendment, it subjected the law only to rational basis review. Under this lenient standard, the court concluded that Georgia's stated interest in "combating election fraud and verifying the eligibility of voters" was likely sufficient to uphold the law. In [American Federation of Teachers v. William Gardner](#), plaintiffs in New Hampshire brought a similar claim in a state court. That court also cited Fifth and Ninth Circuit rulings in arriving at the conclusion that "the practice of collecting and delivering absentee ballots is not expressive conduct implicating the First Amendment." On the other hand, a Minnesota state court [granted a preliminary injunction](#) against a state law that limited third parties from collecting more than three ballots each, finding that the law would likely impose an unconstitutional burden on protected minorities' right to vote and right to free speech. The Minnesota Supreme Court affirmed the injunction.

Plaintiffs also filed claims that state restrictions on absentee voter assistance violated two separate provisions of the Voting Rights Act (VRA): Section 208 and Section 2. Section 208 of the VRA states that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice." In cases in Michigan ([Michigan Alliance for Retired Americans v. Benson](#)) and South Carolina ([Middleton v. Andino](#)), plaintiffs asserted that restrictions on absentee assistance prevented voters with disabilities from receiving assistance from the person of their choice. Neither court resolved this claim on the merits. In *Middleton*, a U.S. district court [dodged](#) the VRA question, noting that the plaintiffs had failed to raise it in their motion for a preliminary injunction. In *Michigan*

Alliance, a Michigan state court [enjoined](#) the state law that allowed only immediate family members (or a person residing in the voter's household) to return a voter's absentee ballot. But the court based its ruling on the Michigan Constitution, not the VRA. And a state appellate court subsequently [reversed](#) the lower court ruling, reinstating Michigan's limitations on third-party absentee ballot collection and delivery.

One of the most high-profile ballot collection cases in 2020 was first filed in 2019 and centered on alleged violations of Section 2 of the Voting Rights Act. Section 2 prohibits voting practices and procedures that discriminate or have a discriminatory impact on the basis of race. In [Arizona Republican Party v. Democratic National Committee](#), currently pending before the U.S. Supreme Court, the plaintiffs challenged Arizona state law H.B. 2023, which imposed criminal penalties for assisting with ballot collection, unless the ballot collector is the voter's caregiver, family member, or household member. A federal district court [upheld](#) the law but, in January, a divided Ninth Circuit, sitting *en banc* in [Democratic National Committee v. Hobbs](#), reversed. It ruled that H.B. 2023 was enacted with discriminatory intent, in violation of Section 2 of the Voting Rights Act. The court determined that the law disparately burdened Native American, Hispanic, and Black voters, as compared to white voters. Among other things, the court noted that minority groups in Arizona were more likely to change residences frequently, lacked reliable access to mail services, and were unable to afford adequate transportation. Therefore, those groups disproportionately rely on others to collect and return their early ballots. In April, the Arizona Republican Party [filed](#) a petition for certiorari to the U.S. Supreme Court, which the court [granted](#) in early October. The court held [oral arguments](#) in the case on March 2, 2021, and the court is expected to rule later in 2021.

On the flip side of the coin, plaintiffs who opposed ballot collection by third parties challenged laws that permitted or expanded the practice. They raised claims that permitting ballot collection caused voter-dilution (because fraudulent votes would be counted along with valid votes) and direct disenfranchisement (because some ballot collectors would fail to deliver some ballots). These claims made limited headway. In [Election Integrity Project of Nevada v. State of Nevada](#), plaintiffs sought a preliminary injunction against a new Nevada law that repealed a criminal prohibition against "ballot harvesting" and replaced it with new provisions that plaintiffs alleged "fail to adequately deter voter intimidation." The court denied the preliminary injunction, finding that the plaintiffs had put forward only "unfounded speculations regarding voter fraud." Similarly, in [Driscoll v. Stapleton](#), the Montana Supreme Court granted a preliminary injunction against Montana's restrictions on ballot collection. The court found no evidence "of voter fraud or ballot coercion, generally or as related to ballot-collection efforts."

Thus, challenges both to expand and constrict ballot collection saw mixed results.

Limits on Absentee Ballot Drop-Off Locations and Curbside Voting

The second category of cases relating to the return of mail ballots involved challenges to state limitations on where voters could drop off ballots. Many voters in 2020 preferred to deposit their ballots at drop boxes to avoid the health risks of in-person voting during the pandemic and to avoid the risk of late arrival inherent in returning ballots via mail. Governors in both Texas and Ohio issued executive orders to limit the quantity and location of such ballot drop boxes. Plaintiffs challenged these restrictions in both [Texas](#) and [Ohio](#), emphasizing the burden such restrictions placed on the many voters who planned to deposit their ballots in drop boxes and the disproportionate impact of such restrictions on minority and densely populated communities. In both cases, plaintiffs won injunctions staying the restrictions at the federal district court level then saw those wins overturned by U.S. courts of appeals ruling in favor of the state.

The most high profile case was in Texas. On October 1, less than five weeks before Election Day, Texas Governor Greg Abbott issued a [proclamation](#) that restricted each county to a single drop-off location for ballots cast before Election Day. Abbott said the restriction was necessary to prevent voter fraud. The move prompted swift legal [challenges](#), with plaintiffs arguing that the restrictions would burden people with disabilities, the elderly, and minority voters, and would be especially burdensome in the state's most populous [counties](#), such as Harris County (which had planned to set up 11 drop-off locations for its over four million residents) and Travis County (which had planned to set up four drop-off locations for its over 1.2 million residents).

In a suit brought in the U.S. District Court for the Western District of Texas, the plaintiffs claimed that the governor's order violated the First and Fourteenth Amendments as an impermissible burden on the right to vote. They also challenged the governor's order under Section 2 of the Voting Rights Act, claiming it had a disproportionate impact on Latino voters, who were disproportionately affected by the coronavirus pandemic. In an [order](#) enjoining the state from implementing the restrictions on drop-off locations, U.S. District Judge Robert Pitman noted that it was "perplexing" that the state could "simultaneously assert the [drop off centers] do not present a risk to election integrity on Election Day but somehow do present such a risk in the weeks leading up to" Election Day. However, the Fifth Circuit [stayed](#) the lower court's injunction pending appeal. Although the appeals court suggested in a footnote that *Anderson-Burdick* may not apply to the Texas case (the court suggested that *McDonald* might apply instead), it concluded that the state of Texas would likely prevail under the *Anderson-Burdick* standard anyway. The governor's order, the court argued, effectively *expanded* voting access because it extended the period to hand-deliver absentee ballots by 40 days, rather than confining the drop-off period to Election Day.

Parallel proceedings in state court were also unsuccessful. On October 15, just days after the Fifth Circuit's stay, a Texas state court temporarily enjoined Governor Abbott's one-per-county limit on drop-off centers. Travis County Judge Tim Sulak [enjoined](#) that portion of the governor's proclamation, stating that it "would likely needlessly and unreasonably increase risks of exposure to COVID-19 infections, and needlessly and unreasonably substantially burden" the right to vote under the Texas Constitution. A state appellate court upheld Judge Sulak's order, but the Texas Supreme Court [reversed](#) on October 27, just one week before Election Day. The state's highest court explained that it is the role of the legislature and governor (using his emergency powers) to craft the appropriate policy response to the pandemic, and not the courts. The court went on to criticize the *Anderson-Burdick* test, a test it had previously adopted, for inviting courts to make policy judgments. A concurring opinion repeated the Fifth Circuit's reasoning that the governor's order *expanded* options available to voters—it did not curtail options—and thus did not "disenfranchise anyone."

A similar story played out in Ohio. Ohio Secretary of State Frank LaRose issued [Directive 2020-16](#), which authorized a single secured drop box, and no more, outside each county board of elections office. Plaintiffs filed lawsuits in both [federal](#) and [state](#) court to compel the state to designate additional drop box locations. In mid-September, the Franklin County Common Pleas Court [determined](#) that the secretary of state's ban on the placement of multiple drop boxes per county at various locations was "arbitrary and unreasonable." In response to this state court order, the secretary of state [permitted](#) each of Ohio's 88 county boards of elections to install more than one drop box, but still required that they be located directly outside of each county's board of elections offices.

On October 8, Ohio U.S. District Court Judge Dan Aaron Polster [issued](#) an injunction against enforcement of Directive 2020-16. The injunction halted the directive's prohibition on drop boxes not located directly outside the offices of the boards of elections, thus allowing drop boxes to be placed in additional locations. The judge's order also enjoined a ban on the deployment of county board staff to any such non-elections-office ballot boxes. Judge Polster said there was no evidence that additional drop boxes were prohibited by state law and no evidence "that multiple drop boxes cannot be as secure as the single drop box required at each board of elections." But shortly after Judge Polster issued his decision, a divided Sixth Circuit panel [stayed](#) the district court's injunction pending interlocutory appeal. The court found that the state was likely to win under *Anderson-Burdick* test because "the limitation on drop boxes poses at most an inconvenience to a subset of voters (those who choose to vote absentee and physically drop off their absentee ballot)." The plaintiffs [concluded](#) there was no point to continue to litigate and did not oppose the state's [motion to dismiss](#) the appeal, which the Sixth Circuit [granted](#).

Plaintiffs in Alabama challenged a state restriction on another kind of ballot drop-off option: curbside or “drive-thru” voting, a practice that allows voters to cast their ballots in person but outside of a poll site, without leaving their car. While not pervasive, counties in [several states](#) offered this option as a way to accommodate voters especially at-risk of serious complications from COVID-19, voters with disabilities, and/or elderly voters in the 2020 general election. Alabama Secretary of State John Merrill prohibited local election officials from implementing curbside voting. In [People First of Alabama v. Merrill](#), voting and disability rights groups in Alabama filed a federal [lawsuit](#) seeking to enjoin that state’s ban on curbside voting. The district court [ruled](#) in favor of plaintiffs, concluding that the ban violated the First and Fourteenth Amendments, as well as the Americans with Disabilities Act. The court issued a permanent injunction against the ban, allowing counties the option, but not requiring them, to provide curbside voting as an accommodation. The state appealed, and the 11th Circuit [refused to stay](#) the injunction pending appeal. But on October 21, in a 5-3 vote, the U.S. Supreme Court [stayed the injunction](#) pending appeal to the Eleventh Circuit and, if applicable, the U.S. Supreme Court, without providing any reasoning. Justices Sonia Sotomayor, Elena Kagan, and Stephen Breyer dissented, pointing to the factual record developed at the district court to support the conclusion that the option for counties to provide curbside voting is a reasonable accommodation for voters with disabilities.

Although they were successful in lower courts, plaintiffs ultimately failed when states appealed lower court injunctions against state executive restrictions limiting the number and location of ballot drop boxes and prohibiting drive-thru voting.

USPS Operational Changes

While almost all election lawsuits in 2020 were filed against states, counties, and/or their representatives, a unique group of lawsuits targeted the one national entity that delivered millions of ballots during the election season: the U.S. Postal Service (USPS). In July 2020, newly appointed U.S. Postmaster General Louis DeJoy announced the implementation of a number of [operational changes](#) at the USPS, including a reduction in [overtime pay](#) and the discontinuance of several hundred [high-speed mail sorters](#). The changes [resulted](#) in nationwide [mail delivery delays](#). DeJoy [explained](#) that the changes were necessary for budget reasons to make the agency “financially solvent,” but the timing and impact of the changes [raised suspicions](#) that they might also be designed to slow the delivery of mail ballots (which were generally forecasted to lean in favor of Democrats) and possibly target areas with more Democratic voters. For the detailed story of the USPS changes and the 2020 elections, see the Stanford-MIT Healthy Elections Project report [The U.S. Postal Service and the 2020 Elections](#).

In response to the announced changes and the associated delivery delays, 24 state attorneys general filed federal lawsuits against the Trump administration and Postmaster General DeJoy in [Washington](#), [Pennsylvania](#), and the [District of Columbia](#). Civil rights organizations and individual petitioners filed similar lawsuits in the District of Columbia ([three related filings](#)), [Pennsylvania](#), and [Illinois](#). Several members of the New York legislature also joined individual voters in a [complaint](#) filed in U.S. District Court for the Southern District of New York. These lawsuits were all filed within a three-week period between the middle of August and the start of September. They sought to enjoin the postal service from eliminating overtime hours for workers processing the mail, decommissioning mail sorting machines that help speed the processing of mail, removing post office mail collection boxes, and declassifying election mail as first-class mail. The lawsuits alleged that the postal service's actions violated various federal statutory and constitutional provisions.

The central statutory claim involved the [Postal Reorganization Act](#) ("PRA"), which created the Postal Service's [Board of Governors](#) and the [Postal Regulatory Commission](#). Under [39 U.S.C. § 3661\(b\)](#), the Postal Service must request an advisory opinion from the Postal Regulatory Commission before making a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis." The complaints alleged that the postal service implemented these "[transformative](#)" changes in mail service on a nationwide basis without obtaining an advisory opinion from the Postal Regulatory Commission. The lawsuits sought to enjoin the postal service from implementing any changes that would have a nationwide effect on delivery service without first satisfying the necessary statutory and regulatory procedures.

The lawsuits also raised constitutional claims. The individual and civil rights plaintiffs alleged that the postal service's actions—which might have delayed the delivery of millions of mail ballots and resulted in their rejection—were an [unconstitutional infringement](#) on the right to vote in violation of the First and Fourteenth Amendments and the *Anderson-Burdick* test. Separately, the state attorneys general [alleged](#) that the postal service's actions "on the eve of the 2020 election—well after the [s]tates have established systems for voting using the Postal Service—to no longer support the manner chosen by the [s]tates" impermissibly interfered with the states' constitutional right to set the "Time, Places, and Manner of holding Elections for Senators and Representatives," under [Art. I, § 4](#) of the U.S. Constitution, and to appoint presidential electors "in such manner" as their legislatures direct, under [Art. II, § 1](#).

At least four different federal district courts sided with the individual and state plaintiffs. On September 17, Judge Stanley Bastian of the Eastern District of Washington [granted](#) a nationwide injunction against the postal service's operational changes. At the end of October, the court [ordered](#) the USPS to report an "all clear" status with respect to election mail on a daily basis

between November 1 and November 10 and to “make every effort to deliver” any incoming ballots identified in the “all clear” process.

A few days later, on September 21, Judge Victor Marrero of the Southern District of New York also enjoined the postal service from instituting its operational changes. Among other things, Judge Marrero’s detailed [order](#) required the postal service to treat all election mail as First-Class or Priority Express mail, mandated the approval of requested overtime between October 26 and November 6, and required the postal service to draft a “guidance memorandum” for managerial staff on the proper handling of election mail.

The following week, on September 28, two more district courts issued injunctions. The U.S. District Court for the Eastern District of Pennsylvania enjoined the postal service’s operational changes in a ruling that [explicitly adopted](#) Judge Marrero’s order. The Pennsylvania order also forbade future implementation of the proposed operational changes until the postal service received an advisory opinion from the Postal Regulatory Commission. Judge Emmet Sullivan of the U.S. District Court for the District of Columbia [issued an injunction](#) on September 28. And, in early November, Judge Sullivan issued a further series of orders in the District of Columbia case with directives for the USPS regarding its handling of election-related mail. On November 1, Sullivan [instructed](#) the USPS to use express mail to expedite delivery of ballots. Two days later, on Election Day, Sullivan [ordered](#) the USPS to sweep its facilities to discover and mail out delayed ballots in Florida, Pennsylvania, Michigan, and Georgia, among other states. The next day, Sullivan entered a similar [order](#) requiring the USPS to conduct immediate sweeps of its Texas facilities.

Part III Conclusion

The widespread adoption of vote-by-mail spurred litigation designed to facilitate the return and delivery of mail ballots. Challenges to restrictions on third-party ballot collection and delivery gained little traction, as courts declined to find that such restrictions placed severe burdens on voters. Challenges to drop box restrictions and limits were mixed: Federal district courts in Texas, Ohio, and Pennsylvania were receptive to plaintiffs’ claims, but federal appellate courts ultimately stayed the injunctions issued in Texas and Ohio. Proponents of vote-by-mail were most successful in their USPS-related litigation, as numerous federal district courts enjoined the postal service’s operational changes and ordered USPS to conduct emergency sweeps of its facilities to mail out delayed ballots.

Part IV: Challenges to Mail Ballot Voter Verification Procedures

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Parts I-III of this report reviewed litigation over rules and requirements for obtaining an application to vote by mail, eligibility requirements to be approved for an absentee ballot, submission rules for marking and preparing mail ballots, receipt deadlines for returning mail ballots, and restrictions on who can help voters in the process. Part IV examines litigation challenging how election officials verified that a submitted mail ballot was cast by the intended voter and what processes they used for rejecting ballots that did not meet the verification requirements.

Every state has a process for verifying the identity of each voter who casts an absentee ballot. Election officials use these procedures to ensure that the person who submitted the ballot is, in fact, the duly registered voter who requested the ballot. The processes are designed to ensure against voter fraud in mail voting, as there is no poll worker standing by every absentee voter to verify the voter's identity. While there was [no evidence of widespread fraud](#) in mail voting in the United States, there were [isolated cases](#).

Almost all states required the voter to sign an official return ballot envelope or certificate to affirm that the person casting the vote was the intended voter, was eligible to vote absentee, had not already voted in the election, and that the voter information provided on the envelope or certificate was true and correct. Most states additionally verified the identity of mail voters in one of two ways: (i) by comparing the voter's signature on the ballot return envelope or certificate to the voter's signature on file with the election office to confirm they matched, or (ii) by having a witness or a notary public sign the ballot, return envelope, or certificate to attest that the ballot was completed by the intended voter. [Arkansas](#) additionally required that voters return a photocopy of identification with their absentee or mail ballot, and [Ohio and Minnesota](#) asked voters to write their driver's license number or the last four digits of their Social Security number on their return envelope or certification statement.

In some states, when election officials determined that a ballot failed to meet any of the signature or witness requirements, they simply did not count the vote, and the voter may never have known. In most states, however, and largely in response to litigation over the last several years, election officials notified voters of any ballot "defect" (e.g. a missing voter signature, a "mismatched" voter signature, or a missing witness signature) and provided them an opportunity to fix or "cure" the problem.

While the coronavirus pandemic significantly [increased demand](#) for mail balloting in the 2020 elections, the surge in mail voting also raised some concerns. Some voters in states with witness requirements for absentee balloting feared the health risks of complying with witness requirements, given the growing pandemic. From a policy perspective, some were concerned that a huge number of mail ballots would be rejected. According to a [study](#) by National Public Radio, 550,000 mail ballots were rejected nationwide in the 2020 primary elections, with signature mismatches and missing signatures among the most common reasons for rejection (late arrival was the other most common reason). This was substantially more ballot rejections than in the 2016 general election (318,728).

As a result, signature verification practices and witness requirements came under renewed scrutiny ahead of the November election. Voting rights advocates filed a flood of lawsuits, challenging state absentee voter verification practices and state policies governing the rejection of mail ballots for defects where voters are not first afforded an opportunity to cure the defects.

Initial data from the 2020 general election [suggested](#) that mail ballot rejection rates [did not spike](#). In most states that have [reported](#) rejection rates (as a share of total ballots cast), rates were actually [lower](#) than they were in 2016. A variety of factors likely contributed to the lower-than-feared rejection rates of absentee ballots, including revised and relaxed verification procedures (some of which resulted from litigation), expanded cure processes (some of which resulted from litigation), increased voter education which led more voters to mail in their ballots early, and, perhaps, the reluctance of state officials to discard mail ballots during a pandemic.

This section surveys the litigation challenging states' signature verification practices and witness requirements leading up to the 2020 general election. The success of such litigation was mixed. Many lawsuits resulted in consent decrees or voluntary dismissals after the state voluntarily adopted new voter verification policies likely to reduce the rejection rate of mail ballots. For those lawsuits that reached rulings on the merits, for federal constitutional law claims, outcomes generally turned on the court's views of (i) how severe a burden the ballot verification requirement imposed on voters, (ii) the strength of the state's argument that the ballot requirement was appropriate or necessary to deter voter fraud and protect the integrity of elections, and (iii) whether voting by mail is a state-created liberty interest subject to procedural due process protection under the *Mathews* test. Courts were mixed on the constitutionality of state laws that permitted rejection of mail ballots with no opportunity for the voter to cure.

Signature Verification Requirements

For the 2020 general election, at least 31 [states](#) required election officials to compare the signature on the ballot return envelope or certificate with the intended voter's signature on file, to see if they matched. For a detailed summary of the rules and processes used for signature verification, see the Stanford-MIT Healthy Elections Project report [Signature Verification and Witness Requirements for Mail Ballots in the 2020 Elections](#).

In recent elections, a significant number of absentee ballots have been rejected for signature-related defects. In the 2016 presidential election, about 91,000 ballots (about [.275% of all mail ballots cast](#)) were rejected for “mismatched signatures”—because election officials determined the signature on the ballot envelope did not match the signature(s) on file. About 66,000 ballots (about [.2% of all mail ballots cast](#)) were rejected because the voter's signature was missing. In the 2018 midterm elections, about [64,000 ballots](#) (about .2% of all mail ballots cast) were rejected for mismatched signatures, and almost [as many ballots](#) were rejected for missing the voter's signature. In aggregate, that means between .4% to .475% of ballots were rejected in 2016 and 2018 for voter signature issues. The rejection rates in the 2020 primaries were even higher, causing some to fear that massive numbers of absentee ballots might be rejected in the 2020 general election, particularly as the ballot rejection rates tend to be [higher](#) among first-time mail ballot users.

Given the anticipated [increase](#) in absentee voting because of the coronavirus pandemic, signature requirements for absentee ballots were a frequent subject of litigation. Challenges to signature verification laws were among the most voluminous claims brought during the 2020 elections.

Plaintiffs generally challenged two kinds of practices. First, they challenged the use of the signature verification process as a basis to reject ballots, particularly in states that lacked statewide standards and training. Second, and often in the alternative, plaintiffs requested that states adopt so-called “notice and cure” procedures that would require local election officials to notify voters and provide them with an opportunity to fix defective ballots before they are rejected.

The success of the pre-Election Day litigation was mixed. Lawsuits in several states resulted in new rules that made it less likely that election officials would reject ballots for signature mismatches and made it easier for voters to remedy signature defects on ballots, thus reducing the number of ballot rejections. Many lawsuits resulted in consent decrees or voluntary

dismissals after the state voluntarily adopted new voter verification policies likely to reduce the rejection rate of mail ballots.

For those lawsuits that reached rulings on the merits, some plaintiffs won, and others lost. For federal law claims, outcomes generally turned on the court's views of (i) how severe a burden the ballot verification requirement imposed on voters, (ii) the strength of the state's argument that the ballot requirement was appropriate or necessary to deter voter fraud and protect the integrity of elections, and (iii) whether voting by mail is a state-created liberty interest subject to procedural due process protection under the *Mathews* test. Courts were mixed on the constitutionality of state laws that permitted rejection of mail ballots with no opportunity for the voter to cure.

Lack of Uniform Standards and Training for Signature Verification

Lawsuits challenging signature verification processes, sometimes called "matching processes," typically alleged that the state lacked uniform standards or criteria for deciding whether signatures on ballot envelopes matched signatures on record with election offices. Plaintiffs argued that officials responsible for comparing signatures lacked the necessary expertise and training to perform such comparisons and were, thus, prone to making errors. They claimed that these weaknesses violated the U.S. Constitution's guarantee of equal protection because the votes of different voters were subject to disparate treatment.

Several such cases in 2020 led to consent decrees or states voluntarily altering their policies. In Michigan, for example, the progressive advocacy organization [Priorities USA](#) [sued](#) the state in December 2019 (before the pandemic), alleging that Michigan lacked uniform statewide standards for reviewing and comparing signatures. That deficiency, the lawsuit said, allowed election officials throughout the state to employ arbitrary and divergent criteria in the matching process. The complaint also alleged that many officials engaging in the matching process did not have sufficient training and skills to compare signatures accurately. In April 2020, the Michigan secretary of state released new [signature verification guidance](#), and plaintiffs dropped the [suit](#). The new guidance, which was reissued on October 6, 2020, for the general election, did not eliminate the practice of signature verification altogether, but it implemented a statewide standard designed to reduce erroneous rejections. It stated:

Signature review begins with the presumption that the voter's ... envelope signature is his or her genuine signature. 1. If there are any redeeming qualities in the ... return envelope signature as compared to the signature on file, treat the signature as valid. ... 2. A voter's signature should be considered questionable only if it differs in multiple, significant and obvious respects from

the signature on file. Slight dissimilarities should be resolved in favor of the voter whenever possible.

This guidance was in effect for the 2020 general election but was invalidated by the Michigan court of claims after the election. On March 9, 2021, the court [ruled](#) that the October 6, 2020, guidance constituted a “rule” as defined by the state’s Administrative Procedures Act (APA) and that it was unlawfully issued without following the formal rule-making procedures required by the APA. Thus, the guidance is no longer in effect for future elections.

Similarly, in Pennsylvania, the League of Women Voters [challenged](#) the state’s practice of signature matching in federal court, alleging the state failed to require any training for examining handwriting or provide any standards or guidelines to aid election officials in their signature analysis. Plaintiffs alleged violations of both equal protection and procedural due process, as well as infringement of the fundamental right to vote. Plaintiffs [dropped their lawsuit](#) after the Secretary of the Commonwealth Kathy Boockvar [issued new guidance](#) on September 11, 2020, prohibiting all of the state’s county boards of elections from rejecting returned absentee or mail ballots “based solely on signature analysis.”

The Pennsylvania case did not end there, however. The Trump campaign challenged the secretary’s new guidance in federal court. The U.S. district court [dismissed](#) the lawsuit on October 10, 2020. In doing so, it stated: “A plain reading of the Election Code demonstrates that it does not impose a signature-comparison requirement for mail-in ballots and applications.” It further held that the *lack* of signature-comparison does not violate the due process or equal protection clauses of the U.S. Constitution. Finally, on October 23, in response to a petition filed by Secretary Boockvar, seeking declaratory relief, the Pennsylvania Supreme Court [unanimously held](#) that “county boards of elections are prohibited from rejecting absentee or mail-in ballots based on signature comparison conducted by county election officials or employees, or as the result of third-party challenges based on signature analysis and comparisons.” The court explained that the state’s election code permitted use of signature matching to verify in-person voters and provisional ballots but not for absentee or mail-in ballots. The court clarified, however, that absentee ballots may be rejected for the voter’s failure to sign and date the “declaration envelope” altogether.

In Maine, voter advocacy groups filed a [state court case](#) alleging, among other things, that the state failed to provide any training on handwriting analysis or signature comparison and simply instructed election officials to determine whether the signatures “appear to have been made by the same person.” Plaintiffs argued that Maine’s guidance “forces its election officials to make subjective, arbitrary and standardless determinations as to whether to count a voter’s ballot” and that such judgments were error-prone. Moreover, plaintiffs alleged, these flawed processes

were used to reject votes with no notice to the voter, imposing an undue burden on the right to vote and in violation of procedural due process. The lawsuit also alleged disparate treatment of absentee voters in violation of the equal protection clause because the state undertook signature matching only for [some absentee voters](#)—those who requested an absentee ballot by mail, in-person, or by fax. It did not conduct signature matching for absentee voters who made their request for an absentee ballot online or over the telephone, where no signature was required from the voter as part of the request process, so no signature was on file. In response to the lawsuit, which alleged a host of state and U.S. constitutional violations, the state's secretary of state instructed the state's election officials to implement robust [notice and cure procedures](#).

In sum, election officials in Michigan, Pennsylvania, and Maine all adopted new policies regarding signature verification after lawsuits were filed challenging their state procedures and before any court ordered them to do so. The new policies in each case were designed to reduce the likelihood that absentee ballots cast by eligible voters would be rejected.

Lack of Notice and Opportunity to Cure

Most signature verification lawsuits in 2020 challenged the failure of election officials to notify voters and afford them an opportunity to cure a signature defect before officials tossed the ballots. Short of asking for the elimination of signature matching altogether, these claims sought injunctions to prohibit election officials from discarding any mail ballots for signature mismatch without first notifying the voter and allowing them an opportunity to fix the error. Partially due to litigation over the past several years, [more and more states](#) now require election officials to notify voters and afford them an opportunity to cure ballot signature defects prior to rejecting their ballots.

In 2020, plaintiffs sued in [14 states](#), seeking to prevent ballots from being rejected without the voter being notified and provided an opportunity to cure the error. At least 10 states—[Indiana](#), [Maine](#), [North Dakota](#), [Michigan](#), [New Jersey](#), [New York](#), [South Carolina](#), [North Carolina](#), [Mississippi](#), and [Louisiana](#)—created or enhanced their notice and cure policies in the 2020 general election in response to lawsuits, often through settlements or consent decrees. In the end, for the 2020 general election, at least [21 states](#) offered an opportunity to cure absentee ballots rejected due to voter signature defects, several in response to litigation.

Lawsuits seeking to require states to adopt notice and cure policies argued that the lack of notice and cure violates multiple constitutional provisions. The two most common claims were that rejecting ballots without notice and cure (i) creates a severe burden on the fundamental right to vote, in violation of the First and Fourteenth Amendments (see lawsuits in [Kentucky](#),

[Arizona](#), [Maine](#), [North Dakota](#), [New Jersey](#), [South Carolina](#)), and (ii) deprives voters of their liberty interest in voting, without procedural due process, in violation of the Fourteenth Amendment (see lawsuits in [Louisiana](#), [Maine](#), [North Dakota](#), [New Jersey](#), [South Carolina](#)). Additionally, some lawsuits alleged various state statutory and constitutional violations. A lawsuit in [North Carolina](#) alleged violation of the state constitution's Free Elections Clause and fundamental right to vote protections. And a lawsuit in [Maine](#) alleged violations of the state constitution's guarantees of due process and equal protection, as well as state laws governing qualifications of electors.

Some states voluntarily implemented notice and cure processes after litigation commenced. In New York, after plaintiffs filed a [lawsuit](#) in federal court, the parties reached a [settlement agreement](#) on September 17, 2020, specifying how voters would be contacted if their ballots were rejected and how they could fix the problem. In Louisiana, after plaintiffs [sought](#) a cure process in May, the legislature passed an emergency rule providing voters the opportunity to cure signature deficiencies in the June primary election, and plaintiffs withdrew the cure-related claims. The state legislature later [renewed](#) the emergency rule for the November general election. Similarly, after a [lawsuit](#) was filed in Mississippi, the state's secretary of state implemented [new rules](#) on October 7, 2020, providing for notice and cure. And in response to a [lawsuit](#) filed in Maine, which alleged a host of state and U.S. constitutional violations, the state's secretary of state instructed the state's election officials to implement robust [notice and cure procedures](#).

A case in New Jersey resulted in a consent decree. In *League of Women Voters of New Jersey v. Way*, the plaintiffs [challenged](#) New Jersey's signature verification process, which [required](#) the county clerk to reject a ballot if they determined the signature on the envelope did not match the one on file, without providing any notice or cure opportunity to the voter. Officials doing the comparisons received no training. Plaintiffs [sought](#) a right for voters to be notified and given an opportunity to cure signature defects on their ballots prior to rejection. They argued that the then-existing procedure violated the due process and equal protection clauses and created an impermissible burden on the fundamental right to vote, in violation of the First and Fourteenth Amendments.

For their procedural due process claim, plaintiffs contended that voters faced a high risk of being erroneously deprived of their right to vote, and they said the implementation of notice and cure procedures that could mitigate that risk would impose only a minimal burden on the state. For their equal protection claim, plaintiffs argued that the absence of statewide standards or training led to arbitrary differences in the way votes were analyzed. They noted that votes counted depending on which county the voter resided in and that no state interest was furthered by that process. Finally, for their *Anderson-Burdick* claim, plaintiffs argued that the

current process imposed a severe burden on the right to vote, as ballots could be entirely rejected. They argued that this burden was exacerbated by increased reliance on mail voting during the pandemic, and they argued that no sufficiently weighty interest could be offered by the state to justify this burden.

Following a [stipulation](#) agreement between the parties, the federal district court in New Jersey [granted](#) plaintiffs' request for a preliminary injunction for the July 7 primary—but only for the primary. Under the order, the secretary of state was required to direct those responsible for verifying ballots to issue cure letters to voters whose ballots were rejected, explaining how they could verify their identity and cure their ballot defect so the ballot would be counted. The state also agreed to conduct a public awareness campaign to educate voters about the signature requirements and the new cure process and to issue new signature analysis and matching guidance for all signature evaluators. The New Jersey legislature [passed a bill](#) in August to provide a [notice and cure](#) procedure for the November 3, 2020, general election.

In cases where courts reached decisions on the merits of claims that sought an opportunity for the voter to cure a ballot before it could be tossed out for signature reasons, results were mixed.

Several courts in 2020, as in prior years, were receptive to claims seeking notice and cure opportunities for voters prior to rejection of their ballots, particularly those who considered absentee voting to be a state-created liberty interest subject to procedural due process considerations. Such states included North Dakota, Indiana, and South Carolina.

This reasoning was especially compelling in cases where elections were held entirely by mail. In North Dakota, for example, which held an all-mail election for its June primary, a U.S. district court issued a [preliminary injunction](#) prohibiting the state from rejecting any ballot on the basis of signature mismatch “absent adequate notice and cure procedures.” In analyzing plaintiffs' procedural due process claim, the court wrote that it was “[b]eyond debate” that “the right to vote is a constitutionally protected liberty interest.” It reasoned that, “although ‘the right to apply for and vote via absentee ballot is not constitutionally on par with the fundamental right to vote,’ a state that creates a system for absentee voting ‘must administer it in accordance with the Constitution.’” It further reasoned that, “[b]ecause there is no possibility of a meaningful post-deprivation process when a voter’s ballot is rejected (there is no way to vote after an election is over, after all), sufficient pre-deprivation process is the constitutional imperative.” The court concluded the state’s lack of notice or opportunity to cure constituted no process at all and, in August, issued a [permanent injunction](#) prohibiting the rejection of any absentee ballot on the basis of signature mismatch without “adequate notice and cure procedures.”

Similar reasoning was applied by courts in states that did not conduct all-mail elections. In a case filed prior to the pandemic but resolved during the pandemic, a federal district court in Indiana granted a [permanent injunction](#) after finding that the state's rejection of ballots for mismatched signatures with no notice and cure violated two constitutional provisions. Citing numerous district court precedents, the court ruled that the policy violated the due process clause of the Fourteenth Amendment because, though the right to vote *by absentee ballot* is not a fundamental right, "having extended the privilege of mail-in absentee voting to certain voters, the State 'must afford appropriate due process protections to the use of [mail-in] absentee ballots.'" The court reasoned that, because the law does not require voters be "given notice or an opportunity to respond *at any point* either before or after their ballots are rejected, '[t]his all but ends the inquiry.'" The court also held, under the *Anderson-Burdick* balancing test, that Indiana's policy created an undue burden on the fundamental right to vote under the equal protection clause of the Fourteenth Amendment because, although only a narrow class of voters were affected by rejections, the magnitude of the burden on those voters was substantial.

A U.S. district court in [South Carolina](#) also [enjoined](#) the state and its affiliate county boards from disqualifying otherwise-valid absentee ballots on account of mismatched signatures unless affected voters were provided notice and a timely procedure to cure the ballot. The court found that rejecting ballots without notice and cure failed both the *Anderson-Burdick* test and the *Matthews* test.

Upholding Ballot Rejection Without Opportunity for Voter to Cure

Though lawsuits seeking a notice and cure procedure for signature defects were among the most successful mail voting claims brought by voting rights advocates in 2020, they did not succeed in all cases. The [Fifth Circuit](#) (in a case filed in Texas) and U.S. district courts in [Tennessee](#) and [Arkansas](#), for example, all upheld state policies of tossing out ballots where election officials determined that the signature on the ballot did not match that on file, without any requirement to provide a cure process for the voter. Plaintiffs in these cases brought claims that rejection of their absentee ballots based on perceived signature mismatch, without an opportunity to cure, violated both their procedural due process rights and their fundamental right to vote.

In [Richardson v. Texas Secretary of State](#), plaintiffs challenged a Texas state law that required election officials to notify voters within 10 days *after* the election that their ballot had been rejected but provided no option to cure or challenge the rejection. A U.S. district court in Texas [ordered](#) the state to either implement notice and cure procedures or refrain from comparing signatures altogether. In a 103-page [order](#) issued September 8, 2020, the court applied the

Mathews test to the procedural due process claim. It explained that, because “Texas has created a mail-in ballot regime . . . the State must provide those voters with constitutionally-sufficient due process protections before rejecting their ballots.” Citing several U.S. district court precedents that applied the same reasoning, the court held that the state’s lack of any cure process violated procedural due process. The court indicated the result would be the same under the *Anderson-Burdick* balancing test.

In a rare circuit court decision on this issue, on October 19, 2020, the Fifth Circuit Court of Appeals [stayed](#) the district court’s injunction, pending appeal. The court strongly suggested that the right to vote, though fundamental, is not a liberty interest for purposes of due process. It [concluded](#) that the state was likely to succeed on its argument that the right to vote “does not implicate any state-created liberty interest under the Due Process Clause.” The court was even more skeptical that the right to vote *absentee* implicated a state-created liberty interest, stating that it would “stretch [] the concept too far to suggest that a person is deprived of liberty ‘when the Court has said that he has no right to the object of his alleged liberty interest.’” The court also concluded that, regardless of whether there was a liberty interest at stake, the *Anderson-Burdick* framework, and not the *Mathews* test, was the appropriate test for all challenges to “the voting process.” And under the *Anderson-Burdick* test, the court said, “Texas’s strong interest in safeguarding the integrity of its elections from voter fraud far outweighs any burden the state’s voting procedures place on the right to vote.” The unanimous three-judge decision bucked the general trend among district courts of applying the *Mathews* test to procedural due process challenges to laws that allowed election officials to reject ballots with no opportunity for the voter to cure.

A U.S. district court in Tennessee also concluded the right to vote does not constitute a liberty interest, in a case affirmed by the Sixth Circuit on other grounds. In [Memphis A. Phillip Randolph Institute v. Hargett](#), plaintiffs challenged a state law that required election officials to *notify* voters “immediately” of a ballot rejection due to signature mismatch, but did not provide the voter an opportunity to *cure* the ballot. Instead, notified voters could cast a provisional ballot or submit a new absentee ballot on or before Election Day. The court [rejected](#) plaintiffs’ claims that discarding absentee ballots based on a perceived signature mismatch, without an opportunity for the voter to cure the signature, violated voters’ right to procedural due process under the Fourteenth Amendment and their fundamental right to vote under the First and Fourteenth Amendments. Regarding the procedural due process claim, the court concluded: “The right to vote is fundamental, but it is not a ‘liberty’ interest for purposes of procedural due process....” Because no liberty interest was at stake, the court declined to apply the *Mathews* test to determine whether such interest was deprived without due process of law. Regarding the fundamental right to vote claim, the court applied the *Anderson-Burdick* balancing test but did not consider the burden of ballot rejections based on erroneous conclusions that signatures

did not match. The court characterized that concern as a recast of the procedural due process claim. Instead, it considered only the burden of the requirement to sign the ballot application and the ballot envelope and to subject each of those signatures to a matching comparison. With that framing, the court found that the state's signature verification law presented a burden that is "moderate at most" and balanced that burden against what it found to be the state's compelling interest in preserving the integrity of elections. The court concluded that the law does not impermissibly infringe on the right to vote.

In a two-to-one decision on October 15, 2020, a Sixth Circuit Court of Appeals panel [affirmed](#) the district court decision, but it did so on a basis different from that relied on by the district court. The Sixth Circuit affirmed on the grounds that plaintiffs—individuals and voting rights organizations—did not have either organizational or representative standing because they "failed to demonstrate that they [we]re facing an actual, concrete, particularized, and imminent injury." The court said plaintiffs' claims were based on speculation of what might happen in the election. Though it expressly noted that it "need not go further," the court went on to provide what it called "limited commentary to guide the district court" on the merits of the two claims—the procedural due process claim and the fundamental rights claim. The court explained that the Sixth Circuit had never answered the question "whether procedural due process claims are viable in voting rights cases outside the *Anderson-Burdick* framework." It declined to resolve the question of "whether *Anderson-Burdick*'s 'single standard' encompasses procedural due process claims" and said it wanted "to highlight the ongoing uncertainty in this circuit regarding the viability" of procedural due process claims in voting rights cases. The court cast doubt on the future of procedural due process claims in election cases in the Sixth Circuit; it implied the *Mathews* test is inapplicable to such claims and questioned the viability of such claims under the *Anderson-Burdick* framework. Judge Karen Nelson Moore issued a piercing [dissent](#), defending the rationale and need for two separate tests.

Timeline to Cure

Another category of notice and cure lawsuits focused on the timeline to cure errors. Cure deadlines [vary](#) by state. Most states with notice and cure procedures gave voters some specified number of days *after* Election Day to cure the mistake, ranging from just two days after Election Day (e.g. Florida) to up to 14 days after Election Day (e.g. Illinois). The cure deadline in California was two days before the state's certification of the vote. Some states required voters to cure ballot defects by the close of polls on Election Day. Election Day cure deadlines and deadlines close to Election Day meant some voters, particularly those who submitted their ballots on or just a few days before Election Day, were unlikely or less likely to receive notice of a defect in time to cure it.

In a few states that provide a notice and cure procedure, plaintiffs filed suit before the election seeking to extend the amount of time a voter had to cure their ballot. In Arizona, for example, the state already had a notice and cure procedure in place, but voters had only until Election Day to cure ballots with *missing* signatures. By contrast, voters had until five business days after Election Day to cure signature *mismatches*. In [*Arizona Democratic Party v. Hobbs*](#), plaintiffs sought an extension of the Election Day deadline for curing missing signatures. On September 10, a federal district court issued a [permanent injunction](#) giving voters who failed to sign their ballots until five business days *after* Election Day to fix the missing signature, the same amount of time voters had to fix mismatched signatures. The court [found](#) that the Election Day cure deadline, in the circumstances, failed the *Anderson-Burdick* test even under “the most deferential level of scrutiny” and constituted a procedural due process violation under the *Mathews* test.

But on October 6, the U.S. Court of Appeals for the Ninth Circuit put the district court’s order [on hold](#) while the state litigated its appeal. The Ninth Circuit panel concluded that the state was likely to win on appeal because the requirement that voters supply a missing signature by Election Day imposed only a “minimal” burden on the voter. The panel said “the public interest is well served by preserving Arizona’s existing election laws, rather than by sending the State scrambling to implement and to administer a new procedure for curing unsigned ballots at the eleventh hour.” The court noted that the U.S. Supreme Court had repeatedly admonished lower federal courts not to change the rules of an election in the run-up to that election. As of the time of writing, the appellate court has yet to rule on the merits.

Similarly, plaintiffs in Ohio sought to enjoin the state’s policy of rejecting ballots for signature mismatch without giving voters what plaintiffs deemed to be adequate time to cure the ballot signature deficiency. Under the state policy, election officials notified voters by mail of the ballot defect, and voters could cure it by mail. Ballots were required to be corrected within seven days of Election Day (down from 10 days, under a new law). Plaintiffs sought a longer cure period or a requirement that boards of elections promptly contact voters by telephone and email in sufficient time to correct absentee ballots rejected on the basis of signature mismatch. Plaintiffs asserted that the cure period was “particularly burdensome in light of the serious delays in delivery time the U.S. Postal Service is currently experiencing,” slowing the multiple trips through the mail required for correcting a deficient absentee ballot by mail. A federal district court in Ohio [denied](#) plaintiffs’ motion on September 27, 2020. Applying the *Anderson-Burdick* test, the court found that Ohio’s signature-matching procedures place “some burden on the right to vote ” but that this burden must be considered in the context of “the alternative voting opportunities that Ohio provides.” The court further concluded that the state’s “substantial” interests in preventing fraud, promoting confidence in elections, and maintaining orderly election administration outweighed the “moderate burden” on the right to vote. The court applied similar reasoning to plaintiffs’ procedural due process claim, noting that plaintiffs failed

to demonstrate that the state's cure period and process deprived voters of their liberty interest in voting absentee and the state's interests were substantial.

In sum, although lawsuits seeking a notice and cure procedure for signature defects were among the most successful mail voting claims brought by voting rights advocates, plaintiffs did not win in all cases. For fundamental-right-to-vote claims, courts did not agree on the severity of the burden placed on a citizen's right to vote when their mail ballot was rejected for signature defects without a notice and cure process. And courts did not agree on the weight of the state interest served by not having a notice and cure procedure in place. Courts also disagreed on how to analyze procedural due process claims regarding election laws and on whether voting absentee, and even voting at all, constituted a state-created liberty interest subject to procedural due process protections under *Mathews v. Eldridge*. They also disagreed on whether to use the *Mathews* test or *Anderson-Burdick* test for procedural due process challenges to election schemes that rejected ballots without notice and cure. Several district courts, including the [Western District of Texas](#) (in *Richardson*), concluded or just assumed that rejection of mail ballots for signature mismatch without an opportunity for the voter to cure implicated a cognizable state-created liberty interest and applied [the Mathews test](#). In contrast, the Fifth Circuit and Sixth Circuit appeared to assume that there was not a liberty interest (though the Sixth Circuit [declined](#) to take a clear position).³ And, in *Richardson*, the Fifth Circuit rejected *Mathews* in favor of applying the more flexible *Anderson-Burdick* test.

Witness or Notary Requirements

Before the coronavirus pandemic, [12 states](#) required mail voters to have either a witness or a notary public sign the return envelope, the back of the ballot, or a certificate to affirm the identity of the voter: the battleground states of North Carolina and Wisconsin, as well as Alabama, Alaska, Louisiana, Minnesota, Mississippi, Missouri, Oklahoma, Rhode Island, South Carolina, and Virginia.

The specifics of these witness requirements [varied](#) by state. Most states required the ballot to be signed by a single witness or a notary. Alabama required the signature of [two witnesses or a notary](#). [Oklahoma](#) and [Missouri](#) required the ballot to be notarized but provided alternatives for voters incapacitated or confined due to illness or disability. [Minnesota](#) required a witness or a notary but stipulated that the witness must be a registered voter in the state—a requirement that made absentee voting difficult for a voter who was living temporarily in another state. A

³ Similarly, on October 2, 2020, in *New Georgia Project v. Raffensperger*, the Eleventh Circuit rejected the application of the *Mathews* test to a state law that set the receipt deadline for absentee ballots to be Election Day, claiming that to treat this law as a cognizable liberty interest “would stretch concepts of due process to their breaking point.”

few states took legislative action to relax these requirements during the pandemic. North Carolina, for example, [reduced](#) its requirement from two witness signatures to one for the 2020 elections.

Witness requirements can be particularly [confusing](#) to voters and witnesses, as they often include multiple components—the witness’ signature, printed name, address, and date of signature—each in a specific location on the back of either the ballot’s return envelope or the inner “secrecy sleeve” (an envelope that goes inside of the outer return envelope), or on the back of the ballot or on a separate certificate document. In North Carolina, in the 2016 general election, [2,700 absentee ballots](#), or 55% of all rejected absentee ballots, were rejected due to witness errors.

Election season lawsuits in 2020 challenged witness or notary requirements in every state that had them. Plaintiffs generally asked courts to either suspend the requirement during the pandemic or at least require a notice and cure procedure that would enable voters to fix witness and notary-related mistakes. Plaintiffs brought a host of federal and state constitutional and statutory claims. Several states approved consent decrees in response to the lawsuits, and some of those consent agreements were challenged by intervenors. In cases where courts ruled on the merits of the witness requirements, the results were mixed, with state law generally proving a more fruitful avenue for plaintiffs than federal law.

Legal Claims

The most common federal claim alleged that requiring the absentee voter to obtain a witness or notary placed an unconstitutional burden on plaintiffs’ fundamental right to vote, in violation of the First and Fourteenth Amendments to the U.S. Constitution (see lawsuits in [Alabama](#), [Louisiana](#), [Minnesota](#), [Kentucky](#), [Oklahoma](#), [South Carolina](#)). For these claims, plaintiffs argued that the witness requirements, as applied during the coronavirus pandemic, failed the *Anderson-Burdick* test because they left voters, particularly immuno-compromised voters, with an untenable choice between their health and their vote.

Plaintiffs also alleged that the witness or notary requirements violated the equal protection clause of the U.S. Constitution (see lawsuits in [South Carolina](#), [Alabama](#)) and Section 2 of the Voting Rights Act (see lawsuits in [Louisiana](#), [South Carolina](#), [Virginia](#)) because they had a disproportionately adverse impact on Black voters. Plaintiffs also argued that witness requirements constituted an impermissible “test or device” in violation of Sections 3(b) and 201 of the Voting Right Act (VRA) (see lawsuits in [Alabama](#), [South Carolina](#)) and that witness requirements, as applied to voters with disabilities who feared exposure to the coronavirus, violated Title II of the Americans with Disabilities Act (ADA) (see lawsuit in [Alabama](#)).

Plaintiffs additionally challenged witness or notary requirements under various state constitutional and statutory grounds, including under the state constitutions of [Alaska](#), [Minnesota](#), [Missouri](#), and [North Carolina](#), and under [Oklahoma state law](#).

Consent Decrees and Settlements

Several states voluntarily relaxed or waived witness or notary requirements in the face of legal challenges during the coronavirus pandemic. [Missouri](#), for example, in response to a [lawsuit](#), relaxed its requirement that absentee ballots be notarized. Under its new rules, voters who chose to vote absentee because they were at a heightened risk of complications from COVID-19 were not required to have their mail ballot notarized.

Some of the states that voluntarily relaxed or waived their witness requirements in the face of litigation faced new legal challenges to those changes. In Virginia, Rhode Island, and Minnesota, for example, Republican Party groups sought, unsuccessfully, to stop these changes. In Virginia, despite opposition from the state Republican Party, a federal district court approved a [consent decree](#) that waived the state's witness requirement for the November general election. In Rhode Island, a U.S. district court also approved a [consent decree](#) that waived the state's witness requirement during the pandemic, and the Republican National Committee (RNC) [appealed](#) to the First Circuit U.S. Court of Appeals seeking a stay of the district court order. The First Circuit allowed the RNC to intervene but [upheld](#) the district court order finding that, under the *Anderson-Burdick* test, plaintiffs were likely to succeed on the merits. The RNC then filed a stay petition with the U.S. Supreme Court, which [denied the petition](#) on the grounds that the RNC did not have standing. The Supreme Court's order noted that, unlike in some other cases, here "the state election officials support the challenged decree, and no state official has expressed opposition."

In Minnesota, the Trump campaign and RNC [sought to intervene](#) in three different lawsuits in which a state official approved a consent decree relaxing the state's witness requirement. The intervenors cited concern about voter fraud and alleged collusion between plaintiffs and the Minnesota secretary of state, a Democrat. A state judge [approved the consent decrees](#) in two of the lawsuits, while a federal judge [denied the consent decree](#) in the third. The Republican intervenors appealed the consent decree approved in the state court cases but subsequently [dismissed](#) their appeals, and the consent decrees stood.

In North Carolina, Republican opposition to a settlement relaxing the state witness requirement was more successful. After the North Carolina State Board of Elections (NCSBE) [settled a suit](#) brought in state court by North Carolina Alliance for Retired Americans, the State Board issued

[new guidance](#) in September to make both witness and signature defects [broadly curable](#) via affidavit. The Trump campaign and North Carolina General Assembly leaders [objected](#) to the settlement and new guidance. After a dizzying array of inter-related state and federal lawsuits and, *after early voting had already started and many absentee ballots had already been submitted*, a federal court issued an [injunction](#) on October 14 that split the baby. It [required state officials](#) to reject ballots that lacked a witness signature altogether but to provide a standard notice and cure process for other ballot defects, such as an incomplete witness address, a witness or voter signature on the wrong line, or a missing voter signature. The decision was appealed (primarily on other issues in the case) but [left in place](#) by an en banc ruling of the Fourth Circuit U.S. Court of Appeals, and an October 28 [decision](#) of the U.S. Supreme Court to deny injunctive relief.

Federal Law Challenges to Witness Requirements

While some states agreed to consent decrees, other states fiercely defended their absentee ballot witness or notary requirements. In federal courts, plaintiffs who challenged these requirements saw some success on the merits at the district court level, but largely lost on appeal. Cases in Alabama, Wisconsin, and South Carolina illustrate the point.

In Alabama, in the face of extensive litigation before the state's July primary runoff, state officials defended the state's requirement that absentee ballots be submitted with the signature of *two* witnesses or a notary. In [People First of Alabama v. Merrill](#), a U.S. district court judge issued a preliminary injunction that barred the state from enforcing its witness requirement in the July 14 runoff, but *only* for voters who provided a written statement outlining a medical condition that placed the voter at a severe risk if the voter were to contract COVID-19. The state appealed the narrow exception all the way to the U.S. Supreme Court, which [stayed](#) the preliminary injunction on July 2, reinstating the witness requirement just 12 days before the state's primary. With an eye to November, the plaintiffs continued to litigate at the district court and won a permanent injunction against the witness requirement for the general election. But on October 13, the Eleventh Circuit [stayed](#) the district court's permanent injunction, effectively reinstating the witness requirement. Despite all the litigation, the state's requirement of two witnesses or a notary remained intact for the general election, with no exception for immuno-compromised voters.

Similarly, in [DNC v. Bostelmann](#), a federal district court [suspended](#) Wisconsin's witness requirement during the pandemic. But the Seventh Circuit U.S. Court of Appeals [overturned](#) the decision, concluding that the district court "did not give adequate consideration to the state's interests." It cited precedent that "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government."

A notable and high profile example of the legal whiplash of witness or notary litigation during the 2020 election season was [Middleton v. Andino](#) in South Carolina. In May, a federal district court in South Carolina issued a [preliminary injunction](#), suspending the witness requirement for the June primary due to pandemic-related concerns. The litigation continued in two separate lawsuits seeking to extend the injunction to November. In September, a federal district court [enjoined](#) the witness requirement for the November election as well. On appeal, a Fourth Circuit panel [stayed](#) the injunction (thus restoring the witness requirement), but one week later, the Fourth Circuit, [ruling en banc](#), reversed and reinstated the injunction (thus suspending the witness requirement). Finally, on October 5, *after absentee voting had already started*, the U.S. Supreme Court [reversed](#) the Fourth Circuit's en banc injunction (thus reinstating the witness requirement). The Supreme Court exempted ballots already received by the state and any ballots received within two days of the order (as these ballots were presumably submitted in reliance on Fourth Circuit ruling that no witness was required). Justice Brett Kavanaugh, in concurrence, offered two reasons for his vote with the majority. First, he explained, the state's legislature "should not be subject to second guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." And second, he said, under the *Purcell* principle, the district court should not have made procedural changes so close to the election. (The district court issued its preliminary injunction in May, which was in effect for the state primary, and its permanent injunction on September 18, 2020.)

Although most federal court claims were constitutional claims, plaintiffs also brought federal statutory claims under the Americans with Disabilities Act (ADA) and the Voting Rights Act. In [People First of Alabama v. Merrill](#), a U.S. district court addressed the issue of whether, in the context of the pandemic, Alabama's requirement of two witnesses or a notary violated the ADA by discriminating against individuals who were particularly vulnerable to developing serious complications with COVID-19. The court [found](#) that the requirement did not violate the ADA "[b]ecause the witness requirement is deemed a condition precedent to eligibility under state law, and essential eligibility requirements are not subject to reasonable modifications." In [Thomas v. Andino](#), another court rejected a claim that South Carolina's witness requirement is a "test or device" prohibited under the Voting Rights Act. The court [construed](#) the witness requirement as necessary to establish the voter's identity, not a qualification to vote and, therefore, not the kind of test or device that Section 201 was enacted to prohibit (such as literacy tests).

State Law Challenges to Witness Requirements

Plaintiffs had some success challenging witness requirements under state law. Plaintiffs prevailed in Alaska. On October 12, the Alaska State Supreme Court upheld a preliminary

injunction, [waiving](#) the state's witness requirement for the general election and affirming a lower court's [conclusion](#) that plaintiffs were likely to succeed on the merits. Applying a state law balancing test similar to *Anderson-Burdick*, the court reasoned that the witness requirement, as applied during the pandemic, impermissibly burdened the right to vote in violation of Article 1, Section 5 of the Alaska Constitution. Having to choose between voting and protecting one's health, the court said, placed a severe burden on the right to vote.

In Oklahoma, the state supreme court [struck down the notarization requirement](#) for absentee ballots on the grounds that it contravened a state law (12 O.S. §426) that required the state to accept, for state government purposes generally, personally signed statements made under penalty of perjury. The state legislature amended that state law two days later, to reverse the Oklahoma Supreme Court and reinstate the notarization requirement; but, the new law made an exception for the June 30, 2020, primary and any other election within 45 days of a state-declared emergency. During that primary and such emergencies, voters would be permitted to sign and submit a statement under penalty of perjury and send in a photocopy of an approved identification as an alternative to notarization. Plaintiffs in a [new lawsuit](#) challenged this new requirement in federal district court on U.S. constitutional grounds, but the court [denied the relief](#). The court noted that fraud is an "exceeding rarity in Oklahoma history" and, nonetheless, ruled that the state's interests in preventing voter fraud were "legitimate and weighty."

As noted above, lawsuits that brought state constitutional claims in [Missouri](#), [Minnesota](#), and [North Carolina](#) all resulted in consent decrees that relaxed or eliminated the witness or notary requirements.

Part IV Conclusion

There was a large volume of litigation in 2020 regarding how states verified the identity of voters who cast mail ballots. Lawsuits challenging states' signature verification practices were among the most successful. Several states voluntarily altered their signature verification policies after being sued. Some issued new signature matching guidelines that were likely to result in fewer erroneous ballot rejections (e.g. Michigan, New Jersey). Others decided not to reject ballots for signature mismatches at all (e.g. Pennsylvania). Several voluntarily implemented procedures to provide voters an opportunity to cure signature defects to avoid having their ballots rejected (e.g. Maine, New York, Louisiana, Mississippi). Court rulings on the merits of legal challenges in cases seeking implementation of notice and cure procedures for signature defects were mixed. Voting rights advocates succeeded in several district courts (e.g. South Carolina, North Carolina, Indiana). But they lost in the Fifth Circuit and a district court in

Tennessee, and the Sixth Circuit indicated it would likely reject such claims. Courts did not agree on the outcome of the *Anderson-Burdick* balancing test as applied to laws that rejected mail ballots for signature mismatch without an opportunity to cure. Nor did they agree on the question of whether voting absentee, or even voting at all, constituted a state-created liberty interest subject to procedural due process protections under *Mathews v. Eldridge* analysis.

Plaintiffs who challenged witness or notary requirements for absentee ballots won favorable concessions and consent decrees in several states (e.g. Missouri, Virginia, Rhode Island, and Minnesota). They also prevailed in a couple of states where they brought state law claims (e.g. Alaska and Oklahoma). For federal law claims decided on the merits, however, though plaintiffs saw some success at the district court level, they generally saw their claims fail on appeal (e.g. Alabama, Wisconsin and South Carolina).

In the end, [predictions](#) that the increased use of mail ballots in November 2020 could result in a higher *percentage* of ballots being rejected were not borne out. The [early data](#) indicates that, despite the dramatic increase in first-time mail voters, election officials [rejected a lower percentage of mail-in ballots](#) in November 2020 than in previous years.⁴ Of the [23 states that have reported](#) so far, 20 states reported lower rates of absentee ballot rejections in November 2020 compared with November 2016. Nonetheless, because mail voting as a percentage of overall voting [increased substantially](#) in November 2020, [several states](#) saw an increase in the absolute *number* of ballots rejected as compared with prior years, even though the *percentage* of rejections declined.

In the aftermath of the 2020 general election, legislators in many states began [seeking to shore up their voter verification laws](#). Proposed legislation in Pennsylvania and South Carolina—states where courts enjoined, respectively, the use of signature matching as the basis of rejecting a ballot and the practice of rejecting a ballot for signature mismatch with no opportunity to cure—seeks to bring back the enjoined practices. Bills in several states seek to make it harder to satisfy witness requirements. A bill in Arizona seeks to require that all mail ballots be notarized. A bill in South Carolina would require witnesses to include their driver's license or state voter registration number. And two Virginia bills would require witnesses to print their names and provide their residential address. Just as voters are learning the details of how to vote by mail, proposed legislation in states around the country would make it harder to complete an absentee ballot.

⁴ As of the time of writing, the 2020 general election data from the Election Administration and Voting Survey (EAVS), which includes granular data on the numbers of and reasons for mail ballot rejections, are not yet available.

Part V: Efforts to Halt Vote-By-Mail Expansion

Authors: Alexander Perry and Christopher Meyer

The potential disruption of in-person voting because of the coronavirus pandemic prompted [varied reactions](#) from state governments during the 2020 election. Some states, such as California, Nevada, New Jersey, and Vermont, announced plans to send mail-in ballots to all registered voters. Other states, such as [Connecticut](#), expanded the list of acceptable excuses for absentee voting to include fear of contracting COVID-19. But not everyone supported the expansion of mail voting, even as a temporary response to the pandemic. In several states, such as Texas and Alabama, state legislatures declined to expand or facilitate access to mail voting. Just as some plaintiffs sought to expand opportunities for absentee voting, others sought to restrict it.

This Part—the last in a five-part report on mail voting litigation—discusses the legal challenges filed prior to Election Day that were aimed at *stopping* the expansion or facilitation of mail voting during the 2020 elections.⁵ These included challenges to state statutes, regulations, and policies that authorized the automatic delivery of ballots or ballot applications to all registered voters, relaxed restrictions on third-party collection of ballots, expanded options for the return of mail ballots, and suspended requirements for witnesses. Overall, opponents of the expanded availability of absentee voting generally failed to win court orders to bar such expansion.

Mail-voting opponents made three central arguments against laws and policies that expanded or facilitated mail voting.

First, opponents claimed that expanded mail voting would lead to fraudulent votes, thereby diluting the value of legal votes, in violation of the First and Fourteenth Amendments. State and federal courts across the country uniformly rejected this argument, noting the paucity of evidence that mail ballots were particularly susceptible to widespread [fraud](#). Unless evidence of widespread malfeasance emerges, which it did not in the 2020 general election, this argument appeared unlikely to win over courts in later election cycles.

Second, mail-voting opponents argued that state election officials, such as governors, secretaries of state, and county election officials, lacked the legal authority to implement measures that conflict with state statutes that govern mail voting. The results in these cases

⁵ For a discussion of the post-Election Day lawsuits, see the Stanford-MIT Healthy Elections Project's [Post-Election Litigation Analysis & Summaries](#).

were mixed, because the cases were fact-specific and depended on the measure challenged, the authority of the state official in question, and the state law.

Third, mail-voting opponents argued that state courts lacked authority to invalidate state election statutes on the grounds that they violate state constitutions. Although lower federal courts tended to reject this argument, conservative justices of the U.S. Supreme Court indicated openness to such challenges in the future. Thus, recent litigation against the expansion of mail voting may have laid the groundwork for a more enduring overhaul of voting rights jurisprudence in future elections.

Fraud and Vote Dilution

Plaintiffs in nine states—[Pennsylvania](#), [Nevada](#), [Virginia](#), [New Jersey](#), [Illinois](#), [Montana](#), [Hawaii](#), [Vermont](#), and [Texas](#)—challenged state and county regulations that expanded access to mail ballots, arguing that mail voting would increase the incidence of voter fraud. Six of those cases reached decisions on the merits. The plaintiffs in Virginia [voluntarily](#) withdrew their case, and federal judges in Nevada and Vermont dismissed the lawsuits on [standing grounds](#), finding that the plaintiffs had not alleged a particularized injury, because any potential vote dilution would affect *all* voters, not just the plaintiffs in the lawsuits. In Nevada, although the federal case was dismissed, a [similar case](#) remained in state court.

The pre-general election lawsuits challenging state expansions of mail voting on the grounds of vote dilution followed a consistent formula. The plaintiffs asserted that mail ballots were inherently prone to fraud and that the states had failed to establish basic minimum safeguards to ensure ballot reliability. The complaints often included anecdotal references to individual instances of voter fraud at the state or local level, using examples from within and outside the state where the suit was filed. The complaints then alleged that the law or policy challenged would result in a spike in fraudulent mail ballots that would dilute validly cast votes, thereby depriving legitimate voters of their right to vote under the First and Fourteenth Amendments.

The Pennsylvania lawsuit [Trump for President v. Boockvar](#) is a prominent example of this pattern of legal argument. In this federal court case, filed in June, the Trump campaign challenged the state's recently passed mail voting law, Act 77, which [adopted](#) no-excuse mail-in voting for any registered voter. The complaint [alleged](#) that mail voting “is the single greatest threat to free and fair elections.” It quoted from a 2005 [report](#) prepared by the Commission on Federal Election Reform, which was co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker, that noted, “[a]bsentee ballots remain the largest source of potential voter fraud.” The complaint also alleged that Pennsylvania has a history of fraudulent elections and

that mail ballots would create administrative difficulties and encourage hard-to-detect ballot harvesting.

Lawsuits in other states followed a similar playbook. In federal court in New Jersey, the Trump campaign [challenged](#) Governor Phil Murphy's Executive Order 177 (codified by the legislature as A4475), which directed the state to [automatically](#) send mail ballots to all registered voters. After citing allegations of voter fraud in a New Jersey city council election earlier that year, the complaint argued that the executive order established an "unauthorized voting system [that] facilitates fraud and other illegitimate voting practices, and therefore violates the Fourteenth Amendment to the U.S. Constitution." The Trump campaign also [filed](#) a federal lawsuit in Montana, challenging Governor Steve Bullock's [directive](#) authorizing "universal vote-by-mail procedures" for federal elections. Citing alleged examples of mail ballot fraud in New Jersey and Nevada, the complaint [concluded](#) that fraud is "guaranteed when hundreds of thousands of ballots are indiscriminately distributed."

Federal courts roundly rejected the challenges to the expansion of mail voting that were based on vote dilution from potential fraud. In the Pennsylvania case, *Trump v. Boockvar*, the court [granted](#) summary judgment for Pennsylvania on the grounds that the plaintiffs lacked standing because they failed to allege a concrete injury. In a 137-page opinion that touched on multiple aspects of state and federal law, the court held that the Trump campaign's voter fraud claims were speculative and were "at most ... a sequence of uncertain assumptions." The court also rejected the Trump campaign's claims that disparate placement of drop boxes in Pennsylvania counties would lead to vote dilution. The court concluded that disparate drop box placement was not an equal protection violation because "the result of . . . uneven implementation [of drop boxes] will not be votes in certain counties being valued less than others . . . [or]. . . voters who vote in person [having] their votes valued less Instead, if Plaintiffs are right, any unlawful votes will dilute all other lawful votes in the same way."

Judges in Montana, Illinois, and New Jersey took a similarly skeptical view. In Illinois, a federal judge [held](#) that the plaintiff's allegations of voter fraud relied "primarily on unsupported speculation and secondarily on isolated instances of voter fraud in other states and historical examples from Illinois...." In New Jersey, a judge [concluded](#) that the Trump campaign had "faile[ed] to connect...past instances of voter fraud with the relief that they [sought]." And in Montana, a judge tersely [described](#) the allegations of widespread voter fraud in Montana as "fiction."

State courts were equally skeptical. In a Nevada district court for Clark County, which includes Las Vegas, the Elections Integrity Project challenged a statute ([AB 4](#)) that authorized state officials to send mail ballots to every registered voter in the state and permitted third-party

ballot collection. In an [order](#) denying a preliminary injunction, a Nevada state court concluded that the plaintiffs' allegations of voter fraud were speculative and lacked "any concrete evidence." On October 7, the Nevada Supreme Court [upheld](#) the decision on the same rationale.

Lack of Legal Authority of State Executives

Several challenges to measures that expanded mail voting in 2020 argued that state officials lacked the legal authority to adopt or implement such measures. There was considerable overlap between this category of lawsuits and lawsuits that focused on alleged voter fraud. Several of the alleged potential fraud cases discussed above—such as those in [Montana](#) and [Texas](#), for example—also argued that state officials expanded mail voting without the statutory authority to do so. The outcome of these cases was fact-specific and depended on the election measure challenged, the scope of authority of the state official who implemented it, and state law.

Some cases made executive overreach the centerpiece of their argument. In Montana, for example, the Trump campaign argued that Governor Steve Bullock issued his executive order in "direct usurpation of the legislature's authority." The court rejected that claim, [holding](#) that Governor Bullock had the authority to suspend the state's mail voting statute.

In Michigan, plaintiffs filed a state court lawsuit challenging Secretary of State Jocelyn Benson's decision to send mail ballot applications to all registered voters. The [complaint](#) alleged that the secretary of state had no authority under state law to mail out the applications. After [denying](#) the plaintiff's motion for a preliminary injunction, the state trial court [granted summary judgment](#) for the secretary of state. The court concluded that Michigan law gave the secretary "clear and broad authority to provide advice and direction with respect to the conduct of elections and registrations." This included the authority to mail unsolicited absentee ballot applications, the court concluded, because the applications informed voters about their "self-executing right" under the Michigan constitution to cast an absentee ballot. A Michigan appellate court later [upheld](#) the ruling.

Other cases challenged the authority of local election officials. In Texas, on August 25, Chris Hollins, the clerk of Harris County, [announced](#) that his office would send mail voting applications to the more than two million registered voters in the county. Texas Attorney General Ken Paxton, on behalf of the state, [sought](#) an injunction in state court to stop the action. He argued that a county clerk "lacks the authority to send vote-by-mail applications to every registered voter in Harris County" and that the practice risked leading ineligible voters to

cast fraudulent mail ballots. The district court [declined](#) to issue the injunction, and an intermediate appellate court [affirmed](#) the lower court decision. The appellate court noted that the claims of potential fraud were “speculative” and that the attorney general had not proven that voters would intentionally violate Texas law by fraudulently applying for mail ballots. The Texas Supreme Court eventually [struck down](#) the decision, however, holding that the Texas Elections Code did not authorize county clerks to send unsolicited mail ballot applications, especially to voters who were ineligible to vote-by-mail in the first place because they lacked one of the enumerated excuses required by state law.

Local officials in other states also saw little success in bucking state-level guidance. An Arizona state court [ruled](#) that Adrian Fontes, the clerk of Maricopa County, did not have the authority to instruct absentee voters to cross out any erroneous selection they marked on their ballots, rather than request a new ballot. The Arizona Supreme Court eventually [affirmed](#). In Iowa, the state supreme court [ruled](#) that election officials in three Iowa counties did not have the authority to mail absentee ballot applications with pre-filled voter information, because the Iowa secretary of state had ordered counties to send only blank applications.

Lack of Legal Authority of State Courts

The most significant case on lack of authority relates to the ability of state courts to expand mail voting access to protect rights guaranteed by a state’s constitution—in this case, Pennsylvania’s constitution. (This case is also discussed in the “Ballot Receipt Deadlines” section in Part II.) Under the Pennsylvania Statutes, completed mail ballots [must](#) be received by election officials no later than 8 p.m. on Election Day in order to be counted. In mid-September, the Pennsylvania Supreme Court [ruled](#) that enforcing the Election Day deadline during the coronavirus pandemic would violate the Pennsylvania constitution’s [Free and Equal Elections Clause](#). That clause requires elections to be “free and equal” and bars any “civil or military” power from “interfer[ing] to prevent the free exercise of the right of suffrage.” The majority on the state’s highest court concluded that the pandemic was functionally a “natural disaster” that threatened equal access to the right to vote, in violation of the state constitution. As a remedy, the court ordered state officials to count ballots that arrive within three days of Election Day, “unless a preponderance of the evidence demonstrates that [the ballot] was mailed after Election Day.”

On September 28, in *Republican Party of Pennsylvania v. Boockvar*, the Trump campaign filed an [application](#) with the U.S. Supreme Court, seeking an emergency stay against the Pennsylvania Supreme Court order to extend the deadline. Among other things, the filing argued that the Pennsylvania Supreme Court’s decision violated the [Elections Clause](#) of Article I of the U.S.

Constitution, which states that the “Times, Places, and Manner” of elections to federal office “shall be prescribed in each State by the Legislature thereof” By extending the deadline, the petitioners argued, the Pennsylvania Supreme Court was supplanting the state legislature’s authority to determine the “Times, Places, and Manner” of the election.

On October 19, the U.S. Supreme Court issued its order [denying](#) the emergency stay application. With one seat vacant on the high court, due to the death of Justice Ruth Bader Ginsburg, the court’s 4-4 tie on the issue left the Pennsylvania Supreme Court decision intact.

Because tied Supreme Court rulings have no precedential value, the Pennsylvania petitioners’ Elections Clause argument remains unresolved by the U.S. Supreme Court. If adopted in the future, it would effectively invalidate state court rulings that state election statutes violate state constitutions. A literal and narrow interpretation of the word “legislature” in the Elections Clause could invalidate efforts by state courts to protect voting rights guaranteed by state constitutions by, for example, extending absentee ballot deadlines or augmenting ballot delivery options. Three conservative justices adopted a similar argument as an [alternative](#) means of resolving *Bush v. Gore* in 2000. There, the concurring justices argued that “to attach definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate [the Court’s] responsibility to enforce the explicit requirements of [the Electors Clause].”

It is worth noting that the U.S. Supreme Court has already endorsed a more expansive reading of the Elections Clause than the one advanced by the Pennsylvania petitioners in *Republican Party of Pennsylvania v. Boockvar*. In 2015, in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, a 5-4 majority [concluded](#) that the word “legislature” in the Electors Clause of Article I of the U.S. Constitution means the “lawmaking power” of a state. Writing for the majority, Justice Ginsburg rejected a narrow interpretation of the word “legislature” that encompassed “the legislative body alone.” Instead, she said, a state’s “legislature” can include the citizen initiative process and executive vetoes. Her opinion did not explicitly address whether state court decisions grounded in state constitutional law are also part of a state’s “lawmaking power.”

The fact that four justices would have stayed the Pennsylvania Supreme Court decision suggests that a more conservative U.S. Supreme Court might, in the future, adopt the petitioners’ argument. The Court [refused](#) to expedite its consideration of the petition and then denied certiorari on February 22, 2021. With the confirmation of Justice Ginsburg’s replacement, Justice Amy Coney Barrett, the possibility exists that this issue could be raised again and substantively resolved by a majority of the Court. Thus, *Boockvar* foreshadows the potential of a significant development for election jurisprudence.

Part V Conclusion

On balance, litigation opposing state measures to expand mail voting before the primary and general elections of 2020 favored state officials who sought to meet the surge in demand caused by the coronavirus pandemic. Challenges based on vote dilution and the potential for widespread fraud generally failed on the merits, with judges ruling that the alleged voter fraud claims were too speculative to warrant relief or that plaintiffs lacked standing because they failed to identify injuries that were sufficiently particularized or concrete. Challenges based on claims that state officials acted outside of their authority were mixed, depending on the particular facts and circumstances of each case. However, the U.S. Supreme Court's 4-4 split in *Republican Party of Pennsylvania v. Boockvar* raised the prospect of a potential new interpretation of the Elections Clause of Article I of the U.S. Constitution. If adopted, it would restrict the ability of state courts to strike down state election laws that violate state constitutions and impede the ability of state election officials to adapt state election laws to address a public health crisis.

Conclusion

This report surveyed the vast array of lawsuits relating to all aspects of mail voting in 2020, the year of the coronavirus pandemic. Part I explored challenges to absentee ballot application procedures and eligibility requirements, based largely on healthy concerns about the possibility of becoming infected with the coronavirus while voting in-person. These challenges were almost universally rejected. Courts chose instead to defer to legislative or executive decisions, in some cases resulting in the invalidation of tens of thousands of absentee ballot applications.

Part II investigated challenges to ballot submission procedures. Plaintiffs had little success challenging ballot postage requirements or secrecy sleeve requirements and had mixed success in their accessibility challenges and requests for Election Day receipt deadline extensions.

Part III analyzed lawsuits that sought to expand options for returning absentee ballots. Challenges to laws restricting assistance to absentee voters had limited success; challenges to restrictions on the availability of ballot drop boxes had mixed results; and, challenges to operational changes in the U.S. Postal Service were more successful, with numerous federal district courts enjoining the postal service's operational changes and ordering the USPS to conduct emergency sweeps of its facilities to mail out delayed ballots.

Part IV looked at challenges to voter verification requirements for absentee ballots, such as signature verification and witness requirements. Lawsuits challenging these requirements resulted in substantial changes. Many such lawsuits led to consent decrees or voluntary dismissals, after states voluntarily adopted new voter verification policies likely to reduce the rejection rate of mail ballots. Some states issued new signature matching guidelines, and others decided not to reject ballots for signature mismatches at all or not to reject them without providing voters an opportunity to cure signature or witness-related defects to avoid having their ballots rejected.

Lastly, Part V explored lawsuits brought by claimants seeking to narrow the ability of voters to vote by mail. These lawsuits argued that expanded mail voting would lead to fraudulent votes, that state election officials lacked the legal authority to implement measures that conflict with state statutes, and/or that state courts lacked authority to invalidate state election statutes on the grounds that they violate state constitutions. The claims that alleged voter fraud or challenged the legal authority of the executive branch made very limited headway, while the charges leveled against state courts were mixed.

Across all domains of mail voting litigation, plaintiffs brought state and federal, statutory and constitutional claims. Courts often applied the *Anderson-Burdick* balancing test, which applies a sliding level of scrutiny, to conclude that barriers to voting did not sufficiently burden the franchise. Or they cited the *Purcell* principle, to defer to state legislative guidelines as an election approached. Courts did not agree on whether and when the *Matthews* test applied to procedural due process claims challenging the rejection of votes based on signature or witness defects without providing the voter an opportunity to cure.

Based on this memo's survey of the major election litigation related to mail voting during the coronavirus pandemic in the 2020 election cycle, several trends emerged:

- The courts were generally reluctant to expand access to absentee ballots, particularly in the months leading up to the elections, highlighting the need for legislative and executive action well in advance of Election Day to change election rules;
- The federal appeals courts seemed skeptical that mail ballot submission and delivery requirements—such as secrecy sleeves, receipt deadlines, and bans on ballot collection—unduly burden the right to vote, even where there is little-to-no evidence that such requirements are justified by actual and potential widespread voter fraud;
- There is a value to voting rights advocates to consider non-constitutional claims (such as the Administrative Procedure Act claims against USPS or state law claims based on the state's Election Code) in combating voting restrictions, especially given courts' increasingly narrow reading of the federal constitution's voting protections;
- There is a likelihood of frivolous claims of voter fraud and an ongoing need for transparent safeguards to prove the integrity of elections; and
- There is division among courts regarding whether voting generally, and absentee voting in particular, is a state-created liberty interest subject to procedural due process protection under the Fourteenth Amendment. The resolution of this question could determine the extent to which the Constitution requires election officials to provide voters an opportunity to cure signature and witness defects before rejecting their ballots.
- The paradigm-shifting argument of plaintiffs in *Republican Party of Pennsylvania v. Boockvar*—that only state legislatures may change election rules—if adopted by the Supreme Court, could significantly curtail the ability of state executive officials and election officials to adapt voting policies and practices as exigencies emerge and curtail the ability of state courts to strike down state election laws that violate state constitutions.

Election officials [praised](#) the accuracy and security of the 2020 general election. The widespread use of [absentee voting](#) in the election may accelerate demand for and adoption of mail voting

in future elections. Indeed, legislators in several states are already advocating and introducing [bills to expand and facilitate mail voting](#). State bills include measures to permit all voters to vote by mail, to ensure voters are notified and have an opportunity to cure ballot defects before their ballot is rejected, to require the availability of drop boxes for the return of ballots, to redefine ballot deadlines from date of *receipt* to date of *postmark*, and to allow election officials to start processing mail ballots before Election Day. Additionally, on March 3, the U.S. House of Representatives passed [H.R.1](#), an expansive bill designed to make voting easier in many respects, including through expanded access to mail voting. As of the time of this report, the bill would guarantee [no-excuse access](#) to mail voting and many of the same mail voting accommodations proposed by state legislators. The bill passed the House by a vote of 220-210, largely along [party lines](#). Its passage in the Senate is expected to be more difficult and require the Senate to drop its current rules allowing filibuster (which requires 60 votes to allow a bill to proceed to a vote).

At the same time, state legislators in many states are [seeking](#) to erect barriers to voting, including absentee voting, often using baseless allegations of fraud to justify the proposed restrictions. The Brennan Center reported that, as of March 2021, [361 bills in 47 states](#) were seeking to restrict voting, including mail voting. Among the proposed measures are [bills that would curtail eligibility to vote by mail](#), prohibit the use of ballot drop boxes, make it harder to obtain a mail ballot, require notarization of absentee ballots, beef up witness requirements, add signature matching requirements, move ballot receipt deadlines earlier, make it easier to purge lists of permanent mail voters, and [block early voting on Sundays](#).

Thus, litigation over mail voting restrictions and expansions will likely continue in future elections, when mail voting advocates (it is hoped) will lack the compelling policy rationale of a nationwide pandemic. Meanwhile, the cases reviewed here underscore the importance of voter education and public awareness of mail ballot procedures and requirements in order to minimize ballot rejection rates due to voter error.

CHAPTER 5

VOTE COUNTS AND ELECTION CHALLENGES



CHAPTER 5:

VOTE COUNTS AND ELECTION CHALLENGES

INTRODUCTION

The post-election period of the 2020 general election was one of the most contentious in American history. Despite the challenging circumstances of the pandemic, election officials processed, counted, and certified each state's vote, consistent with state law. Throughout, President Trump and his allies repeatedly asserted false claims of widespread election fraud. Misinformation and wild conspiracy theories of rigged elections circulated widely and took hold in large segments of the population. Though false and unfounded, these fraud claims fueled a high volume and wide variety of challenges to the election, particularly in swing states in which President Trump lost by a narrow margin. President Trump and his allies sought several vote recounts and filed an unprecedented volume of election challenges and post-election lawsuits. The Trump campaign sought and obtained two statewide vote recounts and a statewide audit in Georgia, and recounts in two Wisconsin counties. Michigan and Georgia each performed post-election audits in attempts to boost voter confidence in the accuracy of the election results. Republican groups filed 10 election contests—state proceedings to determine whether fraud or irregularity changed the election result or rendered the outcome reasonably uncertain—across Arizona, Georgia, and Nevada. And in the two months between Election Day and January 6, the date on which Congress counted the Electoral College votes, the Trump campaign and its allies filed 76 lawsuits across 10 states pertaining to the presidential race. Lawsuits challenged the mechanics of the vote-counting process and the vote-counting machines, alleged that poll observers were not accorded proper access, and sought to stop states' certification of the vote and appointment of electors. The election challenges culminated on January 6, 2021, when scores of members of Congress voted, unsuccessfully, to overturn the results of the presidential election in one or more states.

In the end, poll workers, election administrators, and the courts rose to the occasion and professionally resolved each of these challenges in accordance with law and established procedures. None of the recounts, election challenges, audits, or lawsuits turned up any significant fraud or had any impact on the outcome of the election in any state. But the false claims of election fraud these challenges amplified fueled significant mistrust of the election process by a [majority of Republican voters](#), eroding their trust in American democracy. The research in this chapter dive into the state processes for counting and certifying the 2020 vote, the various vote recounts and election contests, and the high volume of post-election litigation, all primarily in swing states. A summary of each report follows.

Counting and Certifying the Vote in the 2020 Election

As protestors shouted “Stop the count!” outside counting operations in some states and “Count the votes!” in others, the counting of votes in the 2020 U.S. presidential contest engendered all the controversy one would expect given the narrow margin of victory in the Electoral College and the polarized political environment in which the vote counting took place. This memo addresses what happened during the vote count in the days after the November 3 election. It focuses on the six states whose electoral votes decided the next president of the United States: Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin, with addendums on Florida and North Carolina.

Recounts and Election Contests in Battleground States

Because the 2020 presidential election results in several states were quite close, stakeholders took advantage of various state laws and procedures to allege incorrect vote counts and request recounts. The Trump campaign challenged the vote counts in some states and sought recounts in others. Georgia conducted a risk-limiting audit and two statewide recounts. Wisconsin, at the request of the Trump campaign, recounted votes in Milwaukee and Dane counties. Arizona, Michigan, Wisconsin, and Pennsylvania all faced lawsuits that alleged vote-count fraud and sought recounts. Michigan Secretary of State Jocelyn Benson agreed to conduct a statewide election audit. The Trump campaign and various Republican organizations, candidates, and voters filed 10 “election contests” in Arizona, Georgia, and Nevada. None of these lawsuits or contests succeeded, and none of the recounts or audits changed the results of the election.

Post-Election Litigation Analysis and Summaries

The 2020 general election, including its post-election period, was the most litigious in modern history. In the two-month period between November 3, 2020, (Election Day) and January 6, 2021, (the date on which Congress counted the Electoral College votes), plaintiffs filed 82 lawsuits in 10 states and the District of Columbia (excluding at least 13 lawsuits related to the U.S. Senate runoff election in Georgia). Of these 82 complaints, 80 were filed by Republican plaintiffs, of which 76 pertained to the presidential race. This article summarizes the major arc of the post-election litigation, its trends, and possible long-standing repercussions. The Appendix briefly summarizes each of these post-Election Day lawsuits.

Counting and Certifying the Vote in the 2020 Election

March 10, 2021

Author: Jennifer Friedmann

Other Contributors: This paper draws on prior reports published by Stanford-MIT Healthy Elections:

- [“From Tabulation to Certification: How Battleground States Count the Vote,”](#) Jennifer Friedmann, Toni Friedman, Jesse Lazarus, Albert Park, Alex Stout, Christopher Wan, Chase Small, Sydney Frankenberg, Adriana Stephan, Alez Zaheer (October 30, 2020)
- [“Arizona 2020: Election Administration in the Coronavirus Pandemic,”](#) Haley Schwab and Joven Hundal (March 10, 2021)
- [“Georgia 2020: Election Administration in the Coronavirus Pandemic,”](#) Bree Baccaglini (March 10, 2021)
- [“Recounts and Challenges in Battleground States,”](#) Haley Schwab, Bree Baccaglini, Matthew Simkovits, Mikaela Pyatt, Amanda Zerbe, Axel Hufford, Evie Freeman, Christopher Middleton, Christopher Wan, Ali Bloomgarden, and Garrett Jensen (Last Updated: March 10, 2020)
- [“Post-Election Litigation Analysis and Summaries,”](#) Jacob Kovacs-Goodman (Last Updated: March 10, 2021)
- [“Michigan 2020: Election Administration in the Coronavirus Pandemic,”](#) Mat Simkovits (March 10, 2021)
- [“Nevada 2020: Election Administration in the Coronavirus Pandemic,”](#) Mikaela Pyatt, Alexa Gold, and Krithika Iyer (March 10, 2021)
- [“Pennsylvania 2020: Election Administration in the Coronavirus Pandemic,”](#) Axel Hufford and Sarah Maung (March 10, 2021)
- [“Wisconsin 2020: Election Administration in the Coronavirus Pandemic,”](#) Evie Freeman, Gabriella Garcia, and Maria LaBella (March 10, 2021)
- [“Behind the Scenes of Mail Voting: Signature Verification and Witness Requirements in the 2020 General Election,”](#) Ali Bloomgarden, Arushi Gupta, Garrett Jensen, Zahavah Levine, Chris Middleton, Kyra Sikora (Last Updated: March 10, 2020)

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Introduction: Overview of the Counting Process

Every state government is responsible for counting the U.S. presidential vote in their state. The processes used to count the vote vary widely by state, both in terms of each state's statutory requirements and its administration of those requirements. Each of the battleground states described below had its own set of laws and procedures that dictated when and how ballots were counted, who did the counting and reporting, and how much discretion the state government gave to local election officials. But for every state, the [procedures are split](#) into four basic steps: processing mail ballots, tabulating results, reporting results, and certifying the vote.

Processing Mail Ballots: Processing mail ballots is sometimes called [pre-processing](#) ballots because it involves scrutinizing certain features of the ballot's return envelope before the ballot can be removed from the envelope for counting. Processing may include verifying signatures, sorting ballots into batches, opening envelopes, removing ballots from envelopes and, sometimes, from inner envelopes, and flattening ballots to prepare them to be fed into tabulation equipment. Processing takes place because mail ballots—or any ballot cast in an envelope, such as absentee ballots delivered in person or some provisional ballots—must be handled differently than ballots cast by a voter who checks into a polling place to cast a vote in person. When a voter is not present, an election administrator must check the identification of the voter returning the ballot. States often look for and verify voters' signatures, to confirm that the ballot return envelope is from the registered voter to whom the ballot was sent. Some states require a witness to sign a ballot envelope as well. Once the voter's identity and other required signatures or information has been verified, the envelope is opened and the ballot is separated from any identifying information. For states that use an inner envelope (or "secrecy sleeve"), the ballot is removed from those interior envelopes as well. The ballots themselves are then flattened to ensure they can be easily fed into vote tabulating equipment at a precinct or a central tabulation facility.

The timing of mail ballot processing also varies from state to state. Some states begin processing ballots weeks in advance of Election Day, while others are allowed to begin processing only on Election Day. States that begin early often have results counted by election night. In the eight swing states discussed below, the [key dates in 2020 were as follows](#), in order of earliest processing date:

Table 1: Processing and tabulation start dates and ballot receipt deadlines for each of the 8 battleground states. Green indicates dates before Election Day (November 3, 2020), blue indicates deadlines and start dates falling on Election Day, and orange indicates deadlines falling after Election Day.

State	Processing Began	Tabulation Began	Ballot Receipt Deadline
Georgia	Sept. 15	Nov. 3	Nov. 3
Florida	Sept. 24	Sept. 24	Nov. 3
Nevada	Sept. 24	Oct. 19	Nov. 10
North Carolina	Sept. 29	Nov. 3	Nov. 12
Arizona	Oct. 7	Oct. 20	Nov. 3
Michigan	Nov. 2	Nov. 3	Nov. 3
Pennsylvania	Nov. 3	Nov. 3	Nov. 6
Wisconsin	Nov. 3	Nov. 3	Nov. 3

Tabulating the Vote: Tabulating, also known as counting, is the next step. Tabulation usually begins on Election Day at the close of the polls, but some states begin scanning ballots earlier, even though counts are not aggregated and revealed until after polls close. States generally use machines to perform the initial tabulation for speed and to prevent human error. The specific tabulation technology used in each state [varies widely](#). Generally, the tabulation process involves poll workers feeding paper ballots into machines that create a final count at the end of the day. Election workers then transport the memory devices from these scanners to a central tabulation location to be uploaded into an election management system. Results are also printed at the polling place and posted publicly. Each polling location is usually required to maintain and securely store (or transfer to the county) a paper record of its votes. Both the paper ballots cast and printouts of the aggregated initial machine counts are preserved in case of a recount. States also have processes for interpreting ballots that are not readable by the vote-counting machine, such as ones with a misspelled name for a write-in candidate. Such ballots can require manual counts by poll workers.

Reporting the Vote: Local election officials are typically required to submit their tabulations into their state's centralized results reporting system at a designated time on election night. In states that start the process of tabulating ballots before Election Day, the first results reported on election night are often results from early in-person voting and swiftly returned mail ballots. Some states require election officials to work continuously until the initial count is complete, while other jurisdictions may suspend counting for the night and resume the next morning.

Certifying the Vote: The initial results, often revealed on election night, are not yet final. The total vote count, which includes provisional ballots, mail-in ballots that are processed after Election Day, challenged ballots, and military ballots, must be verified over the coming weeks through an official canvass. The “canvass” is the official tally of votes for any given election. **Canvassing** is the procedure through which election officials verify that each ballot was correctly cast and counted. During canvassing, the materials, equipment, and results of an election are reviewed, updated, and officially recorded. Once the canvass of the ballots is completed and any discrepancies resolved, the vote totals are then certified, usually by the chief state election official. **Certification** is the process by which the results of an election are made official. Canvassing and certification are two closely related processes, and the terms are sometimes used interchangeably, but it is important to note that an election cannot be certified until a canvass has been completed. Certification usually [involves](#) a presentation of all of the canvass documentation—including certified returns, statistics, and narrative—to a canvassing board for its review and approval. Following the canvassing board’s certification of the election, the responsible election authority designated by state law will provide each candidate with a notice of certification of the election. Depending on state law, a state may conduct a [recount](#) if a candidate contests the results or the election results are very close; several states *require* recounts depending on the margin of victory.

Together, these four steps constitute how American election officials count the vote. The appendix details the laws in eight battleground states (Arizona, Florida, Georgia, Michigan, Nevada, North Carolina, Pennsylvania, and Wisconsin), describing in detail how each state performs this four-step process. The state-by-state analysis examines specific challenges or issues with the counting process in the six states where voting in the presidential race was considered very close and whose electoral voters were decisive in the 2020 election: Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.

Analysis: Counting the Vote in Battleground States

Arizona

In the days following the November 3, 2020, general election, protests outside of the elections office in Arizona's most populous county, Maricopa County in Phoenix, made the national news. The [protests](#) gave the impression of a chaotic vote-counting process—an impression bolstered by eight post-Election-Day lawsuits and the days it took for election officials to tally their results. However, the actual administration of the election—the vote counting and certification of results—unfolded in a smooth, timely, and precise manner. It constituted a remarkable feat in light of the coronavirus pandemic and Arizona's intensely partisan landscape. [Governor Doug Ducey](#) and [Secretary of State Katie Hobbs](#), members of different political parties and often political rivals, [each used their platforms](#) to instill confidence in the results and to urge for patience as the process played out.

As a predominantly vote-by-mail state, Arizona [often takes more time](#) than other states to tabulate its election results and, with the added complication of a pandemic, 2020 was no different. However, Fox News and the Associated Press accurately [called](#) the contest for Democrat Joe Biden on election night, based on early returns from mail votes—a call that held up as the rest of the votes were tallied. Voters in Arizona [cast](#) more than 3.2 million ballots and turnout neared 80% of registered voters, up from about 65% in 2018 midterm and about 74% during the presidential election in 2016. Legal challenges to the results did not impact the outcome. The ballots were counted efficiently, the canvass confirmed the initial results, post-election audits re-affirmed the accuracy of the result, and the election was certified on time.

Processing and Rejecting Ballots

Election officials rejected [27,327](#) ballots cast by Arizona voters in the November election, more than twice the vote margin of victory in the presidential contest (10,457 votes). Ballots can be rejected in Arizona for several reasons, such as a missing signature or mismatched signature, receipt of a mail ballot beyond the deadline for receipt, or improper voter registration. But the [1.19%](#) rate of rejected ballots in November 2020 represented an overall *decrease* for Arizona compared to previous elections, despite the coronavirus pandemic and late-changing registration deadlines for the 2020 election. The rejected ballot rate in Arizona has [trended downward](#) since at least 2012, following increased voter education efforts, new laws, and

improvements to election administration. Yet rejection rates varied by county: Apache County, which contains large portions of the Navajo Nation, experienced the [highest overall rate](#) of rejected ballots in the 2020 general election at 3.76%.

As in the previous three presidential elections, issues with a person's voter registration were the [most common](#) reason for rejection: statewide, 63% of all votes rejected—or more than 17,200 ballots—were cast by voters who were not registered or had an issue with their registration, such as missing the state deadline to register. Arizona, unlike 19 other states, does not have same-day voter registration.

Signature verification presented less of an issue than previous years. A [law](#) passed in 2019 with bipartisan support gave absentee voters five business days after the election to fix a mismatched signature. Experts [said](#) that change contributed to the decrease in early ballot rejections. County officials proactively contacted voters to cure any defects to their ballot return envelopes. In Maricopa County, for example, election officials texted voters to alert them to any signature issues, helping voters cure nearly [19,000](#) ballots that would have been rejected otherwise. However, because voters returned a [huge number](#) of mail ballots on Election Day, signature verification and the five-day cure period slowed the final vote tally and made it more difficult for election officials to finalize election results quickly.

The five-day period to cure a signature mismatch did *not* apply to voters who forgot to sign their ballot envelopes. Arizona automatically rejects ballots *missing* signatures after 7 p.m. on election night. In November 2020, Arizona rejected more than [2,000](#) such no-signature ballots.

Fears that there would be massive numbers of absentee ballots rejected for lateness did not materialize. There were concerns leading up to the election that the [U.S. Postal Service](#) would not be able to handle the record number of requested mail ballots. Arizona's "received by" deadline meant that ballots received at the county recorder's office *after* 7 p.m. on Election Day would be considered late and not counted. To reduce the incidence of late ballots, Secretary Hobbs produced a [public messaging campaign](#) to encourage voters to [return their ballots](#) via the post office by Tuesday, October 27—one full week before Election Day. Voters unable to postmark their ballots by October 27 were encouraged to return their ballots to an official ballot drop box or a polling place.

The public messaging campaign instructing voters to drop off their completed ballots instead of mailing them through the USPS after October 27 was successful. Many voters chose to return their early ballots in person on Election Day, rather than risk sending them in the mail and having them arrive late. In Maricopa County, an estimated [175,000 early ballots](#) were returned on Election Day (dubbed "late earlyies"). The downside of the high number of the sudden influx

of absentee ballots on Election Day, however, was that it left more ballots to be counted following Election Day. These ballots still had to be processed, with signature verification—including the five-day cure period for mismatched signatures—before they could be counted. And the so-called “late early” ballots were processed and counted last, after traditional in-person Election Day ballots.

Rejected provisional ballots did not represent a large portion of rejected ballots in the 2020 general election. The number of provisional ballots in the state dropped in 2020, largely because Maricopa County—the largest in Arizona—adopted a “vote center” model for in-person voting. Under the vote center model, voters were able to go to any vote center in the county, rather than to one specifically assigned precinct. In the 2016 presidential election, [52,173 provisional ballots](#) were cast in Maricopa County; of those, 15,250 (29%) were rejected. In the 2020 presidential election, only [18,310 provisional ballots](#) were cast in the county; of those, 12,112 (66%) were rejected. The reduced number of total provisional ballots was even more remarkable in light of the county’s increased voter turnout this election—from [74.43%](#) in 2016 to 80.51% in 2020. Maricopa vote centers effectively neutralized the state’s controversial and [heavily litigated](#) law requiring that all “out-of-precinct ballots” be rejected. However, more than [1,400 ballots](#)—across Mohave, Pinal, Pima and Apache counties, the remaining four counties that did not offer any vote centers—were rejected because they were cast in the wrong precinct.

Counting Ballots

Arizona offered a long period for voting before Election Day, and a new law allowing early tabulation of mail ballots helped produce a smooth vote count. Statewide, in-person [early voting](#) began 27 days before Election Day and continued through the Friday before Election Day. Tabulation of early ballots started 14 days before Election Day (previously it started only seven days before) (See A.R.S. § [16-550\(B\)](#)), and after confirmation from the secretary of state that all voting equipment passed any required logic and accuracy test. (Ariz. Rev. Stat. § [16-552\(A\)](#)). The 2020 election was Arizona’s first presidential election with the extended tabulation timeline, which enabled Arizona to deliver election results more quickly.

Procedures for tabulating and processing in-person ballots differed by county—some counted ballots at a central location, and others counted them at individual polling locations. Regardless of method, there were no reported issues across the state. There were some [minor hiccups](#), such as when polling places ran out of ink for their printers faster than anticipated, but these isolated issues were resolved promptly and did not cause inordinate delays. An additional issue

caused one of three computers to crash at a vote center, but that, too, was resolved in short order.

The most notable news incident occurred on November 4, 2020, outside the Maricopa County Elections Department, where a few hundred [protesters](#), many wearing pro-Trump hats and carrying firearms, chanted “Count the votes!” for hours. Many of the protesters were galvanized by an [unfounded claim](#) that pro-Trump ballots had been disqualified because voters used Sharpie pens to mark their ballots. The rumor dubbed “SharpieGate” claimed that ballots marked with Sharpies could not be counted by the voting equipment. In fact, they were able to be counted by the voting machines according to a [statement](#) by the Maricopa County Board of Supervisors. Still other protesters expressed their dismay that some media outlets, such as Fox News and the Associated Press, had called Arizona for Joe Biden on election night.

Vote counts were the central issue in several lawsuits filed against Maricopa County Recorder Adrian Fontes and Arizona Secretary of State Katie Hobbs in the wake of the election returns. All three lawsuits were dismissed without having had any effect on the results of the election. First, in response to “[SharpieGate](#),” some voters in Maricopa County filed a suit alleging that the ballots they cast in-person on Election Day were not counted by the tabulation machines because they were [given Sharpie brand markers](#) by election officials to fill out their ballots. Their lawsuit, *Aguilera v. Fontes*, claimed the voting tabulation machines could not read votes marked in Sharpie ink. Arizona officials maintained that the votes were properly counted, and the manufacturers of the machines, [Dominion Voting Systems](#), specifically recommended using Sharpies for ballot completion due to a new ballot design. As there was no evidence to support their claim, plaintiffs requested the court [voluntarily dismiss](#) the suit just three days after they filed it.

In [Donald J. Trump for President v. Hobbs](#), the Trump campaign brought suit [against Secretary of State Hobbs](#) to halt the canvass until the state could review in-person ballots that were allegedly improperly disqualified due to “overvote,” or voting for too many candidates for one office. Plaintiffs alleged that poll workers had induced voters to override alerts from a tabulation machine when a vote was flagged as unreadable, causing affected votes on those ballots to be disqualified. The case was dismissed as moot because the number of ballots at issue would not have impacted the election outcome.

In the third lawsuit, *Arizona Republican Party v. Fontes*, the state Republican Party [brought suit against Maricopa County Recorder Fontes](#) to increase the sample size of the required quality-control hand count from two percent of “polling places” to two percent of “precincts.” While this plan may have delayed vote counts, the case was ultimately dismissed as well.

Reporting Results

On election night, Fox News and the Associated Press [called](#) Arizona for Biden, even though only around 70% of the vote had been counted. These announcements [infuriated](#) President Trump and his supporters. Yet, even though the Trump campaign [argued](#) that these calls were made too early, Biden's victory held as the rest of the votes were counted. These early calls held in part because Arizona election night results included mail votes, which were omitted from early results in other states with later processing procedures, such as Pennsylvania.

Under Arizona [law](#), unofficial tabulated results may be released publicly after all precincts have reported to the Arizona secretary of state, or one hour after the closing of polls, whichever comes first. On Election Night 2020, the [secretary of state website](#) released the first results at 8 p.m., one hour after the polls closed at 7 p.m. The first results included early ballots, such as mail ballots, that had been counted starting 14 days before election night. After that, the results were updated as counties reported votes from machines at their polling locations. [These results were unofficial](#), as they had not yet been certified by the local board of supervisors or other officers in charge. Results were simultaneously shared with the secretary via phone, fax, or "other electronic means" as they were tabulated.

Smaller counties with fewer resources experienced some reporting delays because of high voter turnout. While early ballots could be processed before Election Day, the processing required tremendous diligence and time and involved voter outreach if the ballots required curing. In Pima County, [376,000 early ballots](#) were returned by October 30, which was about 72% of all the early ballots requested by county voters. Meanwhile, only [50,000 of the 638,000](#) registered voters in Pima County voted in person on Election Day. Thus, the vast majority of processing in Pima could be done prior to Election Day. By contrast, in Yavapai County, 80% of the registered voters were on the [Permanent Early Vote List](#) (PEVL), but the county needed days after Election Day to count [7,800 "late earlies"](#) (mail ballots turned in late in the election cycle) dropped off at vote centers on Election Day.

Certifying the Vote

The post-election canvassing process in Arizona leading up to the certification went smoothly and efficiently. Boards of supervisors in all 15 counties [certified](#) tallies ahead of deadline. Multiple [logic and accuracy tests](#) were applied to the results in Maricopa County, confirming the canvassed results. On November 30, 2020, Governor Ducey and Secretary Hobbs [certified](#) the election results on schedule. The final results showed that Biden had beaten Trump by [10,457 votes](#)—a margin of about 0.3 percentage points. At the certification ceremony, Secretary Hobbs

[praised](#) high turnout and a successful election operation, stating “this election was conducted with transparency, accuracy and fairness in accordance with Arizona’s laws and election procedures, despite numerous unfounded claims to the contrary.” Although Republican groups sought to nullify the certification through legal challenges, no challenge succeeded.

In *Ward v. Jackson*, the Arizona Republican Party, led by Chairwoman Kelli Ward, [challenged the election certification](#). The lawsuit claimed, without substantial proof, that mistakes in signature verification and in duplication of ballots which could not be machine-read in Maricopa County led to Trump’s defeat. The trial court permitted inspection of 1,626 randomly sampled ballots, for which there were fewer than 10 errors. The [Supreme Court of Arizona](#) found that the error rate was “statistically negligible” and might have resulted in only 153 votes lost for Trump. As such, the error rate was below the margin that would trigger a mandatory recount. The state supreme court affirmed the trial court’s decision finding no fraud and confirmed the election of the Biden slate of Electors under Arizona state law. That effectively ended any further legal challenge to the outcome of the presidential election in the state. Ward and the Republican Party [filed for certiorari](#) with the Supreme Court of the United States. Their subsequent motion for expedited consideration was denied on January 11, 2021, and, on February 22, the U.S. Supreme Court denied their petition.

Another case, *Bowyer v. Ducey*, sought to invalidate the election results in Arizona. U.S. District Court Judge Diana Humetewa [dismissed the case](#) on December 9, 2020, criticizing the merits of the case but dismissing it on the grounds that the plaintiffs—the 11 electors pledged to President Trump if he had won Arizona—did not have standing. Petitioners filed a [notice of appeal](#) to the Ninth Circuit, but no final ruling on the case as of March 2021.

In two separate cases against the Arizona governor, plaintiffs sought to prevent the state’s certified results from being cast at the Electoral College. Both lawsuits alleged a wide range of fraud. One, *Burk v. Ducey*, focused on the Dominion Voting Systems voting equipment and alleged that thousands of fictitious votes had been counted. That case was [dismissed for lack of standing](#) because the plaintiff was not a registered voter. The second lawsuit, *Stevenson v. Ducey*, sought to vacate the state’s certified results and appointment of electors by arguing that [private election grants to Maricopa County](#) exacerbated problems with “unlawful ballots.” Plaintiffs eventually requested the court dismiss the suit.

The attempts to invalidate the election results in Arizona through the courts were short-lived and unsuccessful. This did not stop the 11 Republican would-be electors from gathering on December 16 [to cast their electoral ballots](#) for President Trump and Vice President Mike Pence. Though their action may have cast doubt on the integrity of the results, it carried no weight in the Electoral College because the Arizona election had been certified for President-elect Biden.

Georgia

Though the general election turnout in Georgia in 2016 [broke records](#) with 4.1 million people participating, the turnout in the 2020 election was higher by almost 900,000 votes: Nearly [five million](#) Georgians—or 67.7% of the voting-eligible population—cast ballots in the presidential election in 2020. Existing vote-by-mail infrastructure, as well as new updates for 2020, such as early processing of absentee ballots, helped keep mail voting accessible, ballot rejection rates low, and ballot tabulation on track. Unlike in most states, however, November 3 closed only one chapter of the 2020 presidential election in Georgia. In the weeks after Election Day, Georgia's election officials had to oversee a hand audit of five million ballots (the first statewide audit ever performed in Georgia) and a full machine-based recount. Despite the challenges and the enormity of the undertaking, county officials met their deadlines and, in so doing, affirmed the outcome of the Georgia presidential election three separate times. Multiple lawsuits to challenge the results were ultimately unsuccessful.

Processing and Rejecting Ballots

Georgia voters cast 1,320,154 mail votes in the 2020 general election, representing a return rate of 74.1%. Voters cast more than six and a half times the number of absentee votes in 2020 compared to 2016, when voters cast [202,500](#) mail ballots. The percentage of absentee votes compared to all votes cast was more than 5 times higher in the 2020 general election—5% in 2016 and 26% in 2020.

Existing laws in Georgia eased the increase of absentee voting in 2020. State law did not require voters to provide an excuse for requesting a mail ballot, and absentee ballots did not require a witness signature or a copy of the voter's ID. The Georgia State Elections Board (SEB) also passed new rules in February 2020 ahead of the June presidential primary (which were later made applicable to the November general election) that proved vital to the election's success. One [rule](#) permitted county election officials to pre-process absentee ballots starting at 8 a.m. the third Monday before Election Day (October 19) instead of waiting for Election Day itself. Though officials were prohibited from counting absentee ballots ahead of Election Day, this new rule permitted them to get nearly three weeks head start on everything short of tabulation—which included signature verification, curing of absentee ballot errors, ballot scanning, and adjudication of ballot marking errors. Nearly all of Georgia's 159 counties [expressed intent](#) to start processing, scanning, and/or adjudicating early, including Georgia's 10 most populous counties.

Georgia officials made a number of policy changes in order to encourage and simplify mail voting in 2020, including the introduction of an absentee ballot request portal and ballot dropboxes. The secretary of state also took steps to increase voter confidence in mail voting. In late September, Secretary Brad Raffensperger [introduced](#) a new partnership with BallotTrax, a computer application that can provide detailed ballot tracking services to all Georgians. Citing the need to innovate and adapt to “unprecedented times,” the secretary expressed hope that the service would provide Georgia voters with “greater clarity and increased confidence that their votes are accepted.”

Rejection rates for mail ballots were low. Secretary Raffensperger [reported](#) that only 2,011 (or 0.15%) of all absentee ballots were rejected for missing or non-matching signatures in the November election. This rejection rate was down from the 2020 June primary rejection rate of [0.28%](#) for missing or non-matching signatures. The secretary [attributed](#) the improvement to “both parties attempting to help voters cure their absentee ballots pursuant to the process set forth in Georgia statute.” Interestingly, the November 2020 signature rejection rate was [on par](#) with the November 2018 rejection rate, even though no signature cure procedures were in place in 2018. Only in 2019 did [House Bill 316](#) modify the existing signature verification procedures and introduce for the first time a notice and cure process for absentee ballots with signature defects. A total of [454](#) ballots in 2018 (0.15% rejection rate) and [580](#) ballots in 2016 (0.24% rejection rate) were rejected for missing or non-matching signatures. Part of the reason for the low rate of signature rejection may be due to the [influx of volunteers](#) who called and canvassed voters with uncured ballots in the days following the election.

Besides signature issues, late receipt of the mail ballot to election officials represented a significant reason that Georgia election officials rejected absentee ballots. In the June primary, 8,596 out of the 11,889 rejected ballots were tossed because they were received after the deadline. The [introduction of ballot drop boxes](#) for the November 2020 voting may have overcome potential postal delays facing voters trying to get their ballots returned on time, but changes in the deadlines for ballot receipt may have misled some voters to believe they had time to mail their ballots. In late August, Democratic plaintiffs in [New Georgia Project v. Raffensperger](#) secured a [preliminary injunction](#) extending Georgia’s Election Day ballot receipt deadline by three days, from November 3 until November 6. Though the U.S. district court rejected the state’s motion for a stay pending appeal in September, a three-judge panel on the Eleventh Circuit U.S. Court of Appeals granted the [stay](#) on October 2. Because the Eleventh Circuit did not hear and rule on the state’s appeal by November 3, Georgia rejected all absentee ballots received after 7 p.m. on November 3, regardless of when the ballot return envelope was postmarked. Voters who heard about the initial deadline extension—but not about the 11th Circuit’s stay of the extension—may have mistakenly believed they had longer than they did to

return their ballots. In addition, USPS delays may have increased transit times even for voters who mailed their ballot in a timely fashion.

Counting Ballots

In the days and weeks after November 3, Georgia's election became the subject of intense national interest and scrutiny. With a razor-thin margin separating the two presidential candidates, Georgia election officials took several days to announce the presidential results, reporting that Democrat Biden had won the state's popular vote (Associated Press took until [November 12](#) to announce it believed Biden had won). However, that was only the beginning of the post-November 3 story in Georgia, which ultimately involved an audit, a recount, multiple lawsuits, and numerous misinformation narratives.

The use of mail voting shattered historical records, with relatively few problems. The sheer volume of absentee ballots, however—along with snafus such as a [technical glitch in Gwinnett County and a burst water pipe in Fulton County](#)—meant that, despite pre-processing efforts, the count was not complete by Election Night. While some counting had been expected to spill into the Wednesday or Thursday after the election, Secretary Raffensperger expressed [frustration](#) with the delays. By the evening of Thursday, November 5, there were still about [16,105](#) absentee votes remaining to be counted, as well as provisional ballots and ballots that needed to be cured before being scanned.

A software problem that occurred on Election Day delayed the counting of about [6,000 ballots](#) in Gwinnett County outside of Atlanta. The error [forced](#) officials to rescan roughly 80,000 ballots to identify ones where voters made errors in marking them by hand. Over the next few days, an adjudication panel was tasked with examining those ballots to determine voter intent. Once that process was completed, the outstanding ballots—mostly absentee ballots received on Election Day—could be counted.

Georgia's results may have seemed slow compared to the rest of the country, but the new [rule](#) implemented in February 2020 that allowed for pre-processing ballots was instrumental in counting the huge influx of absentee ballots. The ability to pre-process ballots enabled more timely reporting of the results. In Georgia, where the presidential candidates were separated by fewer than 12,000 votes and the U.S. senatorial races bobbed in and out of runoff territory, counting all of the nearly five million ballots became especially necessary for ensuring a reliable report of the results. Had pre-processing of the absentee ballots not occurred, Georgia election officials might have needed even longer to count all the ballots. That delay could have further

jeopardized the perceived legitimacy of the election results and compromised officials' ability to comply with the [November 13](#) county certification deadline.

Though many lawsuits would follow the certification of votes, one challenge came during the initial count. In [In re: Enforcement of Election Laws and Securing Ballots Cast or Received After 7 p.m. on November 3, 2020](#), the Georgia Republican Party and Trump campaign asked a state superior court to order the Chatham County Board of Elections to follow specific ballot custody procedures, namely, to sequester all absentee ballots received after 7 p.m. on Election Day. The court [held](#) that there was no evidence that the [53 ballots](#) in question were returned after 7 p.m. on Election Day or that Chatham County Board of Elections had violated any law.

Auditing Results

The 2020 general election triggered the first statewide audit ever performed in Georgia. In 2019, the Georgia legislature [updated](#) the state's election laws to require that in even-numbered years, a manual statewide risk limiting audit (RLA) be conducted before certification of the state's election results. RLAs are used to confirm, with strong statistical likelihood, that the votes cast on a voting machine for a certain contest were tabulated correctly (i.e. that the same results would have been reached had the ballots been counted by hand). The RLA is conducted by hand-counting a statistically significant sample of paper votes to see if it matches the machine count. Unlike traditional post-election audits, where the number of ballots to be examined is simply a fixed number or percentage of total votes cast, the number of ballots subject to an RLA [depends](#) on the closeness of a given race. Where the margin between the top two candidates is wide, fewer ballots must be inspected to reach statistical confidence about the results; where the margin is narrow, significantly more sample ballots must be examined.

On November 11 at 1 p.m. EST, Secretary of State Raffensperger [announced](#) that the presidential contest would be the subject of the pre-certification Risk Limiting Audit. At the time, Biden was leading by around [13,500](#). However, instead of selecting a random sample of ballots for each county to review, the secretary announced that the close margin of votes between the two major party presidential candidates (about 0.3%) would trigger a full *hand* re-tally of all five million ballots cast across all 159 counties. The announcement followed public [pressure](#) from President Trump's campaign and Georgia Republicans for the secretary to conduct a full recount. [Voting Works](#), a non-partisan and non-profit election technology company contracted to develop Georgia's audit technology, [said](#) that, while only around 1.5 million ballots needed to be audited in order to provide statistical confidence about the winner, in a presidential contest this close, it was actually "less work to sample every cast ballot, simply because attempting to

audit a large subset incurs the work of retrieving and replacing specific ballots, while reviewing all ballots does not.”

The secretary’s office [directed](#) counties to begin the audit process no later than November 13 at 9 a.m. (the deadline for county certification) and to complete it by 11:59 p.m. on November 18—two days prior to the state certification deadline. VotingWorks made copies of audit paperwork (and even a humorous [video](#) demonstrating the tasks required in a full hand tally) publicly available [online](#). Some facilities also [live-streamed](#) the audit process.

Though it was widely expected that counties would need to work around the clock to meet the November 18 deadline, many counties—even [Fulton](#), the state’s most populous county—finished early. On November 19, Secretary Raffensperger [announced](#) the completion of the audit—the largest hand tally in United States history—and shared the [audit results](#) and [audit report](#). Secretary Raffensperger also [announced](#) the successful completion of a forensic audit of voting machines and shared that a certified testing laboratory “found no evidence of the machines being tampered.” According to the [audit report](#), the audit “confirmed the original result of the election, namely that Joe Biden won the Presidential Contest in the State of Georgia.” The audit data showed that the vast majority of Georgia’s 159 counties found negligible changes in their vote counts. In fact, 52 counties reported no changes in their vote totals, and another 73 reported vote total changes of fewer than 10 votes. Seven of the state’s more populous counties had vote count differentials greater than 100 votes, and Dekalb, Floyd, Fulton, and Gwinnett had discrepancies greater than 500 votes. Most notable was Floyd County’s experience, which turned up [2,600](#) previously untallied votes—an oversight for which a local election administrator was later [fired](#). In the course of the audit, President Trump netted 496 votes, bringing Biden’s lead to 12,248 votes out of nearly five million cast.

Governor Brian Kemp [certified](#) the results of the audit on November 20 but, in his remarks, Kemp explicitly [referenced](#) that the law required him to do so, and he encouraged Secretary Raffensperger to investigate all potential instances of electoral fraud.

Recounting and Recertifying Results

Even though the results of the audit corroborated the original tally, the Trump campaign was entitled under [Georgia law](#) to request a machine recount because the post-audit margin remained below 0.5%. The margin hovered around 0.3% after the audit. The Trump campaign formally [requested](#) a taxpayer-funded machine recount on November 21, which differed from the hand audit in that all ballots needed to be rescanned through voting machines. The secretary of state instructed counties to complete the machine recount by December 2, which

they did, with the exception of a negligible number of votes in [Coffee County](#). Every other county was able to [complete](#) the task of recertification within the given time limits. The [final results](#) of the recount indicated that Biden officially won the state of Georgia by [11,779](#) votes—reflecting 99.965% accuracy in the original Election Day count.

Two lawsuits were filed before the recount was complete. In [Pearson v. Kemp](#), filed on November 25, 2020, six Georgia Republicans represented by conservative attorney Sydney Powell filed an election contest. The lawsuit alleged that election software and hardware from Dominion Voting Systems, which they claimed was developed by Venezuelans to manipulate votes in favor of Hugo Chavez, led to a fraudulent ballot-stuffing campaign in five Georgia counties. Plaintiffs alleged that the state's use of Dominion technology violated the Election Code and the Fourteenth Amendment by processing "defective" ballots, and the lawsuit sought an injunction against transmitting Georgia's certified results. On December 7, the court [dismissed](#) the case. In the minutes on the record, the judge [said](#) that "[the plaintiffs] ask the court to order the secretary of state to decertify the election results as if such a mechanism even exists, and I find that it does not." The judge also found that the plaintiffs did not have legal standing and that the suit did not belong in federal court. Plaintiffs filed an [emergency appeal](#) to the U.S. Supreme Court on December 11. The petition was [dismissed](#) on February 11.

Another case filed on November 25 in Georgia state court, [John Wood v. Raffensperger](#), sought to nullify the election results. Plaintiff, the president of the Georgia Voters Alliance, contended that Georgia officials violated the state Election Code and state constitution in several ways: by accepting a grant from the Center for Tech and Civic Life to help fund the election, by following a consent decree that provided for more scrutiny of absentee ballot signatures and disqualification, and by counting purportedly illegal votes. He requested that the court prevent the governor from certifying Georgia's election results. The case was [dismissed](#) on the grounds that neither the governor or the secretary of state can be named as defendants in an election contest, as they are protected by sovereign immunity.

On December 7, 2020, the secretary of state [recertified](#) the results of the presidential election, as [did](#) Governor Kemp—the last step towards committing Georgia's electoral votes to Biden. The recertification followed the audit-triggered hand recount and the formal recount requested by the Trump campaign. Both recounts [upheld](#) the original outcome of the race.

The same day as the recertification, Governor Kemp issued a [statement](#), along with Lt. Governor Geoff Duncan, responding to Republican lawmakers' request that the Georgia General Assembly convene a special session to select a slate of electors who would, instead, vote for Trump. Kemp's [statement](#) unequivocally denied the request, stating that "[i]n the 1960s, the General Assembly decided that Georgia's presidential electors will be determined by

the winner of the state's popular vote. Any attempt by the legislature to retroactively change that process for the November 3 election would be unconstitutional." In this [statement](#), Governor Kemp and Lt. Governor Duncan also advised Republican lawmakers that "the judicial system remains the only viable—and quickest—option in disputing the results of the November 3 election in Georgia." While it may have been the only option, the courts, ultimately, were not a successful forum for litigants hoping to invalidate the will of Georgia voters.

The Trump campaign also filed two post-certification lawsuits. [Trump v. Raffensperger](#), filed December 4, asked a state court in Fulton County to order Georgia to conduct the presidential election all over again, from scratch. Petitioners alleged that respondents, the secretary of state and county elections officials, allowed unqualified people to vote, sent unsolicited absentee ballots to voters, entered into a consent decree that allocated more personnel to conduct signature verification, and that the number of absentee ballots was higher than in previous elections. The case was [voluntarily dismissed](#) on January 7, 2021. In one last-ditch effort, President Trump requested an emergency injunction in federal court December 31, in [Trump v. Kemp](#), to decertify Georgia's election results, alleging that Georgia's manner of conducting the election violated the Electors Clause. The court denied the request on January 5, 2021. Neither of these lawsuits had any impact on certification or results.

Georgia voters also filed lawsuits during the post-election period, but they had no impact on the results of the election either. Three came before the recertification. First, in [Rebecca Brooks v. Thomas Mahoney III](#), filed on November 11, four Georgia voters filed suit against the Georgia governor, the secretary of state, and members of the county boards of elections in eight counties, alleging voter fraud. Their examples included claims that voter registration rolls in 21 counties exceeded 100% of eligible voters in those counties, and that they believed more than 70,000 non-citizens voted for Biden. Plaintiffs sought to exclude counties with any irregularities from the state's overall vote total, on the grounds that such counties' inclusion would dilute plaintiffs' votes. Five days later, plaintiffs [voluntarily dismissed](#) their suit.

In the second post-election citizen lawsuit, [Lin Wood v. Raffensperger](#), filed in federal court on November 13 (the day the audit began), a Georgia voter sought an injunction against certifying the general election results in the state. The plaintiff alleged that the secretary of state had violated the Elections Clause by entering into the litigation settlement in *Georgia Democratic Party v. Raffensperger* in March, and that the secretary of state had changed the manner of handling absentee ballots to a form inconsistent with state law. The court [held](#) that Lin Wood lacked standing to bring these claims and that the plaintiff had not demonstrated a likelihood of success on the merits.

In the third citizen lawsuit, [*Boland v. Raffensperger*](#), filed in a state court in Fulton County November 30, a Georgia voter [alleged](#) that 20,311 people who did not reside in Georgia voted in the election and that there was a low ballot rejection rate based on signature mismatch. As remedy, the plaintiff sought the decertification of election results. The court dismissed the suit on December 8 for lack of standing and for insufficient factual basis for the claims. The Georgia Supreme Court declined to hear an appeal and the plaintiff [voluntarily dismissed](#) the case.

Post-certification, two Georgia voters sought to decertify Georgia's presidential results in [*Still v. Raffensperger*](#), filed on December 12, 2020. Petitioners contended that Coffee County experienced irregularities during its recount and was [unable to certify its recount](#) by the secretary of state's deadline. They argued that, because of this incident, the court should de-certify Georgia's results. The case was [voluntarily dismissed](#) on January 7, 2021.

Finally, in [*Favorito v. Cooney*](#), a tabulation observer and several hand-count auditors filed suit on December 23 in a state court in Fulton County alleging a range of mail-ballot fraud. Among other claims, petitioners said they detected a sudden 20,000 vote increase for Biden, and alleged that a video posted on social media showed that, during a water main break at the State Farm Arena voting center when some staff and reporters left the premises, other election workers allegedly pulled out cases filled with ballots and scanned them. Plaintiffs sought an order permitting them to inspect and scan all mail ballots for the general election; the case remains open as of early 2021.

Michigan

In the words of Michigan Secretary of State Jocelyn Bensen, the 2020 general election went "[incredibly smoothly](#)." Turnout reached record highs, with more than 5.5 million votes [cast](#), representing [71%](#) of all registered voters — compared to 4.9 million votes [cast](#) in the 2016 general election, representing 63% of registered voters. Even with the massive increase in voter turnout and mail voting, [fewer](#) mail ballots were rejected in November 2020 than in previous elections. Although many worried that it would take several days for the state to report election results, the press [called the state](#) for Joe Biden at 6 p.m. the day after Election Day. Biden [defeated](#) Trump in Michigan by 2.8 percentage points, or 154,188 total votes.

Despite the well-executed election, there was still a cloud of misinformation narratives and unsubstantiated claims of voter fraud and electoral misconduct hanging over Michigan. The phenomenon dubbed a "[red mirage](#)" by political observers is one in which Republicans appear to be winning at first because in-person votes are counted first. Democratic voters in 2020,

especially due to the coronavirus pandemic, leaned heavily on absentee votes (which are typically counted later). So as the election counting proceeded, an early Republican lead (the “red mirage”) was dissipated by a later Democratic surge (the “blue tsunami”). Unsupported claims of voter fraud were buoyed by unsuccessful post-election lawsuits, as well as by state legislative hearings that dragged on until December 2. Neither the lawsuits nor the hearings stopped Michigan's certification process and, on November 23, the state certified its election results for Biden.

Processing and Rejecting Ballots

As expected, absentee voting hit an all-time high in Michigan. Of the 5.5 million votes cast in November 2020, [3.26 million](#) were early or mail ballots, representing nearly 60% of all votes cast and with a return rate of 94% of mail ballots requested. This was a [167% increase](#) in mail and early vote turnout from 2016. Despite this surge in mail voting, no supply or ballot shortages were reported.

Anticipating a significant increase in mail voting, Secretary of State Jocelyn Benson and Michigan town clerks [called](#) for an earlier start date for processing mail ballots—a change they had sought since August 2019, long before the coronavirus pandemic. Under state law in 2019, processing of mail ballots could not begin until Election Day. Election officials feared it would take many days after Election Day to count mail votes (see appendix for details on the procedures). In October 2020, the Michigan legislature, controlled by the Republican Party, passed a new law, [Senate Bill 757](#), that allowed election officials in larger municipalities to pre-process (but not to count) mail ballots the day before Election Day, one day earlier than previously allowed. Additionally, the bill [allowed for](#) extra work shifts for counting mail ballots. These changes were relatively modest, and Secretary Benson [predicted](#) that the state might not be able to announce the 2020 presidential results until the Friday after the election. However, election staff worked tirelessly and finished processing and counting votes by Wednesday [evening](#), November 4.

Some election experts [worried](#) that the rejection rate of mail ballots could be large enough to decide the Michigan election. This fear stemmed from the 2016 election, when the [number](#) of mail ballots rejected was only 10 fewer than the [margin](#) by which President Trump won the state. As it turned out, however, rejection rates in November 2020 were low—0.46%, compared to 0.49% [rejected](#) in the 2016 presidential election and 0.70% rejected in the August 2020 primary. Of the [3.26 million](#) mail and early ballots cast, only 15,302 were [rejected](#), well below the 154,188-vote margin by which Biden defeated Trump in the state.

While Michigan does not require a witness signature or a copy of an ID with mail ballots, the state has a signature verification process. The state also rejects ballots received after 8 p.m. on Election Day, no matter the postmark date. Of the 15,302 ballots [rejected](#) in the November 2020 general election, most fell into five categories: 3,328 were rejected for lateness, 1,400 for mismatched signature, 1,852 for missing signature, 4,090 for voters who moved to a different jurisdiction after voting absentee but before Election Day, and 3,469 were voters who died before Election Day.

Two new sets of rules in 2020 reduced the number of mail ballots rejected for signature reasons. First, Michigan Secretary of State Jocelyn Benson issued statewide signature verification [guidance](#) in early 2020. The guidance was created in response to a lawsuit, [Priorities USA v. Benson](#), filed by the League of Women Voters. It standardized criteria employed across the state while providing more rigorous training for election officials on signature verification. Significantly, the guidance recommended that slight dissimilarities in signatures should be resolved in favor of the voter whenever possible, permitting officials to accept more signatures. Second, the Michigan legislature passed a law ([Senate Bill 0757](#)) on October 7, 2020, requiring notice be given to voters who submitted defective ballot envelopes and mandating such voters have an opportunity to cure those defects before Election Day. After these rules went into effect, the rate of rejections for signature issues [fell](#) slightly from 0.14% to 0.1% of total absentee ballots between the August 2020 primary and the November 2020 general election. Rates also fell from the 2016 general election, where the rate of rejection for signature issues was [0.13%](#).

In light of the expected high volume of mail ballots, voting rights advocates feared a large number of mail ballots in November would be rejected for lateness. These fears were exacerbated by the [high number](#) of rejections for late-arriving ballots in the August primary and by concerns that operational changes at the U.S. Postal Service (USPS) would [slow mail](#) delivery. Late ballots did end up constituting about [one in five](#) rejected ballots during the 2020 general election.

In two lawsuits, plaintiffs unsuccessfully tried to obtain an extension to the Election Day receipt deadline. First, plaintiffs in [League of Women Voters of Michigan v. Benson](#) unsuccessfully petitioned a three-judge panel of the [Michigan Court of Appeals](#) to order the secretary of state to accept ballots *postmarked* by Election Day, and the Michigan Supreme Court [denied](#) plaintiffs leave to appeal. Then, in [Michigan Alliance for Retired Americans v. Benson](#), a Michigan state court [granted](#) plaintiffs' request for a preliminary injunction enjoining enforcement of Michigan's Election Day ballot receipt deadline. However, on October 16, well after the state had [printed and mailed](#) voting materials and instructions reflecting the new injunction-granted deadline, a different three-judge panel of the state appeals court [reversed](#) that ruling. The appeals panel

held that it was constitutional to require ballots be *received* by the close of polls on Election Day in order to be counted. This late reversal left election officials and voting rights advocates scrambling to publicize the change in deadline to minimize voter confusion.

Fortunately, operational slowdowns of the USPS prior to the election did not cause as many votes to be rejected for lateness as some had feared and expected. But the USPS changes and delays did prompt at least three lawsuits involving Michigan. [Over the summer](#), the Michigan attorney general joined other states in a federal lawsuit against the USPS. Then, the weekend before Election Day, in a federal lawsuit brought by voting rights groups, a federal court [ordered](#) the USPS to accelerate delivery in Detroit, Michigan, and Lakeland, Wisconsin. And finally, on Election Day itself, in response to data [showing](#) that the USPS was in possession of 300,000 ballots nationwide that had been scanned into the USPS's processing system but not delivered to their elections office destinations, voting rights nonprofits [filed](#) a lawsuit seeking an injunction that would require USPS inspectors to scour facilities across the country, including in Detroit, for undelivered ballots. While the court [granted](#) the injunction for various USPS facilities in Detroit, USPS failed to comply with the [judge's order](#), claiming that compliance "would've interrupted Election Day processes at the facilities and wasn't feasible for the small number of inspectors at a facility." While some were alarmed by the USPS's failure to comply, only [3,328 ballots](#) were ultimately rejected in Michigan for lateness, about half the number ([6,405 ballots](#)) as rejected in the 2020 August primary. Extensive [educational campaigns](#) conducted by Michigan's secretary of state and more than 100 nonprofit organizations likely helped encourage voters to mail their ballots early or drop them off at official locations.

Counting Ballots

The tabulation of votes in Michigan proceeded faster than [anticipated](#). The Associated Press [called](#) the election for Joe Biden on Wednesday, November 4, at 6 p.m, two days before a call was expected. AP was able to make an early call because the remaining uncounted votes came from overwhelmingly Democratic areas. Though the count was expected to take up to three days after Election Day, Michigan finished counting its remaining ballots on Wednesday night, as Secretary Benson [announced](#) in a video. Counties posted their unofficial results on their websites in the [early morning](#) hours on Thursday, November 5. The [new law](#) allowing processing to begin the day before the election and extending work hours for poll workers enabled this efficient counting effort.

Republican poll challengers and the Trump campaign filed multiple lawsuits after Election Day, seeking to delay or halt the tabulation of the vote or the election certification. While these

lawsuits all alleged election irregularities and even outright fraud, their legal claims centered around compliance with election procedures, such as observation of certain processes.

Three lawsuits, all in state courts, sought to halt the count of mail votes until more Republican poll observers were allowed to watch the tabulation of votes. First, in *Polasek v. Benson*, plaintiffs sought an emergency declaratory judgment that more than one challenger per party should be present to observe the absent voter counting board. The judge denied the request, finding that the defendants, including Michigan's secretary of state, did not have the power under Michigan law to expand the number of challengers to 10 per party as requested.

Second, in *Donald J. Trump for President v. Benson*, plaintiffs requested the vote count in Wayne County be halted until the secretary of state allowed the Trump campaign's chosen inspectors to be present at the absentee ballot boards. It also asked that the count be halted until the campaign's challengers were able to review video surveillance footage of ballot dropboxes (which they alleged would show a passenger in a car dropping off more ballots than there were people in the car). The judge dismissed the case and the appeals court upheld the dismissal, holding that Michigan law required fraud claims to be tested through the request of a recount before relief could be granted by the courts.

In the third case, *Stoddard v. City Election Commission*, plaintiffs requested an injunction to halt the counting of absentee ballots until observers from both parties were present. The judge denied the motion, noting that plaintiffs had failed to state a cause of action, made allegations that amounted to "mere speculation," and offered "no evidence to support their assertions." The judge also noted that plaintiffs had alternative remedies, such as a recount.

Republican poll challengers, state elected officials, and President Trump [himself](#) made numerous claims of voter fraud and improper election conduct in Michigan. The Republican-controlled Michigan legislature held days of hearings, allowing witnesses to [testify](#), with little oversight or rebuttal, that voter fraud occurred. These hearings gave an [uncontested microphone](#) to claims of voter fraud that did not hold up in lawsuits. But the repeated publicly aired claims of voter fraud in Michigan and other states may have had an impact on public opinion: Three in four Republicans in late November said they [lacked confidence](#) that the November election was conducted fairly. Additionally, these claims sparked significant anger and led to threats of violence against many state election officials, including [against Michigan's](#) secretary of state (a Democrat). Michigan's election infrastructure and administration proved to be robust, but political and misinformation campaigns were also robust and undermined the perceived legitimacy of the election in the minds of many voters.

Many misinformation narratives surrounded the ballot counting process. The combination of protests and misinformation [culminated](#) in a year of “political chaos” in Michigan. Most of the misinformation narratives were easily and quickly debunked. Claims of ballot stuffing in Flint relied on a video which [turned out](#) to show a polling place in Russia. Claims that a “mysterious wagon” filled with Democratic ballots was sneaked into Detroit’s TCF Center were [discredited](#) when the wagon turned out to contain a reporter’s camera equipment.

Two misinformation narratives did gain considerable traction. The first contended that computer glitches in Antrim and Oakland counties swung their vote counts for Biden. Conspirators [alleged](#) a plot between the Democratic Party and Dominion Voting Systems, a company which manufactures voting machines used in Michigan and other states, to ensure that Biden won. While two computer glitches in Antrim and Oakland counties did occur, both were [quickly rectified](#) and the source of each was easily identified. In Antrim County, which [did use](#) Dominion voting machines, the glitch was [caused by](#) the town clerk’s failure to update the ballot file in certain voting machines. The glitch was minor, and the tabulation of votes in each precinct was correct, as [verified](#) by a hand count. However, the glitch caused the individual precincts’ vote tallies to be added together incorrectly, so the unofficial total vote count for the county was off by a few thousand votes until the error was discovered and fixed. In Oakland, a software glitch [caused](#) some votes to be counted twice. However, the issue was [fixed](#) within a day of being identified. Additionally, Oakland’s voting machines were not manufactured by Dominion, so the two glitches could not have been connected to a grander Dominion conspiracy.

A second misinformation narrative claimed that Republican poll challengers were unfairly barred from observing the processing and counting of absentee ballots in Detroit. This [claim](#) was parroted in several election lawsuits (described above) and was amplified by Trump on Twitter. Some election challengers were prevented from entering a counting center in Detroit (TCF Center), but that was because the number of Republican challengers already observing the process had [reached the limit](#) allowed under state law. Michigan law [provides](#) that only one appointed election challenger per eligible group may observe the conduct of the absentee voter counting board, which tallies absentee votes on Election Day and the day before Election Day. In fact, over 100 Republican challengers were [allowed](#) to observe at TCF Center.

Certifying the Vote

Detroit’s Wayne County election board [initially refused](#) to certify the election results because of fraud allegations, and many [feared](#) the State Board of County Canvassers would do the same. However, each of Michigan’s 83 counties [certified](#) local election results on time, following the

standard double-checking that occurs during the routine canvass process. This process, as is usual, revealed a handful of issues attributed to “[typical human error](#)” that were resolved. Biden’s margin [increased slightly](#) after the canvass—but of the more than 5.5 million ballots cast, only a small fraction were affected by the process. The Michigan Bureau of Elections subsequently [recommended](#) the State Board of County Canvassers certify the statewide results.

Michigan’s State Board of County Canvassers voted on Monday, November 23, to [certify](#) the state’s election results in all 83 counties, formally granting Joe Biden the state’s [16 electoral votes](#). [Three of the four members](#) of the Michigan Board of State Canvassers voted to certify the results, arguing it was their required duty under the law. The remaining board member, Republican [Norm Shinkle](#), abstained. After the vote, the Trump campaign vowed to continue to fight to overturn the results despite Michigan’s certification, but the Trump administration [announced](#) it would begin the transition process to Biden’s presidency.

No automatic recount was required under state law because Biden’s margin over Trump exceeded 2,000 votes. Under Michigan law ([§168.879](#)), the Trump campaign could have filed for a recount within 48 hours of certification. However, the Trump campaign did not request a recount in Michigan. The margin by which President Trump lost Michigan ([154,188 votes](#)) was much wider than in other states where the campaign filed for recounts. Republican lawmakers in Michigan also [met](#) with Trump on November 21 and reported that they had “not yet been made aware of any information that would change the outcome of the election in Michigan.”

Four lawsuits, in state and federal courts, attempted to halt certification of Michigan’s election results. In [Constantino v. Detroit](#), several Wayne County voters alleged a laundry list of electoral misconduct by the City of Detroit election officials. They requested an audit, an order to stop the counting of votes, and an injunction to halt certification. The state circuit court denied all requests, finding that the affidavits supplied by plaintiffs were “rife” with generalization, speculation, hearsay, and a lack of evidentiary basis.

In [Donald J. Trump for President, Inc. v. Benson](#), the Trump campaign alleged in a federal district court that Wayne County and Secretary Benson violated the Michigan Election Code by purportedly not permitting challengers to observe the conduct of the election and the processing of ballots. The campaign also alleged election officials pre-dated ballots that were not eligible to be counted. Plaintiffs voluntarily [dismissed](#) the case eight days later.

In [Bally v. Whitmer](#), plaintiffs alleged in federal district court that a certified poll watcher was excluded from observing canvassing, and they made claims of fraud, citing the complaints in *Constantino v. Detroit* and *Donald J. Trump for President Inc. v. Benson*. Within five days, plaintiffs voluntarily [dismissed](#) the case.

Finally, in [*Johnson v. Benson*](#), two Michigan voters and poll challengers at the TCF Center polling location in Detroit requested an injunction barring election certification. They alleged that the secretary of state's purportedly illegal plan to mail absentee applications to all registered voters enabled Democratic Party inspectors to fill out "thousands" of ballots at the TCF Center, in violation of state law. After two days, plaintiffs voluntarily requested their lawsuit be [dismissed](#).

After the election results were certified, two lawsuits in state court sought to decertify the results. In the first, [*Johnson v. Benson*](#), members of Black Voices for Trump alleged that respondent state officials failed to allow meaningful poll observation, that they instructed election workers to count invalid ballots, and that they permitted counties to accept private grants from tech billionaire Mark Zuckerberg to help fund election expenses. The case was [dismissed](#) for lack of jurisdiction and because the injunction request was moot. In the second case, [*King v. Whitmer*](#), six Michigan voters alleged that Republican poll observers were denied the opportunity to meaningfully observe vote counts, that election workers forged and altered ballots, and that defective ballots were counted. The federal district court [dismissed](#) the case, and plaintiffs [filed](#) a petition for a writ of certiorari with the U.S. Supreme Court, which denied cert on February 22.

In a suit filed in December, [*Leaf v. Whitmer*](#), plaintiffs claimed that the Michigan Board of Elections' routine order to delete certain election records was intended to destroy evidence of voter fraud. The lawsuit was [thrown out](#) on various procedural grounds, including a failure to submit a proper complaint and a failure to comply with basic notice requirements.

One case in Michigan was filed *against* the Trump campaign. [*Michigan Welfare Rights Organization v. Trump*](#), plaintiffs alleged that the president's attempts to pressure election officials to decertify Michigan election results was an effort to disenfranchise Black voters. The case has not been resolved as of March 2021.

Nevada

With six electoral votes, Nevada was not initially expected to be a state that could sway the election. But as results around the country trickled in, Nevada became a critical battleground. To outsiders, the lack of immediate results appeared to be due to counting delays, but Nevada election officials were on pace to conduct a timely election and count. Multiple lawsuits challenged the state's universal vote-by-mail option, argued a lack of "meaningful observation," and cast doubt about the veracity of the Agilis brand signature verification system. But the

Nevada Supreme Court unanimously certified the state's election results. Biden won Nevada by [33,596](#) votes—a margin of 2.39% over Trump. Voters cast [1,425,026](#) total votes in the 2020 general election (78.22% of active voters), an increase from the 2016 total of [1,125,429](#) votes (76.83% of active voters). Despite the conclusion of lawsuits in Nevada and a 78% voter turnout rate, misinformation continued to spread in the weeks after November 3.

Processing and Rejecting Ballots

Mail voting was the most popular method of voting in the Nevada 2020 general election. Mail ballots accounted for [48.46%](#) of overall turnout, while early in-person voting accounted for [40.59%](#) of ballots, and in person voting on Election Day accounted for [10.95%](#) of votes. The 690,548 mail ballots cast for 2020 marked a monumental increase from the [78,572](#) mail votes of 2016, when they represented only 6.98% of total votes.

Nevada's existing laws, plus legislative action in August, allowed the state to avoid problems that made voting by mail more difficult in other states. Before the coronavirus pandemic, Nevada already had the no-excuse vote-by-mail option, no requirements for witness or signature identification, and same-day voter registration. In 2019, Nevada passed [legislation](#) that allowed officials to count mail ballots 1) that were postmarked on or before Election Day but arrived no later than [seven days](#) after the election, and 2) that had indeterminable postmarks but arrived no later than the three [days](#) after the election. By May 2020, Nevada authorized automatically sending registered voters mail ballots for the primary election.

After the June primary election, the Nevada State Legislature passed [Assembly Bill 4](#) ("[AB 4](#)") in August 2020, which created election procedures during an "[affected election](#)"—a general election for which there is a declaration of emergency in effect on July 1. Unsurprisingly because of the coronavirus pandemic, there was a [declared](#) state of emergency in Nevada in effect on July 1, thus making the November 2020 election an "affected election." Importantly for mail voting, AB 4 authorized state officials to send mail ballots to every registered voter and permitted third-party ballot collection. The law enabled election officials to [process](#) mail ballots upon receipt *and* to start counting them [15 days](#) before the election. These rules made it simpler for voters to cast ballots and more efficient for officials to count them. President Trump [challenged](#) AB 4 on the grounds that the new rules would lead to voter fraud, but the court dismissed the suit for lack of standing.

AB 4 also had important implications for signature verification of mail ballots. Before AB 4, a ballot could be rejected if at least two employees in the office of the county clerk "believe there is a reasonable question of fact as to whether the signature" on the ballot matched the

signature “available in the records of the county clerk.” AB 4 altered the rejection standard so that a signature could be challenged *only* if it “[differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the county clerk](#).” In accordance with existing signature verification policies before AB 4, election officials notified the voter if their ballot was rejected for signature deficiencies and provided them with opportunities to “cure” signature deficiencies until 5 p.m. on November 12. During the Nevada primary election, the main reason for rejection of mail ballots was [missing signatures and signature mismatches](#). Historically, members of minority communities in Nevada were more likely to have [their ballots rejected](#) for signature issues than white voters.

Just [0.58%](#) of all mail ballots returned in Nevada were rejected in the 2020 general election, a significantly smaller portion than in 2016 ([1.60%](#)) and 2018 ([2.05%](#)). Initially, [12,584](#) (1.82% of the [690,584](#) returned mail ballots) needed a signature cure. Of those, [9,697](#) (77.06% of mail ballots in need of cure) were [successfully cured](#) before November 10. This left only 2,887 (0.42% of mail ballots) of ballots rejected in the 2020 general election due to a signature defect. By contrast, [12,366](#) (2.56% of the [483,788](#) returned mail ballots) needed a signature cure in the primary election. Just [under half](#) of those ballots ended up being cured and counted. In total, [97.31%](#) of the ballots voters returned in the general election were returned correctly and did not need subsequent signature cures.

Nevada’s extended ballot receipt deadline lessened the risk that ballots would be rejected because of postal delays. While [national media coverage](#) of USPS delays fueled voter fear that their ballots would not reach election officials on time, Nevada law allows for some delay. As long as ballots were postmarked by November 3, they would be counted—even if they arrived as late as November 10, 2020. Due to Nevada’s lengthy ballot receipt deadline (seven days after the election), the Nevada deputy secretary for elections [predicted that](#) USPS delays would not be an issue within the state. To further alleviate some [concerns](#) surrounding vote-by-mail, state officials in September implemented [BallotTrax](#), a third-party tool used in Nevada and other states to track when ballots were mailed, when returned ballots were received by the county, and when ballots were counted.

Counting Ballots and Reporting Results

Nevada’s vote count received national attention, as it was among the final battlegrounds to be called. Despite [memes ridiculing](#) the slow pace of Nevada’s count procedure, the count was actually happening at a [normal](#) and expected speed. To ease the tension, Secretary of State Barbara Cegavske [issued a statement](#) on November 4 to clarify why the results had not been posted, stressing that “the counting of ballots in Nevada is proceeding at the expected pace.”

For the 2020 general election, Nevada law allowed election officials to start counting returned mail ballots [15 days](#) before Election Day and required all ballots to be counted within [nine](#) days of the election. Officials had warned that results could take up to [10 days](#), emphasizing their prioritization of accuracy over speed.

Nevada's count appeared to be delayed for multiple reasons. First, mail ballots that were postmarked by November 3 but arrived through [November 10](#) were eligible to be counted per state law, so the state was obligated to wait a week for late-arriving mail ballots. In addition, ballots with signature defects could be cured and counted through [November 12](#). With a slim margin between Trump and Biden, these outstanding ballots were crucial in determining the ultimate winner of the state. Lastly, voters who registered in person during early voting or on Election Day cast [provisional ballots](#), and their registrations needed to be [verified](#) before their votes were counted. During the 2020 general election, [30,007](#) voters registered to vote in person during early voting or on Election Day and cast provisional ballots.

Nevada's policy of batching election result updates also slowed the pace of results as the nation eagerly awaited news. At 2:45 a.m. PT on November 4, the Nevada Elections Division [tweeted](#) that all in-person early votes, in-person Election Day votes, and mail ballots through November 2 had been counted, but there were still many more ballots to count. A [large volume](#) of mail ballots received on Election Day, mail ballots to be received over the next week, and provisional ballots were yet to be counted. Furthermore, no new results would be posted until November 5 at 9 a.m. PT. Secretary Cegavske also [announced](#) that unofficial election results would be updated daily around 9 a.m. starting on November 5, while one-off updates might occur from time-to-time.

In other states, the results of the presidential election could be estimated by how many ballots remained outstanding in certain precincts. But in Nevada, the number of ballots outstanding was a [difficult number to estimate](#) because the state had sent every voter a mail ballot and, while the state [did not expect](#) a 100% return rate, it did not know what the turnout might be. Therefore, even though Biden led Trump by about 1% of votes on the [morning of November 5](#), news networks held off on making an official call. Furthermore, key counties had high numbers of ballots remaining to be processed and counted—by 10 a.m. on November 5, [63,262](#) ballots remained to be counted in Clark County alone. However, by November 7, media outlets such as the Associated Press and the *New York Times* had [called](#) Nevada for Biden. Ultimately, President-Elect Biden won the state by a margin of [33,596](#) votes.

Other than delays, the counting process went fairly smoothly. There were a few isolated incidents of protests at polling and counting locations. Post-Election Day, [protestors descended on the Clark County Election Center](#), where election workers were counting ballots, demanding

the count be stopped. In response, the county [increased security and started tracking cars](#) entering and leaving the election center.

Nevada Republicans and the Trump campaign began legally challenging Nevadas's general election processing and counting procedures as early as [October 23](#). The last case was filed on November 17 to request that the Nevada State Court certify the Nevada election for President Trump. The most substantive challenges concerned the use of the Agilis automated signature-matching software and a purported lack of ability to observe counting procedures. None of the cases resulted in ordering election officials to cease using the Agilis software. One case [ended](#) because of a stipulation in which Clark County [agreed](#) to expand observation access. Despite that agreement, a subsequent lawsuit, [asking](#) for closer observation (among other things), was ultimately [dismissed](#).

Republican voters filed a lawsuit, [Stokke v. Cegavske](#), on November 5, 2020, to challenge the ballot counting process. Plaintiffs, two individuals and two Nevada Congressional campaigns, sought injunctive relief to direct state election officials to (a) cease their use of the Agilis system to count ballots and (b) allow greater access to ballot-counting observers. Plaintiffs claimed that the Agilis system, which purportedly misidentified plaintiff Stokke as having already voted by mail, was not able to properly verify signatures. The court denied the plaintiffs' request for preliminary injunction to mandate that Clark County permit observers to be closer to the ballot-counting process. Plaintiffs subsequently voluntarily dismissed their lawsuit.

Certifying the Vote

Nevada officially [certified](#) the results of the general election on November 24, 2020, after county clerks had certified the vote count for their counties and passed their certifications up to the secretary of state. The Nevada Supreme Court [approved](#) the state's election results. Several Nevada Supreme Court justices [congratulated](#) Secretary of State Cegavske for running a smooth election with a 77.3% turnout rate. Biden [won](#) by a margin of 33,596 votes over Trump.

Nevada's certification took place despite a [number](#) of GOP [legal challenges](#) to the state's election results and [counting process](#), and the Trump campaign's unsupported [accusations](#) of voter fraud in the state. Under Nevada law, a candidate defeated in any election may request a recount within three business days of the canvass and the subsequent certification of votes. While Trump did not request a recount, his campaign and other candidates for office filed four election contests. An election contest in Nevada is a special judicial proceeding with its [own rules](#). In addition to making unfounded voter fraud claims, all the legal challenges filed in Nevada after Election Day sought to replace Agilis, an automated ballot processing system used

by Clark County to conduct signature verification for mail ballots to supplement human review (see, e.g., [Stokke v. Cegavske](#), [Law v. Whitmer](#), and [Rodimer v. Gloria](#)). While plaintiffs contended that the Agilis machine misidentified signatures, courts found no proof of such malfunctioning. In one case, the judge found the testimony not credible because the plaintiffs' expert witnesses were "unable to identify the source" of their datasets and admitted to using "no quality control" ([Law v. Whitmer](#)). All of these lawsuits were unsuccessful.

Pennsylvania

Pennsylvania's counting of in-person and absentee ballots proceeded as many expected and largely without issue, including the early emergence of a "red mirage" that was later swamped by a "blue tsunami." Pennsylvania election officials fully complied with the law and successfully oversaw the canvassing, tabulating, reporting, and certifying procedures. Ultimately, Pennsylvania elected Biden in the presidential contest by a margin of [80,555](#) votes over Trump.

Processing and Rejecting Ballots

Following nationwide trends during the coronavirus pandemic, mail, or absentee, ballots hit a record high in Pennsylvania for the November 2020 election. Of the total [6,915,283](#) votes counted during Pennsylvania's general election, [37.8%](#) were cast via absentee ballot. This figure marks a significant increase from the 2016 general election, in which only 4.3% of votes were cast absentee. Moreover, more than 80% of mail ballots were returned prior to Election Day in 2020.

[Fears](#) of mass rejections of mail ballots because of late arrival did not materialize. Only [10,000 ballots](#) arrived after November 3, and Pennsylvania had extended the ballot receipt deadline until November 6 in anticipation of the influx of mail votes. However, the extended grace period drew significant [litigation](#), which yielded a U.S. Supreme Court [order](#) to keep the post-November 3 arrivals separate. The 10,000 ballots received after Election Day were far fewer than previous election cycles and [not enough](#) to make a difference in the final electoral results in which Biden beat Trump by more than 80,000 votes. Therefore, the disposition of the segregated absentee ballots did not delay the state's certification of the election results.

Before the election, many were concerned that the state's mandatory requirement that absentee voters use "secrecy sleeves" (inner envelopes that protect the voter's privacy while identifying information on the outer return envelope is processed) would increase the ballot rejection rate. Philadelphia's City Commissioner Lisa M. Deeley [cautioned](#) that the secrecy

sleeve requirement in Pennsylvania would cause “electoral chaos” and could result in 100,000 rejected ballots statewide. However, despite the large number of first-time absentee ballot voters in 2020, just [7,411 ballots](#), or 0.282% of all absentee ballots, were rejected in Pennsylvania. This was a significantly lower rejection rate compared to the 2016 cycle, in which 0.95% of absentee ballots (or 2,534 ballots) were rejected, a rate roughly in line with the historical average. Extensive media coverage of the issue and nonprofit advertising may have successfully educated Pennsylvania voters to include the secrecy sleeve or to cure any “naked ballots” through provisional voting on Election Day.

Pennsylvania did not have consistent notification rules governing absentee ballots rejected for technical errors. Jonathan Marks, Pennsylvania’s deputy secretary for elections and commissions, advised all counties to scan flawed ballots as quickly as possible on Election Day and mark them as canceled in order to trigger notification emails to voters. While some counties followed this guidance and took additional steps to help voters “cure” their ballot defects, other counties (such as Lycoming County), instead marked these ballots as received with [no indication of any problem or ballot rejection](#). Allegheny County mailed flawed ballots back to voters but did not mark these ballots in the tracking system. Officials anticipated a time-crunch in ballot curing on Election Day and proactively [urged voters](#) to make use of provisional ballots if they believed that their ballot might be rejected (for instance, for failing to include the secrecy sleeve or forgetting to sign).

Pennsylvania’s secretary of state also sent guidance to all county boards of elections stating that “the county boards of elections should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected and should promptly update the [online ballot tracking] system.” While some counties followed this guidance on Election Day, several counties—including Blair, Berks, Carbon, Clinton, Dauphin, Lancaster, Lycoming, and Perry counties—refused to accept the guidance, alleging that it violated state law. Citing Pennsylvania’s election code provision that “[n]o person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of a pre-canvass meeting prior to the close of the polls,” these counties failed to provide any names of voters of rejected ballots to official poll workers and later filed several lawsuits over the legality of the guidance itself. At least one of these lawsuits, filed by Republican candidates, [sought](#) to block voters whose ballots had been initially rejected from casting provisional ballots.

After Election Day, Republican party officials and the Trump campaign filed several lawsuits related to various aspects of Pennsylvania’s vote-by-mail procedures. These suits included a [challenge](#) to the constitutionality of a provision of state law (Act 77) that allowed no-excuse mail voting (the lawsuit was [dismissed](#) by the Pennsylvania Supreme Court). Other legal actions

made various [requests](#) to exclude absentee ballots with technical errors, such as those missing dates or addresses, or those arriving with partially unsealed envelopes (most of these were dismissed or [denied](#)). And there was [litigation](#) seeking to prevent the certification of Pennsylvania's election results, alleging mail ballot fraud ([denied](#) by the Third Circuit).

Counting Ballots

Pennsylvania counties tabulated [different](#) "computations," or buckets of votes: votes received by Election Day, including ballots cast in person and mail ballots; postmarked ballots received between 8 p.m. Election Day and Nov. 6, as ordered by the state Supreme Court; and ballots that arrived between those days with no postmark or with an illegible postmark, which the high court also permitted as long as there wasn't a preponderance of evidence to show they were sent too late. As discussed above, these distinctions ended up irrelevant given the wide margin of victory.

Shortly after Election Day, the Trump campaign brought a [lawsuit](#) against Philadelphia's County Board of Elections, seeking to stop the county from counting ballots until Republican election observers were allowed "to be present and observe the canvassing of all mail and absentee ballots." Unfortunately for the plaintiffs, a Trump campaign attorney [admitted](#) to a federal judge during oral argument that the campaign had multiple representatives present to observe the canvassing at all times. And, according to Philadelphia's city commissioners, both parties had observers present and both parties were given equal access throughout the process. The case was dismissed.

The Trump campaign did achieve one minor victory, however, securing [a court order](#) on November 5 that required poll watchers be allowed within six feet of ballot counting in the Pennsylvania Convention Center, rather than the initial 20-foot barrier. This change [paused counting altogether](#) for two hours and subsequently slowed down the counting process in Philadelphia, as poll workers could use only the tables closest to the observers' perimeter barrier, which "left the other tables empty, equipment unused, and ballots counted at a slowed pace." Trump later continued to [claim](#) on Twitter that "Pennsylvania and Michigan didn't allow our Poll Watchers and/or Vote Observers to Watch or Observe," but this claim was [unequivocally false](#), as poll watchers were allowed to observe the canvassing of ballots in both of the implicated states.

By the morning after Election Day, roughly 75% of Pennsylvania's votes had been counted and Trump led Biden by over [600,000 votes](#) statewide. The overwhelming majority of these votes, however, were votes cast in-person on Election Day. Because [Pennsylvania law](#) prevented officials from tabulating mail ballots until the close of polls, it took weeks to officially canvass

and tally 100% of the state's votes. Over the course of the next several days, as election officials began to canvass [over two million](#) mail ballots and [over 100,000](#) provisional ballots, the margin between Trump and Biden began to tighten. Biden's gains in the state's absentee ballots were largely expected, given [widespread evidence](#) that Democrats were overwhelmingly choosing to vote by mail. By Friday, November 6, the number of votes counted for Biden exceeded Trump's vote count. And by November 7, [multiple news outlets](#) called Pennsylvania for Biden and declared him the presumptive president-elect. Biden's final margin of victory over Trump exceeded 34,000 votes, or [0.51 percentage points](#)—outside the margin that would trigger a mandatory recount under Pennsylvania law.

Certifying the Vote

In the several weeks following the November 2020 election, the Trump campaign and its allies pursued [various efforts](#) to delay or circumvent Pennsylvania's official certification of the election results. For example, Pennsylvania's Republican-controlled House attempted to initiate a "legislative audit" of the election. That move was [rejected](#) by the Legislative Budget and Finance Committee in a 2-1 vote due to the ongoing, legally mandated Department of State vote certification audit. In addition, Rudy Giuliani, a prominent Trump attorney, [joined](#) an existing lawsuit urging the court to prohibit the certification of Pennsylvania's results. The federal district court rejected the request, [finding](#) that the plaintiffs had presented "strained legal arguments without merit and speculative accusations ... unsupported by evidence." The Third Circuit U.S. Court of Appeals also [denied relief](#) to the Trump campaign in its effort to stop certification. Despite several open cases and ongoing [attempts](#) to reach the U.S. Supreme Court, the state certified its election results on schedule.

Even with the external legal drama, the certification process in Pennsylvania proceeded on time and in accordance with state law. Counties were [required to submit](#) their certified results to Secretary of the Commonwealth Kathy Boockvar by November 24, 2020. County boards certify their results during a public meeting held before that deadline. Although minor disputes arose over the validity of small batches of ballots with certain technical flaws (such as ballots with illegible or missing printed names or dates) and [delayed results](#) in some counties, ultimately all disputes were resolved before the statutory deadline. [Many boards](#), including those in Bucks, Lehigh, and Lackawanna counties, met the day of the deadline, Monday, November 24, to certify their votes. Allegheny, Dauphin, Luzerne, and Montgomery counties were among those that certified their results but [not unanimously](#).

On [November 24](#), three weeks after Election Day, Pennsylvania officially certified the election results, securing Biden's victory. After the Department of State confirmed the county-by-county

figures, Secretary Boockvar announced the [final count](#): Biden received 3,458,229 votes, 80,555 more than Trump's 3,377,674 votes. Biden won 50.01% of the vote to 48.8% for Trump. Governor Tom Wolf then [signed](#) the Certificate of Ascertainment, a [federally required](#) document given to the national archivist, to name the 20 Biden electors who would meet in the state's capital, Harrisburg, on December 14, 2020, to formally cast their votes. When Pennsylvania's 2020 election was officially certified, Governor Wolf [said](#) that the certification "is a testament to the incredible efforts of our local and state election officials, who worked tirelessly to ensure Pennsylvania had a free, fair and accurate process that reflects the will of the voters."

After the state certified the results, 64 Republican state lawmakers [signed a letter](#) asking Congress to block Pennsylvania's slate of electors from casting their Electoral College votes for President-Elect Biden. On December 14, the Republican Party of Pennsylvania also released a statement [claiming](#) that, at the request of the Trump campaign, the Republican slate of electors met in Harrisburg to "cast a conditional vote for Donald Trump . . . [as a] procedural vote to preserve any legal claims that may be preserved going forward." Neither of these actions, however, had any practical effect on the state's official certification for Biden.

Wisconsin

After seeing an historically high number of absentee voters in its April primary, Wisconsin invested more resources in the absentee voting process, with strong results: The state reported experiencing no major issues during the November election. Statements from both [county](#) and [state-level](#) officials confirmed that the election ran smoothly, with no major problems or irregularities reported. Where minor issues did occur, poll workers were [equipped](#) to address them efficiently and effectively. Nonetheless, the Wisconsin Elections Commission (W.E.C.) and many cities across the state faced a deluge of lawsuits and accusations of fraud, as the Trump campaign and its allies attempted to discredit the administration of the election. However, these lawsuits were resolved and the election results promptly certified by the state.

Processing and Rejecting Ballots

Wisconsin saw record-high use of absentee voting in the 2020 general election. Out of the 3,297,524 people who [voted](#) in Wisconsin, more than half—1,969,274 voters (or 59.7%)—[voted absentee](#). Of those absentee ballots, [1,346,721](#) (68.4%) were cast by mail and the rest ([653,236](#)

ballots) came from early voting, known as “[in-person absentee voting](#)” in Wisconsin. All absentee or early ballots [remained sealed](#) in their envelopes and secured in the local clerk's office until they were delivered to polling places or central counting facilities to be processed on Election Day. Absentee ballot use showed a significant increase from the [2016 general election](#), in which 819,316 (or 27%) of voters voted absentee. This surge was largely expected because of the coronavirus pandemic and attempts to make absentee voting easier. For example, in June 2020, the Wisconsin Elections Commission [voted](#) to proactively send absentee ballot applications for the general election by September 1 to all 2.7 million Wisconsin voters who had not yet applied (with the exception of 158,000 voters who were flagged as recent movers).

Wisconsin was one of only four states where state law prevented election workers from processing absentee ballots until Election Day 2020. This processing limitation meant that the ballots could not be removed from their envelopes, unfolded, or otherwise prepped to go through the counting machines until the polls opened on Election Day. With almost two million absentee ballots in the Wisconsin 2020 election, processing was a daunting task, and the state's county clerks association had [asked](#) the state legislature to allow them to begin opening envelopes earlier. This request was not met with legislative response, however, forcing clerks to process and count ballots [through Election night](#) and into the next day to finish the count.

[Election clerks](#) in Outagamie and Calumet counties had some processing concerns and sought permission from the Wisconsin Supreme Court to correct a small technical misprint on 13,500 absentee ballots. The misprint involved ballot [timing marks](#), small black boxes printed along the edge of a ballot to ensure the ballot is aligned correctly as it is fed into counting machines. The timing marks on the defective ballots were not sufficiently inked during the printing process, and clerks proposed using black ink pens to fill in the misprinted timing marks. It was a solution backed by the Wisconsin Election Commission's six commissioners to save ballot-processing time, but the Commission does not have the authority to change election law. The Commission sent a letter to the court, urging it to allow election officials to rectify the ballots this way. The court [declined](#) to take the case, however, and election workers instead had to [duplicate](#) each defective ballot onto a properly printed ballot. Outagamie County Clerk Lori O'Bright estimated the duplication effort would take about four minutes per ballot and “slow things down.”

But otherwise, the processing of ballots led to few issues and surprisingly fast returns. In Outagamie County, poll workers duplicated the misprinted ballots onto new ones with the help of additional staff from the [National Guard](#), and there were no significant delays in processing votes. Clerks in Outagamie County [said](#) that the day “was better than expected,” that they felt confident in their system and their process, and that counting the large number of absentee ballots “went as well as it could’ve for the amount... It was done the way it was supposed to be

done and the way we've always done it." In Milwaukee, election officials finished the count around [3 a.m.](#) November 4, 2020.

Wisconsin state law [requires](#) absentee ballots to be issued to registered voters with a valid request on file, to include completed certificates (on the return envelopes) to be signed by the voter and a witness, and to be received by election officials by the close of polls. If any of these elements are missing, the ballot is rejected.

Rejection of ballots for late arrival was a significant concern. Wisconsin state law does not allow ballots to be counted if they were received after Election Day, regardless of whether they were postmarked on or before Election Day. This law led to multiple lawsuits, notably [DNC v. Bostelmann](#). Though a federal judge in the spring extended the ballot receipt deadline by six days for the primary election, the issue made it to the [U.S. Supreme Court](#) in October, where the Court blocked the prior court-ordered extension for the general election.

Obtaining the required [witness signature](#) presents a potential barrier for absentee voters in every election, but the escalating coronavirus pandemic made it a particular challenge for voters living alone—or who did not live with other adult citizens—in 2020. The Wisconsin Elections Commission [provided additional guidance](#) for securing a ballot witness while social distancing, suggesting voters ask mail delivery persons, grocery or food delivery persons, and medical professionals to serve as potential witnesses. While a federal district court [suspended](#) Wisconsin's witness requirement during the pandemic, the Seventh Circuit U.S. Court of Appeals [overturned](#) that decision in [DNC v. Bostelmann](#), prioritizing the state's interest in preventing potential voter fraud.

[Reports](#) indicate that Wisconsin's absentee voting process went fairly smoothly. The *Wisconsin State Journal* reported on October 28 —less than a week before the general election—that county elections clerks had [found problems](#) with only 1,506 absentee ballots out of the 1.45 million already returned. Most of those ballots were returned to voters so they could be corrected, but contacting voters to correct or "cure" their ballots was [optional](#) for clerks in Wisconsin. Milwaukee election officials [cured](#) 1,063 ballots in November that were missing the city and state part of the voter's address. Officials either filled in "Milwaukee, WI" after confirming the voter's address was in Milwaukee or called the voter to cure the ballot by mail. Because absentee ballots could not be opened until Election Day, these errors found prior to Election Day could only be ones that were visible on the outer [envelope](#), such as a missing witness signature or incomplete voter information.

Rejection rates were lower than feared. A total of [4,270](#) (0.2%) of absentee ballots were rejected in the November 2020 general election. Of those, [1,434](#) were rejected for insufficient

certification, and [1,045](#) were not returned before the close of polls. An additional [1,151](#) were rejected because the voter was not eligible to vote, and 640 were rejected for various other reasons. However, these rejection figures may be [deceptively low](#). Marking an absentee ballot as “rejected” is only one way to handle flawed absentee ballots. Some county election clerks recorded flawed ballots as an “administrative ballot cancellation” instead of as a “rejected ballot,” though the underlying flaw may be the same — the assignment of these labels was entirely at the [discretion](#) of local clerks. Therefore, the “rejected ballots” number is an imperfect measure of how many absentee ballots ultimately did not count. While the number of absentee ballot rejections dropped from the April presidential primary to the November 2020 general election, the number of “administrative ballot cancellations” nearly [quadrupled](#).

The reportedly low absentee ballot rejection rate in November 2020 is consistent with recent trends in Wisconsin. The rejection rate fell between the 2016 and 2020 primaries: In the April 2020 Wisconsin primary, about 1.8% of total ballots were rejected (23,196 absentee ballots), compared to a 2.5% rejection rate in the April 2016 primary. November elections see lower rejection rates than primaries because a [higher percentage](#) of absentee votes are delivered through in-person early voting, where clerks assist in the process and serve as witnesses. November absentee ballot rejection rates have trended [steadily downward](#) since 2008, except for an increase in November 2016 after a new state law required ballots without witness addresses not to be counted. Rates resumed their downward trend after the Wisconsin Election Commission [advised](#) clerks to fix missing addresses based on “reliable information.” [Rejection rates](#) were 0.23% in November 2018 and 0.2% in November 2020.

November 2020 saw a decrease in rejection rates in part because of an extensive effort by election administrators and community groups to educate voters on how to properly cast an absentee ballot. [For example](#), the exterior of ballot drop boxes sported large stickers with STOP signs, asking voters to check that they had satisfied the signature and witness requirements. In addition, news reports of postal service issues may have contributed to a shift away from voting by mail; voters cancelled [52,148](#) mail ballot requests in favor of voting in person.

Counting Ballots and Reporting Results

Despite state laws that prevent election officials from processing or counting absentee ballots before Election Day, a herculean effort by Wisconsin election workers provided the public with an unofficial final vote tally by the early hours of November 4. Election officials in Wisconsin [worked all night](#) and into the early morning of November 4 to count more than 3.2 million ballots, including the 1.9 million absentee ballots that workers could not start processing or

counting until November 3. Wisconsin Elections Commission Administrator Wolfe called it “[a smooth day](#)” with no widespread issues reported.”

This incredible effort by Wisconsin election officials to complete the count was used by the Trump campaign and conservative media to fuel suspicions about the process, leading to lawsuits and a partial recount. Trump and his allies used the influx of absentee ballot tallies after midnight on Election Night as a major driver of misinformation claiming voter fraud that resulted in numerous (unsuccessful) lawsuits.

The late influx of absentee ballot totals occurred because Wisconsin uses two different counting systems. Different localities [employ different approaches](#) to count their absentee ballots in Wisconsin. While most, including Madison, process them at the polls, [39 municipalities](#), including Milwaukee, count them at a central counting location. Those with a central count system post initial results representing in-person voting totals on Election Day and add absentee ballot tallies later. Those with decentralized counting post a report that includes a tally of both in-person votes and absentee ballot figures. Therefore, unlike reports from the rest of the state, early reports from localities with a central counting system did not include the large number of absentee ballots cast. Because several municipalities could not finish processing their absentee ballots by the time the polls closed at 8 p.m. on Election Day, there was a [delay](#) in reporting those results to county clerks. This was especially true in major cities, including Milwaukee, Green Bay, and Kenosha, where final unofficial results were reported [after](#) 3 a.m. on November 4.

The reporting delays were expected. “It does not mean something went wrong – it means election officials did their jobs and made sure every valid ballot was counted,” [said](#) Meagan Wolfe, Wisconsin’s chief election official. To bolster transparency in the counting process, some central count municipalities, including Milwaukee and Green Bay, provided the public and the media with live webcams of the absentee ballot tabulation. Central count locations were also [open](#) to the public, the media, and representatives of both major political parties, as well as independent poll watchers.

After the central count locations reported, the early “red mirage” dissolved. Trump had been in the lead by more than 100,000 votes early in the night, but the picture changed after the [City of Milwaukee’s central count](#) finished processing its 170,000 absentee votes around 3:30 a.m. Those votes were overwhelmingly Democratic. The late boost for Biden from Milwaukee was expected —absentee ballots tended to skew toward Democrats and Milwaukee was historically a Democratic stronghold. After Milwaukee reported those returns, Biden jumped ahead of Trump by about 8,000 votes. His lead widened to around 20,000 after Green Bay reported its

in-person and absentee results and Kenosha finished its tally. Shortly after, on Wednesday, November 4, the Associated Press [declared Biden the winner](#) in Wisconsin.

The Trump campaign and conservative groups immediately looked for ways to challenge Wisconsin's results. One conservative website made a claim, later repeated by Trump, that the sharp uptick in votes for Biden around 4 a.m. on November 4 (when Milwaukee released its absentee ballot results) was [evidence of voter fraud](#). Another widely shared post on Facebook called it a "[ballot dump](#)," while another post referred to the votes as being "[found](#)." Trump followed the same narrative when he [tweeted](#) around 9 a.m. that his lead in key states "started to magically disappear as surprise ballot dumps were counted." Other widely repeated claims included that Wisconsin election officials "[took a break](#)" from counting votes at some point during the night and, when they returned, they "suddenly came up with" hundreds of thousands of votes for Biden. There was also a claim made that there were [more votes than registered voters](#) in the state. All of these theories were quickly disproven, but the Trump campaign and other sympathetic plaintiffs forged ahead with filing a recount petition and numerous lawsuits. These lawsuits did not have any success in Wisconsin.

The first post-election lawsuit in Wisconsin was filed November 12. In [Langenhorst v. Pecore](#), three Wisconsin voters sought to exclude all of the votes cast in Menominee, Milwaukee, and Dane counties from Wisconsin's total based on differences in absentee voting rules among the counties. Plaintiffs objected to the counties' policies of allowing voters who say they are "indefinitely confined" to cast ballots without providing photo identification. The complaint also cited a handful of voters who said they received absentee ballots without requesting them, and three absentee ballots were allegedly completed after they were mailed to deceased people. However, the plaintiffs [voluntarily dismissed](#) the suit four days later.

Before certification occurred, conservative Wisconsin Voters Alliance [sued](#) to block certification of the results and give the Republican-controlled legislature the power to appoint presidential electors to cast the state's 10 Electoral College votes. The Wisconsin Democratic Party had previously selected Biden's 10 electors as prescribed by law. This lawsuit became moot upon certification, which confirmed that Biden received the state's 10 Electoral College votes from those electors.

Because the number of votes for Trump was within one percentage point of those for Biden, Trump was [entitled to](#), and petitioned for, a [recount](#). Most legal challenges filed after the state had already conducted this recount and certified its results, leveled broad allegations that election officials had improperly expanded mail voting. In each suit, courts held that state election officials had lawfully administered Wisconsin's election, as per the directives of the state legislature.

Certifying the Vote

The win for Biden in Wisconsin was marked by a record turnout. In total, 3,278,963 Wisconsinites (72.3% of the voting-age population in 2019) [voted](#) in the 2020 general election, [up from](#) 3,004,501 (67.3%) in 2016. President-Elect Biden [won](#) the presidential contest with 1,630,866—or 49.57% of the votes; Trump received 1,610,184 votes, thereby losing by 20,682 votes, a margin small enough to qualify for a recount in the state. The partial recount only [added to](#) Biden’s margin over Trump, increasing it by [74](#) votes.

Joe Biden’s victory in Wisconsin was certified on November 30, 2020, following the partial recount. The victory became official after Governor Tony Evers and Ann Jacobs, chairperson of the Wisconsin Elections Commission, approved the canvass report showing Biden as the winner. Jacobs, a Democratic appointee to the bipartisan commission, signed the canvass statement over [objections](#) from Republicans on the commission who wanted to wait until legal challenges were exhausted. In doing so, she affirmed the presidential election results from all 72 counties, including the recounts conducted in Dane and Milwaukee counties. Shortly after that, Governor Evers, a Democrat, [signed](#) a certificate that completed the process and cleared one of the last hurdles for Wisconsin’s 10 electoral votes to go to Biden. Wisconsin sent its [certificate of ascertainment](#) for the 2020 election to the National Archives on November 30, stating that Biden defeated Trump.

The certification on November 30 kicked off a five-day deadline for Trump to file a lawsuit, which he [promised](#) would come the following day. Trump mounted a longshot attempt to overturn the results by disqualifying as many as 238,000 ballots by alleging, without evidence, that there was widespread fraud and illegal activity. Trump’s litigation strategy involved requesting, as a remedy for the alleged fraud, that the state’s election results be decertified (e.g. [Trump v. Evers](#)). In more audacious lawsuits, plaintiffs requested courts to throw out the Electoral College slates chosen by popular vote and instead remand the issue to the Republican-controlled state legislature in Wisconsin, so that the legislature could appoint its own slate of electors (e.g. [Trump v. Wisconsin Elections Commissions](#)).

Many of the lawsuits specifically involved rules regarding “indefinitely confined” voters. While no excuse was required to receive and cast an absentee ballot in Wisconsin, there was some dispute over who was permitted to request an absentee ballot as an “indefinitely confined” voter during the coronavirus pandemic. A designation of “indefinitely confined” [excuses](#) the voter from having to submit a copy of their photo ID with their ballot application. According to statistics kept by the Wisconsin Elections Commission, nearly [216,000 voters](#) said they were indefinitely confined in the 2020 election—up from under 57,000 in 2016. This led to assertions that voters were misclassifying themselves as indefinitely confined because of the pandemic. It

also triggered lawsuits over whether the Wisconsin Elections Commission had given adequate guidance as to who was eligible in the midst of the pandemic.

The day after the November 30 certification, Trump and his campaign [asked](#) the Wisconsin Supreme Court to reverse the election certification, claiming more than 200,000 mail ballots were illegally counted. According to the lawsuit, [Trump v. Evers](#), election boards in Democratic-leaning Milwaukee and Dane counties failed to follow proper procedures for issuing mail ballots and accepted tens of thousands that should have been rejected. The Wisconsin Supreme Court [denied](#) immediate review of the case but permitted Trump to file his challenge in circuit court. The lower court's decision on Friday, December 11 [dismissed](#) the Trump campaign's claims that election officials in two counties failed to follow state law regarding absentee ballots during Wisconsin's recount. "The certification of the results of the 2020 Wisconsin presidential election, after the Dane County and Milwaukee County recounts, is affirmed," ruled Reserve Judge Stephen Simanek, adding, "I believe the recount was transparent and open—I believe [it may have even been live-streamed](#). There is no dispute in that regard."

Also on December 1, 2020, conservative attorney Sidney Powell, who was at times identified as part of the Trump campaign's legal team, filed another lawsuit. In this case, [Feehan v. Wisconsin Elections Commission](#), a Republican presidential elector, William Feehan, and the Republican nominee for Wisconsin's Third Congressional District seat, Derrick Van Orden, [sued](#) the Wisconsin Elections Commission with numerous allegations. Among other things, they alleged the commission had violated state law in its guidance for submitting an absentee ballot application as an "indefinitely confined voter" and in their guidance permitting clerks to contact absentee voters to cure a missing witness address on their return certification envelope. The plaintiffs sought to decertify the election results and to force the state to perform a recount or a statistically valid sampling of voter signatures to investigate whether ineligible absentee ballots had been counted. Two days later, plaintiff Feehan filed an amended complaint, removing Van Orden as a plaintiff. On December 9, the federal district court [held](#) that it lacked the jurisdiction to grant the relief that the remaining plaintiff sought because "federal judges do not appoint the president in this country." The court also held that the plaintiff lacked Article III standing to sue in federal court over a state election claim, but went on to dismiss the claims as moot.

On December 2, 2020, Donald Trump's lawyers [filed Trump v. Wisconsin Elections Commissions](#), a lawsuit in federal district court against the Wisconsin Elections Commission, alleging that absentee voting discriminated against "able-bodied" voters. It alleged that the widespread availability of voting by mail contradicted the Wisconsin Legislature's disfavor of absentee voting policies. The suit also alleged that the commission "eliminated state laws requiring that voters provide information on the mail ballot envelope" and permitted election workers to alter

ballots, among [other claims](#). The suit challenged the validity of 17,000 absentee ballot votes that had been collected at “[Democracy in the Park](#)” events sponsored by the City of Madison. Trump requested that the result of the Wisconsin election be remanded to the Wisconsin State Legislature. On December 12, the court [denied](#) the petition with prejudice. The court found that the Wisconsin Election Commission’s guidance on indefinitely confined voters, the use of absentee ballot drop boxes, and election workers’ corrections to witness addresses were not challenges to the “Manner” of Wisconsin’s appointment of presidential electors, but rather disagreements over election administration. The court also found the Commission conducted the election in the manner directed by the state legislature, in accordance with the Electors Clause. U.S. District Court Judge Brett H. Ludwig, a Trump appointee, [opened his order](#) noting, “This is an *extraordinary* case” (emphasis in the original) because the President is “[h]oping to secure federal court help in undoing his defeat.” After surveying the evidence, Judge Ludwig concluded that “[t]his Court has allowed plaintiff the chance to make his case and he has lost on the merits.”

Appendix of State Laws

Below is a detailed description of state laws in eight battleground states related to counting the vote. While not all of these laws were invoked or came into play during the 2020 election, they frame the context in which the counting and certification of votes took place.

Arizona

Arizona is among the few battleground states that allow early scanning of ballots, including mail ballots. The count in Arizona starts 14 days before the election, such that partial results were available on Election Day despite the increase in mail ballots in 2020. Some Arizona election rules were [litigated](#) in the months leading up to the 2020 election, including the deadline for curing mail ballots without signatures and the treatment of provisional ballots cast in the wrong precinct. However, few of these cases impacted how ballots were counted in the 2020 election.

Processing Mail Ballots

A 2019 law (Ariz. Rev. Stat. § [16-550](#)) extended the period in which election officials may open and count ballots, from seven days to 14 days before Election Day, helping to ensure smooth and timely processing of ballots for the 2020 elections. Despite early tabulation, officials could not release the results until all precincts had reported or until one hour after the polls closed on Election Day. All mail ballots had to be received by 7 p.m. on Election Day to be counted. A case filed in August 2020, [Yazzie v. Hobbs](#), challenged this requirement that mail ballots be *received* by election officials—rather than just postmarked—before 7 p.m. on Election Day, but a federal district court denied the request to extend that deadline, and the Ninth Circuit affirmed. Therefore, the Election Day ballot receipt deadline remained in place for the 2020 election.

Mail ballots are certified through signature verification. Though such ballots cannot be counted earlier than 14 days before Election Day, they can be cleared through a [signature verification](#) process that can begin when the ballot and ballot affidavit are received by the county recorder or official in charge of the election. (For 2020, this was approximately the week of October 12, as ballots were mailed beginning [October 7](#).) The process involves [comparing](#) the signature on the ballot affidavit envelope with the signature on the voter's registration record. If a signature cannot be verified because it is inconsistent with the signature on the voter's registration record, election officials are required to make "reasonable efforts" under Arizona Revised

Statutes § [16-550](#) to contact voters and give them an opportunity to correct the signature. Voters had until the fifth business day after the election to [correct](#) any mismatched signatures. If the signature on the ballot envelope was not [verified](#) by that time, the ballot was not counted. If the signature was [verified](#), the county recorder marked the unopened affidavit envelope as verified and kept the ballot and affidavit unopened in the return envelope until transfer to the election officer for further processing and tabulation.

By contrast, if the ballot was *missing* a signature, voters had only until 7 p.m. on Election Day to fix the error before their ballot would be rejected. Arizona law is silent on the procedure for missing signatures (see Ariz. Rev. Stat. § [16-550](#)), but the [Elections Procedures Manual](#) does address this issue. [According to](#) the Manual, “[i]f the early ballot affidavit is not signed, the County Recorder shall not count the ballot. The County Recorder shall then make a reasonable and meaningful attempt to contact the voter via mail, phone, text message, and/or email, to notify the voter the affidavit was not signed and explain to the voter how they may cure the missing signature or cast a replacement ballot before 7 p.m. on Election Day. The County Recorder shall attempt to contact the voter as soon as practicable using any contact information available in the voter’s record and any other source reasonably available to the County Recorder. Neither replacement ballots nor provisional ballots can be issued after 7p.m. on Election Day.”

The Arizona Democratic Party [sued](#) over the disparity in procedures for missing and mismatched signatures. [Arizona Democratic Party v. Hobbs](#) challenged the procedure that allowed voters with mismatched signatures five days after the election to verify their ballots, while allowing those with missing signatures only until 7 p.m. on Election Day to fix their mistake. Plaintiffs argued that the Election Day deadline made voters with missing signatures more likely to have their vote rejected, as they would be far less likely to receive notice in time to correct the error. In addition, there was a risk that the inconsistency between the deadlines could be a source of confusion for voters. Plaintiffs prevailed at the district court level, but the U.S. Court of Appeals for the Ninth Circuit [overturned the district court ruling](#) in October 2020, finding that the Election Day deadline created only a minimal burden.

Arizona had a controversial policy of rejecting provisional ballots cast in the wrong precinct, a policy that generated concern because so many precinct locations had been relocated or closed in 2020 to accommodate pandemic circumstances. In [Brnovich v. DNC](#), plaintiffs sought to [eliminate](#) the policy, claiming that it violated Section 2 of the Voting Rights Act. They proposed instead that votes for county, state, and national offices on ballots cast in the wrong precinct should be counted, but that votes for precinct-specific offices should not be counted. The Ninth Circuit [struck down](#) the out-of-precinct policy for provisional ballots in January 2020, finding that it was enacted with the intent to discriminate against minority voters. The Arizona [attorney](#)

[general](#) appealed the case to the Supreme Court of the United States, which granted certiorari but set argument to [hear the case](#) in March 2021. The law, therefore, [remained in effect](#) during the 2020 general election and had the potential of disqualifying a large number of provisional ballots.

Tabulating the Vote

Arizona requires all of its election equipment to be tested and certified before an election, using logic and accuracy tests. Under Arizona Revised Statutes § [16-449](#), this testing and certification process must take place both before and after each election to ensure machines are counting votes accurately and attributing them to the correct candidates and ballot measures. Each county is required to test all of its [election equipment](#) (i.e. voting machines) before any tabulation can begin. These tests must be [overseen](#) by at least two election staff or inspectors of different political parties. In addition, the testing must be observed by representatives of political parties, candidates, the press, and the public. For any election that includes a federal, statewide, or legislative office, the secretary of state must conduct additional [logic and accuracy tests](#) on equipment from various counties.

In-person [early voting](#) begins 27 days before Election Day and continues through the Friday before the election. The election officer may begin tabulating early ballots after confirmation from the secretary of state that all voting equipment has passed any required logic and accuracy test. Ariz. Rev. Stat. § [16-552\(A\)](#). Tabulation of early ballots can start 14 days before the election. A.R.S. § [16-550\(B\)](#). Once the signature on an early ballot affidavit is verified by the county recorder, the ballot is sent to the early ballot board, which is made up of staff members who are required to be affiliated with different political parties. The early ballot board removes the ballots from their envelopes and transports them to the tabulation room where election officials run them through [tabulators](#). The ballot tabulation room is required by [law](#) to have live video feed so voters are able to watch ballot tabulation occur.

Counties vary in where they process ballots. Some counties use the [central count](#) method in which voters put their completed ballots in a “secured ballot bin” which is transported to the county's ballot tabulation center after the polls close. This transportation is carried out by “election workers” of different political parties.

Other counties use the [precinct tabulation](#) method, in which voters or poll workers feed the completed ballots into a tabulation machine located at the voting location. The machine tabulates the ballots immediately and saves the vote count to a removable media device which is stored inside the tabulator. After the polls close, the poll workers or sheriff's deputies bring

the removable media devices to the central counting location for the county. At the central counting location, an election official loads the results from the removable media device into the secure election management system and combines the vote totals for all the polling locations.

All counties must follow [chain of custody protocols](#). This includes requirements for documentation on the handling of every ballot, storage of ballots in secure locations, and the live video feed on the ballot tabulation rooms. Counties must also follow protocols for ensuring the security of all ballots, including the use of tamper-evident seals, identification badges, and having two or more election officials of opposing political parties present.

Reporting the Vote

Under Arizona Revised Statutes [Title 16 Section 623](#), unofficial tabulated results may be released after all precincts have reported or one hour after the closing of polls, whichever comes first. It appears that the latter is the de facto default, as the official [secretary of state \(SOS\) website](#) indicates that the first results would be released at 8 p.m., which is one hour after the polls closed at 7 p.m. These first results included early ballots, such as mail ballots, which can be counted starting [14 days before election night](#). After that, these results were updated “sporadically” as counties received information from voting machines at their polling locations. [These results were unofficial](#), as they had not yet been certified by the board of supervisors or other officers in charge. Results were simultaneously [shared](#) with the secretary of state via phone, fax, or other electronic means as they were tabulated at each precinct.

Arizona uses software from [BPro](#), a private company that operates the TotalVote Election Software, for its state election night reporting (ENR) system, which most counties also rely on to display their results for the public. On election night, the state updates election results on [its ENR website](#) as information is sent in from all counties. The state ENR website allows the public to view results by county, and 13 out of the 15 counties rely on this as their main ENR system. In most cases, the individual counties also upload results to their own websites as .pdf or .txt files. Two counties, [Greenlee](#) and [Pinal](#), use [ScytI](#), another private company's election software, to post their results on their individual county websites.

Certifying the Vote

To [certify](#) the election results, election officials must canvass the election results of each precinct or election district. The Secretary of State Election Services Division is in charge of

[certifying](#) on the state level, while the Board of Supervisors for each county certifies the results at the county level. The canvass [verifies](#) vote totals, including write-ins, for all contests.

At the county level, a [board of supervisors](#), made up of [county officials](#) elected to a four-year term, carries out the canvass in a public meeting six to [20 days](#) after the election. The official election [results](#) must include a Statement of Votes Cast, a cumulative Official Final Report, and a Write-Ins Vote Report. As required by state law, the official election [results](#) must include a Statement of Votes Cast, a cumulative Official Final Report, and a Write-Ins Vote Report. The [Statement of Votes Cast](#) includes the number of ballots cast in each precinct and county, the titles of offices up for election, the name of the people up for election, the number and title of each ballot measure, and the number of votes cast for and against each ballot measure. The [Official Final Report](#) includes the total number of precincts, total number of ballots cast, total number of registered voters eligible for the election, and number of votes cast for each candidate by district or division. The [Write-Ins Vote Report](#) includes the name and number of votes for each authorized write-in candidate by precinct. Once the board of supervisors [completes](#) the election results certification, the Official Final Report and Statement of Votes Cast are published on the website of the officer in charge of the election. Under Arizona Revised Statutes § [16-645](#), if the election includes a federal, statewide, or legislative office or a statewide ballot measure, the board of supervisors or elections officer in charge is required to [transmit](#) the official canvass to the secretary of state electronically and by mail.

Florida

A significantly higher number of Floridians were expected to vote by mail in the 2020 general election compared to previous years. In the 2016 and 2018 general elections, vote-by-mail ballots constituted approximately 30% of total ballots cast in Florida. By mid-September 2020, Florida voters had [requested nearly 5 million](#) vote-by-mail ballots, approximately a 40% increase over the number of vote-by-mail ballots requested in 2016.

Florida's vote-counting process consists of opening the ballots, tabulating the ballots, reporting the results, and certifying the results. All tabulation systems used in Florida must undergo a rigorous logic & accuracy test before public use. While the state's process bears general similarities to that of other states, some salient features of Florida's vote-counting process include its voter signature verification process and its tabulation system approvals process.

Processing Mail Ballots

The timeline and procedure for opening and counting mail ballots is specified under Florida Statutes Title IX [§§101.657, 101.68](#). Signature verification and counting [can begin](#) at 7 a.m. on October 12, 22 days before Election Day; releasing the results early is a felony. However, in 2020, in response to the COVID-19 crisis, Florida Governor Ron DeSantis issued an [Executive Order](#) that permitted Florida counties to begin processing and tabulating vote-by-mail ballots immediately after the tabulation machines had completed the public logic & accuracy tests (described below). Therefore, because the Florida Supervisors of Elections [began sending mail ballots](#) to voters on September 24, a county could, in theory, begin counting mail ballots on September 24, so long as its tabulation machines had been certified. Also, counties could not begin tabulating the vote *later* than noon on the day following the election.

In [processing mail ballots](#), the canvassing board must compare the voter's signature on a mail ballot envelope with the voter's signature in the precinct register to see that the voter is registered in the county and to determine the legality of that vote-by-mail ballot. The canvassing board can only determine that the signatures do not match if a majority of the canvassing board arrives at that conclusion and if the signature mismatch is "beyond a reasonable doubt." The supervisor must then notify the voter as soon as possible, both by first-class mail and by email, text message, or telephone. To cure the defect, the voter must submit a cure affidavit, certifying that they submitted their vote-by-mail ballot and attaching documents that confirm their identity. The voter has until 12 p.m. on the second day after the election to either mail or email their cure affidavit to the county supervisor of elections.

A September 2020 [empirical study](#) on uncounted mail votes in Florida (based on reasons such as lateness or signature mismatches) revealed statistically significant differences in rejection rates among various cohorts of the population. For instance, in 2018, Jefferson County rejected 0% of its mail ballots while large counties like Broward and Miami-Dade rejected nearly 3%. One reason for this difference in rates among counties is an inconsistency in how various counties process ballots. For instance, different election offices in Florida use [different methods](#) to contact voters to cure their ballot. Some counties contact voters over the phone, by email, and even through Facebook, while other offices simply mail a notice. A federal judge [called](#) Florida's statute governing rejected vote-by-mail ballots "a crazy quilt of conflicting and diverging procedures," with the "canvassing boards across the state employing a litany of procedures when comparing signatures."

Once the supervisor of elections confirms that the signature on the voter's ballot envelope or the cure affidavit matches the voter's record, the voter's ballot envelope is opened. The election

staff will then mix the enclosed secrecy envelope together with other secrecy envelopes to make it impossible to determine which secrecy envelope came out of which signed mailing envelope. The county is then ready to tabulate the vote.

Tabulating the Vote

Florida precincts tabulate their votes using machine counting systems that digitally scan voter ballots, capture voter selections, and enable precincts to evaluate and download the aggregate results. Under Florida Statutes [Title IX Chapter 101](#), all voting systems used for tabulation must be certified by the state. As a threshold matter, voting systems must meet various hardware and software requirements set forth in [§101.5606](#). For instance, among other requirements, a voting system must be capable of automatically producing precinct totals in printed form.

A voting system must also undergo a rigorous public [“Logic & Accuracy \(L&A\)” Test](#) under [§101.5612](#). For any given precinct, the canvassing board can publicly test either all or a subset of voting systems used in the precinct. In this public test, officials use a “test deck” set of ballots that model real ballots voters may use in casting their votes. For instance, the test deck uses actual ballots that are hand-marked or marked with balloting devices. This test deck is run through the voting system. If a tested tabulation device produces an error in tabulating the test deck, the device is deemed unsatisfactory. The canvassing board must then determine the cause of the error; identify and test other devices that could reasonably be assumed to have the same error; and test a sufficient number of devices to determine that all other devices are satisfactory.

The canvassing board must keep records for all of the public L&A tests. Currently, all certified voting systems are listed on the Florida Division of Elections [website](#), along with each system’s corresponding certification memos and certification test reports. [Democracy Suite](#) and [EVS](#) are the two certified tabulation systems being used in Florida. Democracy Suite is used by 30 States, and EVS by more than 40 States.

Finally, according to [Florida Statutes Title IX Chapter 102](#), results of all tabulated early voting and absentee voting must be entered into the county’s election management system. The county’s election management system is responsible for aggregating data on verification, tabulation, and reporting, and it enables the county to export that data and to view ballot images. All early and absentee ballots that have been tabulated and canvassed must be entered into the system by 7 p.m. the day before the election as unofficial results. These results must remain private until the close of the polls on Election Day.

Reporting the Vote

Election Night Reporting (ENR) procedures for Florida are dictated by Florida state law, though the specific reporting mechanisms can vary by county. As discussed above, while counties must tabulate early voting by 7 p.m. the day before the election, it is illegal to publicize these results at that time. Results must be reported to the Florida Department of State (DOS) 30 minutes after polls close and are subsequently updated every 45 minutes “in a format prescribed by the DOS.” All results must be submitted to the DOS by noon on the fourth day after the election.

On election night, voters can visit a homegrown site, [Florida Election Watch](#), to view results. The vast majority of counties use a commercial product from the company VR Systems for election night results. VoterFocus, the Election Management System (EMS) developed by VR Systems, is used by [65 of 67 counties](#) in Florida (it appears that [Palm Beach County](#) has recently also adopted VoterFocus). While the Democracy Suite and EVS hardware and software packages are responsible for tabulating the ballots, the VoterFocus software is responsible for organizing and managing election data. The election night results component reports votes per candidate (which can further be broken down into Vote By Mail, Early Voting, and Election Day) and results by precinct. [Sarasota County](#) uses the ENR system from Scytl, another large voting technology company, while [Orange County](#) appears to post its results on its website as .xls files. All counties simultaneously report their results to the Florida Department of State to update the state’s Florida Election Watch website.

Florida has official processes for correcting reporting errors and responding to close results. As dictated in Florida Statutes Title IX Chapter 102 Section 6, if “unofficial returns”—votes that have been canvassed but not certified—contain any counting errors, counties must correct the errors and retabulate. The DOS will then verify the tabulation and compare the tabulation software with the software “filed with the department,” thus checking that both the software and results were accurate. Critically, if unofficial results indicate that a candidate or ballot measure has lost by less than 0.5%, a recount is ordered of the votes for that specific election. Moreover, if the margin of victory is equal to or less than 0.25 percent, the recount must be performed manually.

Certifying the Vote

Florida has different timelines for counties to submit their unofficial election results and to certify their official election results. Under Florida Statute Title IX [§ 102.141\(5\)](#), all Florida counties must submit *unofficial* results to the DOS by noon on the fourth day after the election.

Under [§ 102.112\(2\)](#), counties then have until 12 days after the general election to canvass and certify their *official* results to the DOS.

Once counties have canvassed and certified their results, the [Florida Elections Canvassing Commission](#), made up of the governor and two members of the cabinet selected by the governor, certify all of the counties' votes. The state Canvassing Commission convenes at 9 a.m. 14 days after the general election to certify all of the votes. If, within five days after the certification of votes by the Elections Canvassing Commission, a county canvassing board determines that it has found an error in the official returns it reported to the state, and that a correction of that error could result in a change in the outcome of an election, the county canvassing board must certify corrected returns to the Department of State within 24 hours. The Elections Canvassing Commission must then correct and recertify the election returns as soon as practicable.

Georgia

Even before the pandemic, Georgia was well-suited to accommodate a largely vote-by-mail election. Of the state election laws on the books before the pandemic, two important provisions this cycle were [GA Code § 21-2-380](#), which permits no-excuse absentee voting, and [GA Code § 21-2-385](#), which provides for “advance” voting (a term that encompasses both absentee balloting and in-person early voting). The absence of other restrictive provisions for absentee balloting in Georgia law—such as a witness or notary requirement—ensured that Georgians concerned with the coronavirus transmission risks of in-person voting faced minimal barriers to casting a mail ballot. While other states had to adjust absentee ballot eligibility rules or launch last-minute early voting options in response to the pandemic, Georgia's election officials and voters alike already had some familiarity with mail voting and early voting under existing law.

Processing Mail Ballots

Georgia election officials can begin pre-processing mail ballots for signature verification and voter identification upon receipt. ([GA Code § 21-2-386](#)). When ballots are received, a registrar or clerk writes the day and hour of receipt, then checks identifying information and validates the voter's signature ([GA Code § 21-2-386](#)). If the signature and identifying information appear to be correct, the clerk certifies the ballot by signing or initialing their name below the voter's oath and lists the elector's name on the numbered list of absentee voters in the precinct ([GA Code § 21-2-386](#)).

During the identity and signature verification process, the clerk compares the voter's signature to those on file with the office, such as the voter's registration card and their absentee ballot application. Clerks will reject a ballot if the elector has failed to sign the oath, if the signature does not appear to be valid, if the elector has failed to furnish required information, if the voter's information does not conform with that on file, or if the elector is otherwise found disqualified to vote ([§ 21-2-386](#)). According to a March 2020 [settlement](#) in *Georgia Democratic Party v. Raffensberger* that amended the ballot verification procedure, a majority of three registrars must determine that the signature does not match any of the voter's signatures on file or on the absentee ballot application in order to reject the ballot. The registrars then mark the ballot rejected and note the reason for rejection.

Voters in Georgia do have an opportunity to cure rejected ballots. Due to changes in Georgia election law ([GA Code § 21-2-386](#)) enacted through [House Bill 316](#) in 2019, the registrar or absentee ballot clerk is required to "promptly notify" the voter of their ballot's rejection so that the voter can take steps to cure the issue. The voter may cure a failure to sign the oath, an invalid signature, or missing information by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of their photo ID ([GA Code § 21-2-386](#)).

Georgia rejects all absentee ballots received after 7 p.m. on November 3, regardless of when the ballot return envelope was postmarked. In the months before Election Day, the receipt deadline had been extended to November 6 due to litigation but then [reversed back](#) to 7 p.m. on Election Day. Democratic plaintiffs in [New Ga. Project v. Raffensperger](#) had secured a [preliminary injunction](#) extending Georgia's Election Day ballot receipt deadline by three days, but a three-judge panel on the 11th Circuit granted a [stay](#) of the extension on October 2, returning the deadline to November 3.

Officials could begin opening and processing absentee ballots earlier than usual for the 2020 elections. The State Election Board passed a [new rule](#) in February ahead of the June presidential primary (later made applicable to the November general election) which moved up processing of absentee ballots. The rule [permitted](#) county election officials to process absentee ballots starting at 8 p.m. the third Monday before Election Day (October 19) instead of waiting for Election Day. While signature verification processes could always start [upon receipt](#), the new rule authorized county election superintendents to *open* the outer envelope of accepted absentee ballots, remove the contents including the absentee ballot, and scan the absentee ballot using one or more ballot scanners. However, election officials were not permitted to count the absentee ballots, or cause the scanning equipment to produce any tally or tabulation of the ballots, until the closing of the polls on Election Day. ([Rule 183-1-14-0.9-.15](#)). If a county chose to implement this rule to begin processing ballots prior to Election Day, the county

election superintendent would have to notify the secretary of state in writing at least seven days prior to processing absentee ballots ([Rule 183-1-14-0.9-.15](#)).

Early ballot processing under the 2020 rule, just like regular Election Day processing and tabulation ([GA Code § 21-2-483](#)), is open to public observation and monitoring by political parties. For counties using the early processing rules outlined in [Rule 183-1-14-0.9-.15](#), the county superintendent could designate locations where public observers may view the process, while ensuring that the process maintained the security and secrecy of the ballots at all times. Each political party also has the right to have two persons present as monitors for the ballot processing, which are distinguished from public observers by nametags ([Rule 183-1-14-0.9-.15](#)). Monitors and observers may view the “batching of the ballots, reconciliation of envelopes to ballots, scanning the ballots, duplication of ballots, adjudication of ballots by vote review panels, sealing the ballots after scanning, and other such areas as the superintendent may deem necessary to the assurance of fair and honest procedures” ([Rule 183-1-14-0.9-.15](#)). But observers and monitors may not touch, photograph, communicate any information they see, or interfere in any way with the process ([Rule 183-1-14-0.9-.15](#)). If observers interfere with ballot processing, they will be removed and the incident will be referred to the secretary of state’s office for investigation ([Rule 183-1-14-0.9-.15](#)).

Tabulating the Vote

Ballots in Georgia can be counted at the precinct in which they were cast or at a tabulating center, under the direction of the county election superintendent ([GA Code § 21-2-483](#)). All tabulation proceedings are open to viewing by the public, but only election officials may touch any ballot or ballot container ([GA Code § 21-2-483](#)).

A Georgia mail ballot is fully processed once election officials have removed the ballot from its envelope, sorted it into a group, and scanned it into a machine. Officials may duplicate any ballot that can not be scanned because it is torn, bent, or otherwise defective; all duplicate ballots are clearly labeled by the word “duplicate” ([GA Code § 21-2-483](#)). A bipartisan vote review panel adjudicates any ballot with an overvote to determine the voter’s intent ([GA Code § 21-2-483](#)).

As of the March 2020 primary, [all in-person voting](#) in Georgia has used [Dominion Voting Systems](#) direct-recording electronic voting machines, though polling places are required to have a sufficient number of blank paper ballots on hand in case of emergency ([Rule 183-1-12-.01](#)). The voting machines employ user-friendly touchscreen systems and produce a secure, paper ballot. After voting on a touchscreen and printing their completed ballot, the voter [feeds](#) their

own ballot into a scanner, which tallies the votes to be printed later. The paper ballot is [secured](#) for later and may be used to verify or audit results. Immediately after the polls close and the last voter has voted, the poll manager and two witnesses close down the ballot scanner so that no further votes are cast and then print three tapes of the tabulated results. One of the tapes is affixed to the door of the polling place for the public to view, one tape is placed in a sealed envelope with the scanner memory cards, and the third goes into an envelope with the polling place recap form.

When all ballots have been scanned, the tabulating machine prints the official returns of the votes cast on ballots at each polling place ([GA Code § 21-2-483](#)). Officials file and retain all ballots and returns, as well as the spoiled, defective, and invalid ballots ([GA Code § 21-2-483](#)).

Reporting the Vote

Once the tabulating machine has printed the results from a polling place, election officials certify the results and post them “promptly” ([GA Code § 21-2-483](#))—or as soon as possible after the closing of the polls ([Rule 183-1-12-.12](#)). All absentee ballots are tabulated so that returns may be reported by precinct ([GA Code § 21-2-386](#)). However, the 159 Georgia counties are inconsistent in their method of reporting: Some post only their early in-person votes shortly after the polls have closed, while others are faster at reporting results from mail ballots. Fulton County, which includes Atlanta, has a [reputation](#) for being slow at reporting vote totals.

Election night results are uploaded onto a state-run Election Night Reporting [website](#) as they come in. Election Night Reporting (ENR) allows county election officials to upload election results for display on the state website. The vendor that provides ENR in Georgia is [Scytl](#). The Georgia secretary of state’s office works [closely](#) with Scytl to ensure that ENR is set up correctly and operates smoothly on election night. State Election Board Rule [183-1-12-.12\(c\)](#) requires that each county submit at least [three uploads](#) throughout the night: the first upon one-third of the precincts reporting results, the second upon two-thirds of the precincts reporting results, and the third upon all precincts reporting results, including absentee ballots within all precincts. Counties are [encouraged](#) to do more than three uploads.

Certifying the Vote

In Georgia, the 159 individual counties have [10 days](#) after the Election Day to certify the results of the vote. That date for the 2020 election cycle was November 13. As soon as the secretary of state receives the certified returns from county election superintendents, the secretary proceeds to tabulate, compute, and canvass the votes cast across the state. In the event an

error is found in the certified returns presented to the secretary of state or in the tabulation, computation, or canvassing of votes, the secretary notifies the county submitting the incorrect returns and directs the county to correct and recertify such returns ([GA Code § 21-2-499](#)).

The deadline for the secretary of state to certify results in Georgia is 5 p.m. on the 17th day following Election Day ([GA Code § 21-2-499](#)). In 2020, that date fell on November 20. The secretary of state delivers certified results to the governor, who enumerates and ascertains the number of votes for each presidential candidate and then certifies the slates of presidential electors receiving the highest number of votes ([GA Code § 21-2-499](#)). The governor has one extra day to certify the slate of presidential electors—the deadline for the governor's certification is 5 p.m. on the 18th day following Election Day ([GA Code § 21-2-499](#)).

A candidate can request a recount within two days of election certification, if the voting margin is less than or equal to 0.5% ([GA Code § 21-2-495](#)). [Taxpayers](#) fund any recounts in Georgia.

Michigan

Since the 2016 election, Michigan has greatly expanded voting accessibility. In 2018, voters passed a series of [statewide ballot proposals](#) that eliminated the need for voters to provide an “excuse” to vote by mail. As a result, state voters entered the election season with full and easy access to mail voting newly enshrined in the state constitution. Michigan Secretary of State Jocelyn Benson also [mailed out](#) absentee ballot applications to all registered voters in the state in May 2020. Due to these changes and the coronavirus pandemic, Michigan officials anticipated a record-breaking number of mail ballots in the 2020 general election, with mail ballots expected to comprise [60-70%](#) of all votes in the state. Because mail ballots [cannot be processed](#) until Election Day, it was expected that Michigan would not be called on election night. Secretary Benson [warned in September](#) that, due to the flood of mail and early ballots, the state was expecting to take a week to determine its election results: “We should be prepared for this to be closer to an Election Week, as opposed to an Election Day.” Despite some [late legislative changes](#) that allowed for certain municipalities to begin processing ballots the day before Election Day, it was expected that the count would take some time.

Processing Mail Ballots

Under [MCL §168.764a-b](#), voters must submit their marked absentee ballots [before polls close at 8 p.m.](#) on November 3, either by mail or hand-delivered to their city or township clerk. A September ruling by the Michigan Court of Claims had extended the deadline for the November

2020 election, allowing all mail ballots postmarked by November 2, 2020, to be counted, as long as they [arrived within 14 days](#) of Election Day. But the Michigan Court of Appeals [overturned the decision](#), stating that there was no need for the extension given the number of ballot delivery options available to voters.

Once election precincts receive their absentee ballots, they can employ one of two options: (1) the clerk may deliver the ballot to the absentee voter's precinct, where it will be processed and counted by election inspectors (MCL 168.765) or, (2) if the city or township election commission has established an absent voter counting board (AVCB), then the ballots must be taken to the AVCB for processing and counting ([MCL 168.765a, 168.765d](#)). AVCBs are dedicated [election counting boards](#) that meet at a separate location away from the polls and focus solely on processing absentee ballots under the supervision of election inspectors. For reporting purposes, AVCBs are precincts, so their results are reported separately from the precincts established for in-person voting. In contrast, ballots delivered directly to the absent voter's precinct are included as part of the precinct's total ([Elec. Offs. Manual, Ch. 8](#)). On June 23, 2020, Governor Gretchen Whitmer [signed into law](#) an amendment that gave municipalities the option to combine resources with other cities and townships in the county to create centralized AVCBs, whereas the law had previously only allowed AVCBs to serve an individual precinct.

According to [MCL §168.765a\(8\)](#), absentee ballots cannot be processed until 7 a.m. on Election Day. A bill with bipartisan support was [signed into law](#) on October 6, 2020, expanding work shifts for absentee ballot counting and [allowing municipalities](#) with populations of at least 25,000 to process absentee ballots the day before the election, from 10 a.m. to 8 p.m. Another Michigan bill would have extended the pre-processing period up to seven extra days before Election Day, but that bill was [shot down](#) by Republican leadership who said it would create a "dangerous precedent" and allow for the possibility of voter fraud. Many states, [such as Florida](#), did allow election officials to begin processing ballots more than a week in advance of Election Day.

There is a multi-step procedure for processing of ballots in Michigan. Processing a mail ballot [requires](#) satisfaction of various formalities, including that the local clerk has completed relevant portions of the return envelope and that a poll worker has checked for a match between the ballot stub number and the number recorded for that voter. According to [MCL §168.766](#), the board of inspectors must then verify the voter's signature on the ballot envelope against their signature in the qualified voter file, registration record, or master card (depending on their method of voter registration). See the [Healthy Elections Signature Verification report](#) for more details on Michigan's verification process. If the signature is verified, the ballot is then removed from its exterior return envelope. Election workers [must](#) open the ballot envelope and [tear off](#)

the ballot stub. Then, the ballot ‘processing’ is complete. In Ann Arbor, Michigan, processing a single ballot takes an estimated [45 seconds](#).

Tabulating the Vote

Only after a mail ballot has been fully processed [can it be removed](#) from its secrecy envelope and prepared for tabulation. Poll workers [remove](#) the ballot from its secrecy sleeve, put the sleeve in a box, inspect the ballot for any errors, back-fold the creases, put the ballots in stacks of 10, and place them into a tabulator for counting. If a ballot cannot be read by a tabulator, the ballot proceeds to the [duplicator table](#), staffed by one Democrat and one Republican who then copy over that ballot’s markings onto a fresh ballot, even if there are overvotes or other mistakes. Under [MCL §168.798c\(1\)](#), absentee ballots may be cast as paper ballots, ballot cards, or a combination thereof, depending on the precinct. If an absentee voter submits a paper ballot, election inspectors are authorized to record the ballot on a paper ballot card that is then fed into the tabulator.

Each Michigan county has the discretion to choose its own electronic voting system, so long as it meets all of the rigorous requirements outlined in [MCL §168.795\(1\)](#). The statute states the system must include: (1) usage of paper ballots for tabulating purposes (§168.795(1)(b)); (2) electronic tabulation equipment that automatically rejects all choices recorded on an elector’s ballot if the elector votes for more choices than they are allowed (also known as overvoting) (§168.795(1)(c)); (3) electronic tabulating equipment that can reject a ballot if no valid votes are cast (known as undervoting) (§168.795(1)(g)); and (4) electronic tabulation equipment that can alert the elector if their ballot is spoiled and give them the opportunity to cast another ballot (§168.795(1)(c)). Additionally, the tabulators must provide a method for the machine to be rendered ‘inoperable’ if vote totals are revealed before polls close (§168.795(2)). Under [MCL §168.803\(2\)](#), a vote will count only if the voter places a mark properly in the predetermined area. Lastly, if the counting center is separate from the precinct, and a ballot being fed into the tabulator is rejected because of physical damage or defect, election officials can duplicate the damaged ballot and re-feed it into the tabulator [under MCL §168.798a](#). There are currently [three companies](#) that supply tabulators that meet these requirements of the state.

Every electronic tabulating system is tested at least twice under Michigan law. According to the [Test Procedure Manual](#), both tests must confirm that “1) the equipment is performing properly, 2) the ballots have been properly prepared for each precinct, and 3) that the programs will accurately count votes.” The first test is known as the “preliminary accuracy test” and must be run as soon as clerks receive the tabulator and ballots. The second test, known as the “public accuracy test,” is mandated by [MCL §168.798\(1\)](#). Election officials must give the public at least

48 hours notice of the time and place of the test and such notice must be placed in a newspaper “published in the county, city, village, township, or school district where the electronic tabulating equipment is used.” Both of these tests run a series of ballots through the tabulator, checking to make sure that the tabulator accurately counts the ballots and rejects ballots that are blank or overvoted as outlined in [MCL §168.795\(1\)](#).

Under [MCL §168.798b](#), once the vote count is fully tabulated and write-in and absentee votes are separately added (if necessary), the count reported by the electronic tabulating equipment constitutes the official return of each precinct or election district, once it has been duly certified. Per [MCL §168.809\(2\)](#), after the precinct or AVCB completes its vote count, a sealed statement of returns is reported to the county clerk, who may then provide an unofficial tabulation of the returns to the public, pending an official canvass by the county canvassing board.

Reporting the Vote

Michigan state law requires county clerks to tabulate unofficial results and report them to the public upon receipt of the statement of returns. According to [MCL §168.798b](#), unofficial results of Michigan elections must be made available to the public. Additionally, according to [MCL §168.809](#), upon receipt of the sealed statement of returns from the county election inspectors, county clerks must compile unofficial results for the county and make them available to the public. However, no timeline is placed on the public reporting requirement by law so, while unofficial results are often available on election night, counties seem to publicly post unofficial results anywhere from hours to months after the close of polls.

Election night results are reported at the state and local level in Michigan. The Michigan secretary of state’s office reports unofficial results on its webpage. Only [after](#) a county has all jurisdictions reporting are its results added to the secretary of state’s website. Many counties also directly post their unofficial results on their designated websites as PDFs. A list of those county websites can be found [here](#). Additionally, a few counties employ [ElectionSource](#), a local Michigan company, as an Election Management Service (EMS) vendor. ElectionSource provides an unofficial results reporting site for county-level results, found [here](#). However, Michigan’s largest county, Wayne County, cut ties with ElectionSource’s results reporting service shortly before the 2018 general election, due to [operational mishaps](#) during the 2018 primary.

Certifying the Vote

Each of Michigan’s 83 boards of county canvassers [is responsible](#) for certifying its county’s votes to the [Michigan Board of State Canvassers](#). Under [MCL §168.822](#), a board of county canvassers

must certify that county's votes within 14 days of the election. The county boards "canvass" (certify) elections by [carefully reviewing and authenticating](#) various forms and certificates completed to document the votes cast at the polls. Once a county has finished its certification, it must then prepare a sealed statement containing data on the county's votes, including the number of votes cast for each office ([MCL §168.824](#)). If the board of county canvassers fails to certify its votes and prepare this sealed statement within 14 days, it must deliver all relevant voting records on hand to the Michigan Board of State Canvassers, and the Board of State Canvassers will finish certifying that particular county's votes within 10 days of receiving those records. Under [MCL §168.842\(1\)](#), the Board of State Canvassers must begin the state certification process within 20 days after the election and finish certification within 40 days after the election.

Michigan can also require counties to certify their votes on an expedited basis. Under [MCL §168.842\(2\)](#), if the unofficial election returns show that the vote differential between the first-place and second-place candidates for the presidential election is fewer than 25,000 votes, the secretary of state may direct the boards of county canvassers to finish certification more quickly. In fact, the secretary of state may require the boards of county canvassers to finish certification and prepare their sealed statements between 7 and 14 days after the election.

Candidates can also petition the Michigan secretary of state to conduct a vote recount in certain counties. Under Michigan Coded Laws [§168.879](#), the candidate must petition for a recount within 48 hours of the completion of certification. The candidate must be able to allege a good-faith belief that, but for voter fraud or mistake, the candidate would have had a reasonable chance of winning the election. The petition must allege specific instances of wrongdoing and indicate whether the candidate has evidence of such wrongdoing, and the candidate must specify the counties in which they are requesting a recount. Under Michigan Coded Laws §§[168.867](#) and [168.881](#), the candidate requesting a recount must pay a \$25 deposit per precinct. This fee is raised to \$125 per precinct if the pre-petition margin of victory for the winning candidate over the petitioner is greater than 50 votes, or 0.5 percent of all votes cast, whichever is greater. If the outcome of the election is altered as a result of the recount, the deposit is refunded. Notably, under Michigan Coded Laws §§[168.880](#) and [168.880a](#), registered voters in Michigan can also petition for a vote recount, and the state itself will automatically trigger a statewide recount if the winning candidate's lead is 2,000 votes or fewer.

Nevada

As early as March 2020, Nevada officials made the call to conduct their June primary election mostly by mail. Nevada's pre-pandemic election laws proved to be useful in ensuring voter access during the health crisis. For example, Nevada election laws already provided [no-excuse vote-by-mail](#) and [same-day voter registration](#). The state [sent](#) mail ballots to all active registered voters, an [inclusive category](#) containing all voters with a current address on file (as determined by election mail that had been returned as undeliverable and voter failure to respond to update requests). Nevada was prepared for increased mail ballot turnout compared to previous elections, while also providing in-person polling availability. By August, the Nevada State Legislature passed [Assembly Bill 4](#), which provided for special election procedures as long as a state of emergency was in effect. AB 4 provided helpful changes that increased in-person voter accessibility, created changes that made it easier for voters to cast ballots, and helped election officials verify and count ballots.

Processing Mail Ballots

Voters need no excuse to vote by mail in Nevada ([NRS 293.309](#)) and may apply for an absentee ballot until 14 days before Election Day ([NRS 293.313](#)). By May 2020, Nevada had authorized automatically sending registered voters mail ballots for the primary election, and the passage of [AB 4](#) in August 2020 authorized state officials to send mail ballots to every registered voter for the 2020 general election and any future elections conducted during an "affected election." An "[affected election](#)" occurs when there is a declaration of emergency in effect on March 1 for a primary election, or July 1 for a general election.

Absentee ballots submitted by mail must be postmarked by Election Day and received not more than seven days after Election Day ([NRS 293.317](#))—a more permissive deadline than states like Arizona and Wisconsin that required receipt by close of polls. mail ballots with indeterminable postmarks that arrive no later than three [days](#) after the election are also counted. Voters can also submit their absentee ballots in person until the close of polls on Election Day at a designated county location; but early voting sites and Election Day Vote Centers cannot accept a voted absentee ballot ([NRS 293.353](#)). Before 2020, only the voter or their family member could deliver an absentee ballot ([NRS 293.353](#)), but [AB 4](#) permitted third-party ballot collection. Third-party ballot collection is a [permanent](#) change for all future elections.

Once mail ballots are received and recorded in the mail ballot record, the county clerk checks the voter's signature on the return envelope against all signatures of the voter available in the records of the county clerk. Most mail ballots are first processed through a [machine](#) that

verifies signatures, such as the [Agilis Ballot Sorting System](#). Election staff manually examines signatures not verified by the machine. A signature is rejected if at least two employees in the office of the county clerk agree that there is a reasonable question of fact as to whether the signature on the absentee ballot matches the signature of the voter, and the signature differs in multiple, significant and obvious respects from the signatures on record. This stringent rejection standard, requiring “multiple, significant, and obvious” differences, was passed as part of [AB 4](#) in August to clarify the process and help officials determine whether to invalidate mail ballots. The county clerk must contact the voter and ask him or her to confirm the signature ([NRS 293.325](#)). The clerk must contact the voter as soon as possible after receipt of the ballot deadline by mail, phone, or email ([NRS 293.325](#)). Voters have the opportunity to “cure” signature deficiencies until [seven days](#) after the election or, in affected elections governed by AB 4, nine days after the election ([NRS 293.8874](#)).

Ballots are rejected if an identifying mark appears on the ballot which leads to the reasonable belief that the ballot has been tampered with, such that the outcome of the election would be affected ([NRS 293.367](#)). An error in marking one or more votes does not invalidate any votes marked properly on a ballot ([NRS 293.367](#)). Moreover, a soiled or defaced ballot is counted if it appears that the soiling or defacing was inadvertent ([NRS 293.367](#)). It is unlawful for any election board member to place a mark upon any ballot other than a spoiled ballot. Election officials must instead seal rejected ballots in an envelope and write on the envelope the reason for rejection ([NRS 293.367](#)).

After verifying that the absentee voter is entitled to cast a ballot, the county clerk is responsible for delivering the mail ballots to the proper location for counting ([NRS 293.325](#)). Clerks deliver the ballots using secure containers to either the appropriate election board or an absentee ballot central counting board, depending on the county ([NRS 293.325](#)). The transit, storage, and processing procedures ensure the confidentiality of the prepared ballots until after the polls have closed ([NRS 293.325](#)).

Tabulating the Vote

After processing, the ballots are [reviewed](#) to make sure the total number of ballots processed matches the number of ballots received. Election boards receiving the absentee voters’ ballots from the county clerk, remove the ballots from their secure transport boxes, then double-check the name of the voter, verify the signature on the back of the envelope, and compare the numbers on the ballot and envelope to make sure they match ([NRS 293.333](#)). Once verified, those ballots are [counted](#).

Before the passage of [AB 4](#), election officials were able to [process](#) ballots upon receipt but could begin *counting* mail ballots only four days before the election ([NRS 293.363](#)). AB 4 allowed election officials conducting an election under a declaration of an emergency to start counting returned mail ballots [15 days](#) before the election, making the counting process more efficient. However, results are kept under wraps until Election Day—any person who disseminates to the public in any way information pertaining to the count of absentee ballots before the polls close is guilty of a misdemeanor ([NRS 293.385](#)).

The counting procedure must be public and continue without adjournment until completed ([NRS 293.363](#)). Members of the general public (but not the press) are allowed to observe the conduct of voting at the polling place, including counting, as long as they do not photograph or record the procedures ([NRS 293.274](#)). Nevada law requires all ballots to be counted within seven days of election day or, for affected elections, within [nine](#) days of Election Day ([NRS 293.333](#)).

Reporting the Vote

When all the votes have been counted, the counting board officers produce a tally list organized by precinct and ballot type indicating the number of votes that each candidate received ([NRS 293.370](#)).

In [Clark County](#), for example, after the polls close at 7 p.m., polling place officials bring the results to central tabulation at the [Election Center](#) for processing. The Election Day results are tabulated along with [early voting](#) and [mail ballot](#) results. After 7 p.m. on election night, or whenever the [last voters in line](#) have finished casting their ballots, unofficial election night results are posted on the [Nevada Elections Division website](#). [Clark County](#) also posts election night results as they are tabulated on Clark County Television (CCTV) cable [Channel 4](#).

Provisional ballots are [not included](#) in the unofficial results on election night. Provisional ballots will be counted only [after](#) verification of applicable voter information and that the voter did not cast multiple ballots in the same election. Provisional ballots are counted in the days following the election. This procedure stems from a recent law. In 2019, the Nevada Legislature [authorized](#) same-day registration to vote in-person during early voting and on Election Day (with certain [identification](#)). Because the county voter registration systems [do not communicate](#) with each other in real time, an individual who registers to vote at a polling place cannot be verified in real time as not having already voted in the election. For this reason, state law requires that same-day registrants use [provisional ballots](#). These provisional ballots are

counted only after it is [verified](#) post-election that the voter has not voted more than once in the election.

Certifying the Vote

Until the canvass of the vote occurs, reported election results are unofficial. Election results [become official](#) upon the canvass of the vote by the county election official. The canvass of the vote was required to take place on or before [November 16](#) for the 2020 general election. For regular elections, the canvass must occur by the 10th day after the election, but for affected elections governed by AB 4, the board of county commissioners had 13 days post-election to canvass results ([NRS 293.393](#)). The board of county commissioners canvasses the results in its county by creating an “abstract of votes”—that is, a compilation of votes cast for a particular candidate by office and precinct ([NRS 293.016](#)). After making the abstract of votes as provided in [NRS 293.393](#), the county clerk certifies the abstract and transmits it to the secretary of state ([NRS 293.395](#)). Starting in January 2022, each county clerk will also conduct a risk-limiting audit of the results of an election prior to certifying the results ([NRS Chapter 293](#)).

On the fourth Tuesday of November after each general election, the Nevada Supreme Court meets with the secretary of state to open and canvass the vote. The meeting formally certifies the results and grants the winner in the presidential race the number of presidential electors to which Nevada is entitled ([NRS 293.395](#)).

North Carolina

The use of mail ballots was expected to reach new records in the North Carolina 2020 general election. As of September 30, 2020, North Carolina had already [experienced](#) an approximately ten-fold increase in absentee ballot requests over the number requested at the same date in 2016. North Carolina election law allows officials some flexibility to deal with an increase. For instance, local election officials have the authority to begin [opening](#) and preparing absentee ballots for counting on the fifth Tuesday before Election Day. They may also [count](#) late-arriving absentee ballots. Pre-election litigation [changed](#) the procedures for how absentee ballots can be processed and counted in the state.

Although some aspects of North Carolina election law require statewide uniformity, others allow a degree of discretion for individual counties. North Carolina statute lays out some [general principles](#) for how ballots should be counted. It also requires the North Carolina State Board of Elections to adopt [uniform](#) standards and procedures for how counties should count

votes and how individual counties may make use of [different](#) vote-counting systems, such as electronic, mechanical, or hand-to-eye counts. All counties may be required to [engage](#) in hand-to-eye counts or recounts of at least some of their paper ballots or records. The results from all counties are [viewable](#) on election night on the North Carolina Election Results Dashboard. Later, the canvassing and certification of votes [take](#) place both at both the county and state level, with the potential for mandatory and discretionary recounts to [delay](#) the completion of the canvass at each level.

Processing Mail Ballots

Before beginning to count mail ballots (which North Carolina election officials often [refer](#) to as “absentee ballots”), county boards of elections may begin [scanning](#) each approved absentee ballot, a process which consists of opening approved absentee ballots, removing them from their envelopes, and inserting them into the tabulator. At this time, the county boards [may](#) use the tabulators to “read” the ballots, but the tabulators do not count the ballots until Election Day. This early preparatory step allows election officials to [identify](#) which ballots cannot be read by the tabulator machine, perhaps because of damage, and to make duplicate copies of the unreadable ballots that can be read by the tabulator machine. That way, election staff can [avoid](#) having to manually input each voter’s selections from a ballot into the reporting software, which can save time on Election Day. All approved absentee ballots must be [scanned](#) by the tabulator machine.

North Carolina election law and guidance provided flexibility for county boards of elections to deal with the anticipated significant increase in mail ballots for the November 2020 election. Each county board of election could [decide](#), by majority vote, to begin the scanning process during each absentee board meeting. A September 22, 2020, [memo](#) from North Carolina State Board of Elections Executive Director Karen Bell noted that, due “to the significant increase in absentee ballots this election, it is strongly recommended that county boards authorize the scanning of approved ballots during absentee board meetings instead of waiting until Election Day.” Therefore, county boards could [begin](#) scanning absentee ballots as early as September 29, 2020, during the first required absentee board meeting for the 2020 general election. County boards also [had](#) the authority to delegate additional preparatory steps for staff to perform before absentee board meetings. Preparatory steps [included](#) tasks such as inspecting the ballot return envelopes for deficiencies and, if any deficiencies were discovered, to notify voters within one business day.

The process for how county boards and their staff should evaluate and address deficiencies in absentee return envelopes was the subject of litigation. The aforementioned September 22,

2020, memo from the North Carolina State Board of Elections, for instance, was at issue in the lawsuit [Arnett v. North Carolina State Board of Elections](#), which may require the State Board to provide greater access to the public to observe and provide input to the absentee return envelope evaluation process. An August 2020 [memo](#) from State Board Executive Director Bell—a memo later revised in September and again in October following a settlement and rulings in [N.C. Alliance for Retired Americans v. North Carolina](#) and [Democracy NC v. North Carolina State Bd. of Elections](#)—also provided guidance on how the county boards and their staff were to evaluate and address deficiencies in absentee return envelopes. Notably, in verifying the voter’s signature on the return envelope, the county board was instructed to [presume](#) that the signature is that of the voter, absent clear evidence to the contrary, if the signature “appears to be the name of the voter.” Furthermore, the signature would be [accepted](#) even if it was illegible. There was no legal requirement to [compare](#) the voter’s signature on the absentee return envelope “with the voter’s signature in their registration record.” If an absentee return envelope [lacked](#) a witness signature, however, then the voter could no longer cure the deficiency and save the ballot by submitting a certification over mail or email. Instead, the voter’s ballot would be rejected and county boards and their staff would [reissue](#) the voter a new ballot.

Pre-election litigation, *Wise v. North Carolina State Board of Elections* and *Moore v. Circosta*, unsuccessfully challenged the State Board’s rules for evaluating and addressing deficiencies in absentee return envelopes, as well as its revision of the absentee ballot deadline. And, the State Board continued to enforce the rules for absentee return envelopes that it outlined in its recent [memos](#), and absentee ballots could be [received](#) and counted nine days after Election Day, so long as they were mailed on or before Election Day. Plaintiffs in both *Wise* and *Moore* [filed](#) a request with the U.S. Supreme Court for an emergency injunction, but on October 28, the Court [denied](#) the requests.

The State Board of Elections set out rules for evaluating and addressing deficiencies in absentee return envelopes in a August 2020 [memo](#) (revised in October 2020). Generally speaking, some deficiencies could be cured by the submission of a certification from the voter addressing the deficiency, whereas other deficiencies required the reissuance of a ballot, and still others required board action. If a deficiency was [discovered](#) in a board meeting, then it could not be resolved by staff and would instead require board action to evaluate the deficiency. If the board [rejected](#) the envelope by majority vote, then it must notify the voter within one business day. If the envelope [indicates](#) that the voter is requesting a replacement ballot, lacked the signature of a witness or assistant, or was unsealed when it arrived at the county board office, then staff would reject the ballot and reissue a new ballot along with a notice to the voter within one business day. By contrast, the following deficiencies could be [fixed](#) by sending the voter a cure certification through mail or email:

- Voter did not sign the Voter Certification
- Voter signed in the wrong place
- Witness or assistant did not print name
- Witness or assistant did not print address
- Witness or assistant signed on the wrong line

Although North Carolina election law does not allow county boards of elections to begin counting mail ballots until Election Day, it does provide some flexibility to allow additional time for counting. Under N.C. Gen. Stat [§163-234](#), each county board of elections is required to meet at 5 p.m. on Election Day to begin counting all mail ballots, except for late-arriving ballots or those challenged before 5 p.m. on Election Day. However, [§163-234](#) also allows county boards to begin counting absentee ballots from military personnel and overseas voters as early as 9 a.m. on Election Day. In addition, [§163-234](#) allows county boards to begin counting other mail ballots as early as 2 p.m. on Election Day, as long as they adopt a resolution at least two weeks prior to Election Day that states the place and time they will begin counting.

Election law also provided county boards of elections additional time to deal with an influx of late-arriving absentee ballots. For instance, county boards of elections can [adopt](#) a resolution to hold additional meetings after Election Day and before canvassing to count absentee ballots. If a county board adopts such a resolution, then [§163-234](#) requires them to publicly publish its contents. State law [§163-234](#) also requires county boards to meet after Election Day and before the start of canvassing to determine if all late-arriving absentee ballots have been assessed and counted. Any late-arriving ballots not [counted](#) before the day of canvass will be counted on the day of canvass.

Finally, North Carolina election law allows some flexibility in who can count absentee ballots, even while setting requirements for how they can count them. Each county board of elections [may](#) hire staff to help them count the absentee ballots, but the board must observe and supervise the staff. As staffers open each ballot envelope, the county boards will [record](#) the names of each voter in a paper or computer pollbook, then place each ballot in the appropriate box according to ballot type. Only after all ballots have been placed in their respective boxes can the counting process [begin](#).

Tabulating the Vote

North Carolina election law lays out requirements regarding the timing and organization of the counting of ballots. Under [§163-182.2](#), vote counting at each precinct begins immediately after the closing of its polls on Election Day and continues until it is completed. The law also requires

that vote counting in each precinct be conducted with the participation of precinct officials from all political parties present. And, it [allows](#) for any member of the public to witness the counting process but forbids them from participating or otherwise interfering.

State law [§163-182.1](#) lays out some of the general principles and rules for counting ballots. For instance, under [§163-182.1](#), no ballot can be rejected because of technical errors made in marking the ballot, unless it is impossible to determine the voter's choice. Furthermore, if a ballot is [rejected](#) by a scanner or other counting machine but election staff can clearly discern the voter's choice, then the ballot will be counted by hand. In addition to the general principles provided directly in the statute, [§163-182.1](#) requires the North Carolina State Board of Elections to adopt "uniform and nondiscriminatory procedures and standards" for vote counting. These include rules such as [08 NCAC 06B .0105](#), which indicates that provisional ballots will be counted before canvass. [08 NCAC 06B .0105](#) also prohibits county boards from discarding a voter's entire ballot if they are ineligible to vote for some items on the ballot; boards are required to count the items for which the voter is eligible.

Although counties may make use of different vote-counting systems, all counties may be required to engage in hand-to-eye counts of at least some of their paper ballots or records. [§163-182.2](#) notes how, in addition to hand-to-eye counts of paper ballots, counties may make use of "any certified mechanical or electronic voting system," including optical scan and direct record electronic voting systems. Any counties that use a system other than hand-to-eye counts of paper ballots, however, are required to [hold](#) a hand-to-eye count of a random sampling of their paper ballots. The sampling may [include](#) all paper ballots from one or more precincts, mailed absentee ballots, and ballots from early voting sites (where absentee voters are allowed to vote in person before Election Day). It [must](#) also be of sufficient size to produce a statistically significant result. If there is a "[material discrepancy](#)" between the mechanical or electronic count and the hand-to-eye count, and there is no reason to doubt the accuracy of the hand-to-eye count, such as because paper ballots have been lost or destroyed, then the hand-to-eye count takes precedence. If the discrepancy is "[significant](#)," then a complete hand-to-eye count will be conducted.

Reporting the Vote

The process for reporting the unofficial results is straightforward. After the counting is completed at the precincts, the chief judge or someone they designate will verbally [announce](#) the precinct's unofficial results. Following the requirements of the recently rewritten [§163-182.2](#), precinct officials will then transmit the results in an unofficial report to the county board of elections as quickly as possible. This unofficial preliminary report will [include](#) the

number of provisional ballots cast in that precinct and will not have a binding effect on the official county canvass. Immediately after the precinct reports are received, the chair, secretary, or their designee will [publish](#) the unofficial results to the news media.

County boards are in charge of reporting election returns. Under [§163-132.5G](#), county boards are required to report returns by precinct within 30 days after the election. The 30-day deadline does not, however, “[relieve](#) the county board of the duty to report returns as soon as practicable after the election.” Executive Director Bell [extended](#) the reporting deadline of [§163-132.5G](#) by an additional 30 days, effective March 20, 2020, but her emergency amendment authorizing the extension [expired](#) in June 2020. In reporting the returns, the county boards must also [report](#), by precinct and by ballot item in each precinct, how many voters did not select any choice for a ballot item and how many voters selected too many choices for a ballot item.

On election night, the State Board of Elections is required to maintain an Election Results [dashboard](#). The dashboard must be updated as precincts report results to the State Board of Elections (SBE) and must [include data](#), in the form of maps, tables, and charts, and enable visitors to download election results spreadsheets. After polls close, the state is expected to update the [dashboard](#) every five to 10 minutes.

Certifying the Vote

Under [§163-182.5](#) and [§163-182.6](#), canvassing and certification take place at both the county and state level. At the county level, each county board of elections will [meet](#) at 11 a.m. 10 days after the election to conduct the official tally of votes (or canvass) in precincts in that county and to ensure that all votes have been counted and tabulated correctly. If the initial canvass has not been completed by that time, the board may [hold](#) the canvass meeting at “a reasonable time thereafter.” After completing the canvass, the county board will prepare “abstracts” (defined under [§163-182](#) as “a document signed by members of the board of elections showing the votes for each candidate”) in the uniform format [requested](#) by the State Board of Elections. The abstract, at a minimum, must [state](#) each candidate’s name and the number of votes received. Each county board [prepares](#) three originals of the abstract, retaining one for itself, submitting one to the clerk of the superior court for that county, and submitting one to the State Board of Elections. Six days after the completion of the canvass, if there is no election protest pending, then the county board will [issue](#) a certificate of election.

At the state level, the State Board of Elections must [meet](#) at 11 a.m. on the Tuesday three weeks after Election Day to complete its statewide canvass and ensure that the votes have been

counted and tabulated correctly. If, at the time of its canvass meeting, the State Board has not yet received abstracts from some county boards, the State Board can temporarily [adjourn](#) the meeting for up to 10 days while it obtains the missing abstracts. In obtaining the abstracts from the county boards, the State Board is [authorized](#) to obtain one of the triplicate originals at the expense of the county. Immediately after completing the canvass, the State Board will prepare two original copies of its composite abstracts, retaining one for itself and submitting the other to the secretary of state, which the secretary is then [required](#) to keep accessible to the public. Six days after the completion of the State Board canvass, if there is no election protest pending, then the State Board will [issue](#) a certificate of election.

Recounts have the potential to delay the completion of a canvass, and there are two types: discretionary and mandatory. When necessary to complete its canvass, the State Board has discretion to [order](#) a recount, and a county board may do the same if the State Board has not already [denied](#) a recount in that county. A losing candidate on a statewide ballot has the right to [demand](#) a recount if the margin of votes between the losing and the prevailing candidate is less than 0.5% of the votes cast or fewer than 10,000 votes. If the losing candidate wants to exercise this right, they must submit their [demand](#) in writing to the State Board by “noon on the second business day after the county canvass.” If the executive director later revises the initial results and concludes that the winning margin qualifies the losing candidate to demand a recount, then the executive director is [required](#) to notify the losing candidate immediately. After being notified, the losing candidate has 48 hours to [exercise](#) the right to a recount.

Following an initial recount, candidates [have](#) the right to demand an *additional* recount if the initial recount did not use hand-to-eye counting and did not reverse the results for the losing candidate. In these circumstances, the losing candidate may, within 24 hours of completion of the initial recount, [demand](#) a hand-to-eye recount in a sampling of precincts. If the initial recount was not hand-to-eye and it does overturn the election results for the candidate who had initially been declared the winner, then *that* candidate [has](#) the same right to a hand-to-eye recount in a sampling of the precincts. Such a sampling must [include](#) all ballots in 3% of the precincts casting votes in each county, rounded up to the nearest whole number of precincts. For the purposes of this calculation, each one-stop (early) voting site would [be](#) considered a precinct. If extrapolating the discrepancy between the initial recount and the hand-to-eye recount in the sampling would [lead](#) to a reversal of the election results, then the State Board of Elections will order a hand-to-eye recount in the entire jurisdiction in which the election is held.

Pennsylvania

It was well-known before November 3, 2020, that Pennsylvania would not be able to report its complete results on election night, due to the large number of expected absentee ballots, combined with legal requirements that prohibited processing absentee ballots before Election Day. The coronavirus pandemic and new legislation exacerbated those anticipated delays. In 2019, the state legislature passed a law allowing all voters to vote-by-mail without providing an excuse. As a result of this new law and the pandemic, a [record](#) number of Pennsylvania voters planned to vote by mail in 2020. Pennsylvania does not permit the tabulation of mail ballots to begin until after the close of polls on Election Day. Thus the final results of the statewide Pennsylvania elections were not expected until days later, [depending](#) on the results of a few key counties. In fact, after the [primaries](#) in June, around half of the state's counties were still tabulating votes a week later.

The tabulation and canvassing system in Pennsylvania is fairly standardized. Unlike other states where ballots are counted at polling places, ballots in Pennsylvania are counted [centrally](#) using an industrialized process. [District-level](#) tallies are physically delivered to county offices, where they are aggregated, along with mail ballots and provisional ballots. Discrepancies and challenges over provisional ballots are reconciled and decided on at the [county](#) level. As the returns come into the counties and as counties process mail ballots, they [report](#) the unofficial count to the Department of State. The unofficial counts are updated on the statewide election night reporting site. The third [day](#) after the election, the counties begin canvassing returns. Once the official county count is certified, a sealed copy is physically [delivered](#) to the Department of State.

The scope and process for counting mail ballots in Pennsylvania ([Title 25 P.S.](#)) changed significantly over the course of the year leading up to the 2020 general election. [Act 77](#), passed by the state legislature in October 2019, expanded vote-by-mail to any registered voter who requests a ballot. The law also centralized the processing of mail ballots at the county level. [Act 12](#), passed in March 2020, [responded](#) to the public health concerns surrounding the coronavirus pandemic during the primaries and updated the procedural timeline for pre-canvassing and canvassing mail ballots. Subsequent to those changes, the Pennsylvania Supreme Court in September ruled on [Act 77](#) ([\[1-96-2020\]](#) and [\[1-97-2020\]](#)), allowing for receipt of mail ballots up to three days after Election Day and permitting the use of secure drop-off locations for mail ballots. On October 19, 2020, the U.S. Supreme Court [let stand the ruling](#) that Pennsylvania could count ballots received in the three-day grace period after Election Day, so long as the ballots were postmarked on or before Election Day. In addition, the state supreme court [ruled](#) in September 2020 that Pennsylvania cannot count mail ballots sent in without their

state-provided inner envelope (referred to as a “secrecy envelope”) intended to protect the privacy of mail votes. (Ballots without the “secrecy envelope” are sometimes referred to as “naked ballots.”) There was concern that these changes might significantly impact the results of the November 2020 election in this key swing state, though the margin of victory turned out wide enough that that did not happen.

Processing Mail Ballots

The county boards of election are responsible for processing mail ballots. They cannot begin opening and counting ballots until the morning of Election Day and can record and publish results only after the close of polls. [Pre-canvassing](#), the process of inspecting, opening, and taking ballots out of their inner “secrecy envelopes,” may begin once polls open on Election Day, at 7 a.m. ([25 P.S. §3146.8\(1.1\)](#)). After the polls close at 8 p.m., counties can begin canvassing (counting) all ballots, and this process continues until all valid mail ballots have been counted ([25 P.S. §3146.8\(2\)](#)). After polls close on election night, the vote counts can be recorded or published ([25 P.S. §3146.8\(2\)](#)). Once canvassing starts, each county board meets to verify and tabulate ballots, with one representative from each candidate’s campaign and one representative from each party allowed to observe ([25 P.S. §3146.8\(1.1\)](#)).

Mail ballots sent on or before Election Day [are counted](#) so long as they are received within three days after Election Day and there is no evidence that they were mailed after Election Day. In addition, military ballots received [seven days](#) after Election Day can be counted and, thus, the pre-canvassing and canvassing period must continue until at least [eight days](#) after the election.

While the official pre-canvassing process cannot begin until Election Day, county boards of elections collect and record mail ballots that have been returned. According to Department of State [guidance](#), once receiving mail ballots, officials stamp the date of when a ballot was received and scan the “correspondence ID barcode” that is found on the outer envelope. Each issued mail ballot has its own unique [correspondence ID](#), and Pennsylvania’s Statewide Uniform Registry of Electors (SURE) will not accept the same ID twice. The [SURE system](#) also records when a ballot is received and if a ballot has been cancelled. All ballots are then [stored](#) in a secure location until they can be pre-canvassed and canvassed on Election Day.

During the pre-canvassing and canvassing process, there are several reasons why ballots may be set aside and not counted. Voters using a Pennsylvania mail ballot are instructed to place their ballots into two envelopes. The ballot goes first into the smaller envelope, labeled “Official Election Ballot,” which is designed to hide the identity and party of the voter ([25 P.S. §1304-D](#)). If the ballot arrives without this “secrecy envelope,” it is set aside and not counted, as ordered by

a September 2020 Pennsylvania Supreme Court [ruling](#). Furthermore, if there is any indication of the voter's identity or party on the "Official Election Ballot" envelope, the ballot is set aside and not counted ([25 P.S. §3146.8\(4\)\(ii\)](#)). The voter is also instructed to place the smaller envelope with the ballot into the larger envelope that has the voter's declaration and the voter's county, district, and signature ([25 P.S. §1304-D](#)). Any deceased voters' ballots are set aside, as well as any ballots that are [blank](#).

The county board of election then checks the name on the ballot envelope against the "Registered Absentee and mail Voters File" and/or the "Military Veterans and Emergency Civilians Absentee Voters File" through the [SURE](#) system to verify that the individual is registered and has a right to vote ([25 P.S. §3146.8\(3\)](#)). During this time, a member of the board may challenge a ballot "on the basis that the applicant is not qualified to vote," according to a [directive](#) from the Department of State, but cannot challenge the ballot "based on signature analysis." Secretary Boockvar [clarified](#) in September 2020 that the Pennsylvania Election [Code](#) does not provide clear standards for assessment of signatures, and it [does not authorize](#) the county board of elections to reject mail ballots based solely on signature analysis. If not challenged or discarded, the inner envelope is opened and the ballot is tallied ([25 P.S. §3146.8](#)). Ballots that have been challenged are set aside for a hearing ([25 P.S. §3146.8\(5\)](#)), and the challenge is recorded in the [SURE](#) system.

Although individual county boards of election in Pennsylvania have much discretion when it comes to canvassing methods and the use of technology, they generally apply a similar process. For each mail ballot, a clerk scans the outer envelope, opens and scans the inner "secrecy" envelope, then finally opens the inner envelope and scans the ballot into a county tabulation system. For example, in [Montgomery County](#), clerks scan outer envelopes as well as the ballots within and have invested in "ballot extraction devices and high-density scanners." [Philadelphia County](#) has also invested in "high-speed scanners and other equipment." Philadelphia's 22 extraction desks can remove [12,000](#) ballots from their envelopes per hour. The outer envelope must be opened [without](#) being damaged, as they must be stored for two years after the election ([25 P.S. § 3150.17](#)).

Tabulating the Vote

Pennsylvania's tabulation of in-person ballots begins in each district when polls close at 8 p.m. on election night ([25 P.S. §3031.13](#)). In districts with paper ballots or ballot cards, officials announce the vote totals, compare them with a voting checklist to check for any discrepancies, and input the tabulation into a voting system, if they have one ([25 P.S. §3031.13\(g\)](#)). For the most part, voting machines tabulate the district's votes, printing out a summary of the returns

for each individual machine. If the district tabulates votes through a voting system directly, then the automated tabulation process begins at the close of polls ([25 P.S. §3031.13\(f\)](#)). Pennsylvania recently required all counties to upgrade their voting systems to a new safety standard, [outlined](#) by the Department of State, that mandates “voter-verifiable paper records” be printed from each machine, so that there is a paper trail for votes.

Individual districts are responsible for delivering a copy of their vote counts to their counties. When the district has a system to tabulate votes, two copies of the results in the form of “district total cards” (i.e., memory cards) and “reporting forms” are made ([25 P.S. §3031.13\(b\)\(f\)](#)). These are sealed in envelopes; one copy stays in the district and one is physically delivered to the county board of election ([25 P.S. §3031.13\(f\)\(g\)](#)). In Allegheny County, however, the physical returns are transferred from precincts to regional centers and then electronically relayed to the county, according to a January 2019 [study](#) by the Blue Ribbon Commission at the University of Pittsburgh. Returns, supplies, and provisional ballots must be delivered to county offices by 2 a.m. the day after the election ([25 P.S. §3031.13\(j\)](#)). It is also the responsibility of districts to publicly post the results at the district polling place ([25 P.S. §3031.13\(f\)](#)).

County boards are responsible for aggregating district results, through tabulation machines at a “central tabulation center” ([25 P.S. §3031.14](#)). Although counties [have](#) a wide array of election voting and management systems that they can use to tabulate and create records of the vote, all such systems must satisfy a statewide set of security [requirements](#). For instance, county vote tabulation systems [cannot be](#) “connected to or permitted on internet-facing networks.” In addition to aggregating results, county boards canvass and count write-in ballots and provisional ballots.

There are a few cases when a voter may cast a provisional ballot. If an individual comes to the polls and their identity is not verifiable and their proof of identity and right to vote is challenged (perhaps because their name does not appear on the list of registered electors), then they may cast a provisional ballot ([25 P.S. §3050](#)). In addition, if an individual requested a mail ballot but goes to vote at the polls on Election Day and does not bring their mail ballot to be discarded, then their vote is cast as a provisional [ballot](#). (Polling locations’ lists of voters will [include](#) those who have applied for but not returned a mail ballot.) Officials also [encouraged voters](#) to use provisional ballots on Election Day if they believed that their mail ballot was rejected—for example, if they realized they omitted their secrecy sleeve or signature. Within seven days of the election, county boards of election evaluate the provisional ballots and make a determination on each provisional ballot’s validity ([25 P.S. §3050.4](#)). If the board determines the ballot is valid, it will be included in the tabulation ([25 P.S. §3050.4\(5\)\(i\)](#)). Otherwise, the ballot is securely stored and, within seven days of the challenge, a hearing will be held where the voter can object to the decision ([25 P.S. §3050](#)).

Reporting the Vote

The regulation of election night reporting comes mostly from Pennsylvania Department of State directives. Under [25 P.S. § 3031.14\(e\)](#), counties “*may* unofficially report the progress of the count.” The Department of State (DOS) points voters to a designated public [website](#) where county boards of election submit uncertified election counts by uploading exported files from their election management system to the [SURE](#) portal. Although most counties directly submit election night returns to the DOS electronically, a few counties report them via fax, and some counties allow the DOS to manually “scrape” election returns from the county’s website (according to a January 2019 [study](#) by the Blue Ribbon Commission at the University of Pittsburgh). This [study](#) further claims that, for counties that submit returns electronically, the computer they use to transmit the results should be completely separated from other computer components connected to the election management system. Some counties also have their own public-facing web portals where they announce uncertified vote counts on election night and in the days following. Allegheny County, for example, has a designated [website](#) for election night reporting.

An August 2020 [directive](#) from the Department of State laid out additional guidelines for how and when to submit returns, given the potential for a drawn-out tabulation period. The Department of State [directed](#) county boards to label counting groups and report them as falling under one of three categories: “Election Day, Mail (combination of absentee and mail ballots), Provisional.” County boards of election [must](#) submit the following counts on election night to the Department of State, along with a daily updated version, after election night: “1) a precinct-level results file; 2) a county-level summary report from the EMS system; and 3) a precinct-level summary report from the EMS system.” This same [directive](#) asks counties to submit updated reports at the close of polls, daily as the canvassing process continues, during certification, and when they submit the final results per county.

Certifying the Vote

County boards of elections are legally [required](#) to receive precinct results and certify them to the Department of State by the third Monday after the election. County boards of elections are usually made up of [three](#) county commissioners. Boards must include someone from both the majority and minority parties, unless the county has a home rule charter with a different setup. Members [sign](#) a form certifying the results during a public meeting before the certification deadline.

County boards of election start the process of canvassing and certifying the vote count at 9 a.m. the third day after the election ([25 P.S. §3154 \(a\)](#)). This process has been outlined by a [DOS checklist](#). [First](#), the commissioners retrieve and check the total registration number of each district and verify that it aligns with the elector lists and voting machine lists. If the commissioners find discrepancies, then this triggers an investigation by the return board ([25 P.S. § 3154\(b\)](#)) which, barring special circumstances, consists of two or more judges from the court of common pleas ([25 P.S. § 3153\(b\)](#)). The number of ballots, extra ballots, spoiled ballots, and absentee ballots are then verified and discrepancies accounted for ([25 P.S. § 3154\(c\)](#)). Finally, the paper ballot returns for each district (from district totals cards) are read out loud and checked for discrepancies (on the general returns sheet) ([25 P.S. § 3154\(d\)](#)). If a district used machines, the individual machine's registration number and returns are read out loud and checked for discrepancies. Lastly, the board conducts "a statistical recount of a random sample of ballots" ([25 P.S. § 3031.17](#)), which must be a manual recount of ballots or "e-ballot images contained in the system" (according to a 2011 [directive](#)). Official results, "certified under the seal of the county," are delivered to the Department of State in [physical form](#).

Wisconsin

Like Michigan and Pennsylvania, Wisconsin did not expect to announce a winner of its statewide vote on election night 2020 due to the volume of absentee ballots. The state cannot begin processing absentee ballots until Election Day and cannot begin counting votes [until the polls close](#) at 8 p.m. CT. Wisconsin's [decentralized](#) election administration system allows municipalities significant flexibility in choosing procedures, including how mail ballots are processed. This flexibility may result in some localities being able to report results sooner than others. Wisconsin issued [845,243](#) absentee ballots in the 2016 general election and [2,068,464](#) absentee ballots in the 2020 election (a 145% increase).

Wisconsin law [provides](#) the basic structure for processing, counting, and certifying election results. Ballots cannot be opened and counted [until](#) Election Day. After ballots are returned, clerks must verify that the ballot envelopes have both voter and witness signatures and that address requirements have been met. Clerks contact voters who did not meet requirements. Then clerks open approved ballot envelopes, feed ballots through voting machines, and, finally, tally the votes. Tallying the votes can occur only [after](#) the close of polls.

The steps in processing mail ballots can be time-consuming and can create a [backlog](#) of millions of votes, which could delay reporting of results. Officials must verify signatures, open envelopes, and flatten ballots crumpled in transit so that they can be fed into voting machines

(this [video](#) demonstrates the process). A key step of this process, checking for voter and witness signatures, was expected to hold significant influence over the final election result in 2020. Thousands of mail ballots have been rejected for missing signatures in past elections. In the April 2020 primary election, [14,042](#) ballots were rejected for missing signatures (out of [23,196](#) total rejected absentee ballots). To understand the significance of that total, the 2016 election in Wisconsin was decided by only [22,748](#) votes.

Processing Mail Ballots

Absentee ballots in Wisconsin are carefully collected and securely stored until Election Day, when they are [transported](#) to local polling places or, in some communities, a central counting facility. [Most localities](#) in Wisconsin, including most rural areas and small municipalities, as well as some larger cities such as Madison, intermingle mail ballots and in-person ballots at the polling places. Ballot processing and counting procedures at polling place locations are defined by [Wis. Stat. 6.88](#). All ballots are counted together so that, when the precinct count is released, it contains both in-person and mail ballots.

Other localities, such as [Milwaukee](#), Kenosha, Waukesha, and Janesville, process mail ballots at a central counting location, following state law [Wis. Stat. § 7.52](#). [Thirty-nine municipalities](#) in 2020 processed mail ballots at a “Central Count Absentee Ballot site.” A municipal board of absentee ballot canvassers, [composed of](#) the municipal clerk (or a qualified elector designated by the clerk) and two other qualified electors of the municipality appointed by the clerk, convene at a public location any time after the opening of the polls and before 10 p.m. on Election Day to count the absentee ballots for the municipality. The board of absentee ballot canvassers follows the [same procedures](#) as those used at the polling place when processing, counting, and securing absentee ballots. Just like at regular polling places, [election observers](#) from political parties and other organizations may observe the processing and counting of absentee ballots at these designated sites ([Wis. Stat. § 7.41](#)).

Wisconsin waits until [after the polls open](#) on Election Day to begin processing mail ballots. Processing is the act of verifying the identity of the voter who returned the mail ballot. There are multiple steps to processing a ballot before counting begins. The election inspectors [must ensure that](#):

1. the voter’s certification has been properly executed,
2. the voter is a qualified elector of the ward or election district,
3. the voter has not yet voted in the election,
4. the ballot has been endorsed by the issuing clerk,

5. the voter has enclosed proof of residence, if required under Wis. Stat. § [6.34](#), and such proof matches the name and address on file (if not enclosed, the ballot is marked as provisional), and
6. the voter's name does not appear on the poll list as ineligible to vote by reason of a felony conviction. If the voter does have a felony conviction, the inspectors will challenge the ballot as provided in Wis. Stat. § [6.92](#).

If the election inspector or board of absentee ballot canvassers finds no reason to reject the absentee ballot, they mark the elector's name on a poll list and [deposit](#) the voter's ballot into the proper ballot box. But inspectors [reject](#) a ballot if they find one of the following issues:

1. A certification is insufficient: the ballot envelope has no voter signature, no witness signature, no witness address, both special voting deputies failed to sign, and / or no certification language;
2. the applicant is not a qualified elector in the ward or election district;
3. the ballot envelope is open or has been opened and resealed;
4. the ballot envelope contains more than one ballot of any one kind;
5. the certificate is missing for a military or overseas elector who received an absentee ballot by fax or email; or
6. there is proof that an absentee ballot has been submitted for a voter who has since died.

When an absentee ballot is rejected, an inspector [endorses](#) the rejected ballot on the back of the return envelope, giving the reason for rejection. They will then reinsert the rejected ballot into the certificate envelope and securely seal the ballot in the envelope inside an envelope marked for rejected absentee ballots. [The inspectors then](#) endorse a "rejected ballots" envelope with a statement of the ward or election district and date of the election, and the envelope is signed by the chief inspector and one of the inspectors representing each of the two major political parties (or every member of the board of absentee ballot canvassers). They send the envelope to the municipal clerk in the same manner as official ballots voted at the election.

Ballots rejected because of issues with certification, such as no voter signature, [may be returned](#) to voters on Election Day to cure the certification defects [before the polls close](#) at 8 p.m. But notice and cure practices across Wisconsin [vary widely](#). In some counties, election officials make an effort to [call every voter](#) whose ballot does not meet witness requirements and help them fix the ballot. Despite the rule that ballots may not be processed before Election Day, county clerks may [inspect the outside](#) of a mail ballot as soon as it is received to notify a voter of a missing signature. In other counties, only a small number of ballots that fail to meet the witness and signature requirements [make it](#) to the eventual count.

Rejection of absentee ballots was a major concern for November 2020. In the past, deficiencies in the absentee ballot's certification form, which requires the signature of the voter and a witness, have been responsible for the [majority of rejections](#). In the April 2020 primary elections, more than [23,000 absentee ballots](#) were invalidated—[14,042](#) due to voters or their witnesses failing to sign the absentee ballot envelope. Anticipating that these [high rejection rates](#) might cause issues in November, the Wisconsin Elections Commission launched a [public relations campaign](#) to provide better instructions to voters on filling out a ballot, fulfilling the witness requirement, correcting mistakes, and returning the ballot once completed. (See [Healthy Election's Signature Verification Memo](#) for a discussion of Wisconsin ballot rejection rates due to ballot defects, the witness form verification process, ballot cure, and related litigation.)

Absentee ballots must be received by the close of polls on Election Day in order to be counted. This law was recently the [subject of litigation](#) as Democrats sought a more flexible deadline. On September 21, 2020, U.S. District Judge William Conley [ruled](#) that ballots that arrive up to six days after Election Day would count as long as they were postmarked by Election Day; but, on October 8, the Seventh Circuit [blocked](#) the extension of Wisconsin's absentee ballot deadline, and the U.S. Supreme Court [agreed](#) on October 26 to uphold the Wisconsin law. As a result, voters had to get their ballots to the polls by Election Day to be counted. However, at the [39 municipalities](#), including Milwaukee and Green Bay, that count absentee ballots at a central location, rules about where voters should return their ballots on Election Day [varied](#).

Tabulating the Vote

In Wisconsin, no ballots may be counted until the polls close. This late start to the counting process elicited [concerns](#) that the results of the 2020 election would not be known for days. Yet the Wisconsin Elections Commission [maintained](#) that the system of counting votes on Election Night and canvassing votes in the following days was designed to ensure an "accurate, honest, and transparent tabulation and reporting of the people's will at the ballot box, as well as to detect actual fraud."

Wisconsin legislators have debated allowing votes to be tabulated before polls close but did not enact any changes for the 2020 general election. The Assembly approved a [bill](#) in 2019 that would have allowed some in-person votes cast early to be counted sooner, but that bill died in the Wisconsin Senate. A Senate committee heard testimony in 2020 on a [bill](#) that would have allowed clerks to count absentee ballots early, but it, too, failed to pass. Therefore, for the November 2020 election, the counting of votes occurred after the polls closed at [8 p.m.](#) on Election Day.

Vote counting at polling places is performed by the election inspectors, otherwise known as “[poll workers](#).” Each polling place generally has [seven](#) inspectors, though more can be appointed. The governing body of a municipality may also appoint [tabulators](#) to assist election inspectors in the counting of votes after polls close.

Immediately after the polls close, the inspectors proceed to canvass all votes received at the polling place. The canvass, whether conducted at the polling place or at a central counting location, must continue without adjournment until the canvass of all ballots cast and received on or before Election Day is completed and the results are reported (Wis. Stat. [7.51\(1\)](#)).

The process of counting ballots is detailed in the [Wisconsin Election Day Manual](#) (2020), which includes detailed procedures for hand-counted paper ballots, optical scan ballots, and Direct Recording Electronic Voting Equipment (DRE). For example, the hand-counted ballot procedure follows [these basic steps](#) (“Counting Ballots”):

1. If there are multiple ballot boxes, open boxes one at a time.
2. Count the ballots in each box (without examining them) to determine the total number.
3. Determine if the number of ballots is equal to the number of voters. (If not, and there is no alternative reason for the ballot overage, election officials [randomly withdraw](#) the number of ballots equal to the excess number of ballots and set those aside.)
4. Count and record the votes on two separate tally sheets. Reconcile the tally sheets when the counting for each office is complete.
5. Announce the results of the votes cast at the polling place and prepare all election materials for delivery to the municipal clerk.

Wisconsin law does not specify the manner for actually counting paper ballots. The Election Commission [recommends](#) a process in which one election official reads each ballot, a second official observes, and two other election officials mark the votes on tally sheets, which are then compared for accuracy at the end of counting.

[Most](#) Wisconsin polling locations use optical scanning devices or voting machines for tabulating ballots, which record the votes and drop the marked ballots into a locked container. [Verified Voting](#) offers a detailed breakdown of election ballot-marking and tabulation equipment by county.

For locations that tabulate votes using Direct Recording Electronic Voting Equipment (DRE), the counting process is straightforward. All votes, including write-in votes, are [automatically tabulated](#) by the DRE equipment. After the polls close, election workers [print out a tape](#) which lists the tabulated vote totals. Inspectors [then](#) record the serial numbers on the security seals

and secure a copy of the results (plus the memory cards, unless they remain sealed in the machines) in a sealed envelope bearing the signatures of the chief election inspector and two additional inspectors across the seal. The machine-produced record of the total votes cast for each candidate is [presumed correct](#), unless an error in the record is clearly apparent or unless a candidate requests that the machine be viewed. Voting machines provide [three](#) redundancies: the original ballots in their secured container, the print-out tape from the machine, and the electronic memory device from the machine. Wisconsin creates a paper record of [every vote](#) that is cast, no matter what kind of ballot or equipment voters use.

In addition to following the steps for DRE equipment, locations using optical scanning devices must be aware of extra procedures to tabulate ballots that were not legible to the machine. For example, a ballot rejected by the machine must be examined by two election officials from different political parties to determine the cause for rejection. The officials can then make a duplicate ballot to correct the problem (see “Remaking Ballots” in the [WEC Election Day Manual](#)). For some machines, write-in ballots must be tabulated by hand, which may require an edit to the printed results if, for instance, an elector fills in an oval next to a candidate’s name and also writes in a candidate for that office but fails to complete that oval. Write-in votes, even if the arrow/oval is not completed, [are counted instead](#) of the vote for the candidate on the ballot if the write-in is a registered candidate. Therefore, the returns may need to be amended to reflect the correct number of votes.

The Wisconsin Elections Commission (WEC) offers [extensive instructions](#) for counting irregular ballots in accordance with Wis. Stat. § [7.50\(2\)](#). When a voter has marked a ballot in a way that does not clearly indicate their voting objective, such as when an elector has overvoted an office on the ballot, the election inspectors must attempt to determine the voter’s intention. All inspectors must be part of the determination process, and the majority must agree that the voter’s intention can or cannot be determined. Rules for counting [write-in votes](#) also prioritize voter intent—for example, an irregular write-in vote may be counted if the intent of the voter can be determined, even if a name is misspelled. A ballot that is damaged, overvoted, or otherwise unclear as to voter intent is called a “[defective](#)” ballot. Whenever a ballot is found to be defective, cast by a [challenged elector](#), or rejected (e.g. for missing a signature), the ballot must be identified with a number and set aside, and a notation about the rejected ballot must be made on the [Inspectors’ Statement](#).

Reporting the Vote

Wisconsin law specifies the process of election night reporting. After tallying the votes, election officials [announce](#) the results of the votes cast at the polling places and prepare all election

materials for delivery to the municipal clerk. On election night, election inspectors [must](#) report the returns, by ward or returning unit, to the county clerk no later than two hours after the votes are tabulated (Wis. Stat. [§ 7.51\(4\)\(c\)](#)). Wisconsin [does not](#) have an official statewide Election Night reporting system. According to Wis. Stat. [§ 7.60\(1\)](#), the clerks must post all returns received from election inspectors, by ward or reporting unit, on an internet site maintained by the county no later than two hours after receiving the returns on election night. Some counties (such as Adams County) post results via Google Drive folders linked from their county website, while others report results directly on their websites. The Wisconsin Elections Commission advises voters to refer to this [list](#) of Wisconsin county election websites on election night to find unofficial results from Wisconsin's 72 county clerks or [to look for](#) reporting by local news outlets, which aggregate and report statewide results.

Certifying the Vote

Vote totals in Wisconsin are [triple-checked](#). Election results from municipalities are not official until they have been double-checked by the county and [certified](#) by the bipartisan Wisconsin Elections Commission. The tally from election inspectors on election night is the unofficial election result; the official results of the elections are [not finalized until later](#) (see "Post Election Activities"). To certify the vote, each official board of canvassers must meet to complete the official canvass (certification) of their respective offices (at the municipal, county, state, or other level). The canvass statement is the [official](#) determination of the outcome of the election. The election is not complete, and no recount can be requested, until the canvass has been completed (Wis. Stats. §§ [7.53\(4\)](#), [9.01\(1\)\(a\)](#)).

The canvass for the presidential race takes place at the [county level](#). Immediately following the county canvass, the county clerk [delivers](#) to the Elections Commission the certified statements from the county board of canvassers, with the election returns recorded by ward. County canvassers must certify their results to the Wisconsin Election Commission ("WEC") [14 days](#) after the election (Wis. Stat. § 7.60(5)). The WEC must certify the statewide results by [December 1](#) (Wis. Stat. § 7.70(3)(a)).

Candidates and electors may petition for a [recount](#) until 5 p.m. on the third business day following certification by the official board of canvassers. As soon as this deadline for filing a petition for a recount has passed, the municipal clerk issues a [Certificate of Election](#) to each person elected to any municipal office. When a valid petition for a recount is filed, the municipal clerk must wait to issue the certificate of election for the office in question until the recount has been completed and the time allowed for filing an appeal has passed or, if appealed, until the

appeal is decided (Wis. Stat. § [7.53\(4\)](#)). Wisconsin recount laws are [summarized in detail](#) by the Citizens for Election Integrity Minnesota.

Vote Recounts and Election Contests in Battleground States

March 10, 2021

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Introduction

In the immediate aftermath of the 2020 presidential election, there was an extraordinary volume of requests for states to recount their vote and election contests challenging the validity of official results. The Trump campaign sought and obtained both a statewide vote recount and a statewide risk-limiting audit in the state of Georgia, as well as two countywide recounts in Wisconsin. Additionally, the national and state Republican parties, the Trump campaign, various Republican candidates for state and local offices, and Republican voters filed about a dozen election contests in court. Michigan and Georgia each performed post-election vote audits, with Michigan's extending into [February](#), after President-Elect Biden took office. These audits were not prescribed by law; rather, the secretaries of state called for these audits to boost voter confidence that the elections were fair and not tainted by widespread fraud. By contrast, in 2016 when Trump won the presidency, neither of the major parties, candidates, or their campaigns filed any election challenges, and there were only two [recounts](#)—one statewide recount in Wisconsin and one in several counties in Nevada.

This memo surveys the requests for and administration of vote recounts and election contests in seven battleground states in the 2020 general election: Arizona, Georgia, Michigan, Nevada, North Carolina, Pennsylvania, and Wisconsin. The extent of these requests and challenges varied significantly by state.

What are vote recounts and election contests? As a general matter, recounts involve re-canvassing or re-tabulating votes and are either mandatory or discretionary under state statute. Election contests are quasi-judicial proceedings to determine whether an election was marred by fraud or irregularities sufficient to overturn the results of the election.

Recounts: Recounts of election results generally involve a re-canvassing or re-tabulation of votes. Recounts can be mandatory or discretionary. Some states require a mandatory recount when the margin of victory is below a statutorily specified threshold. Other states have no such requirement but instead permit candidates to request a recount if the vote margin is small or if the candidate suspects that an error was made in the initial count. In November 2020, President Trump sought and obtained recounts in Georgia and in two counties in Wisconsin, indicating he believed they would uncover rampant voter fraud—fraud that the president and his loyalists predicted and alleged for months. None of the recounts revealed systemic fraud. The few irregularities that were uncovered were far from sufficient to change the results of the election. Additionally, Georgia and Michigan also undertook audits of their presidential vote counts. Unlike a recount, an audit is a post-election safety measure to verify and ensure that voting systems worked as expected. An audit is not a challenge or attempt to change the

election results, regardless of how close the margins appear to be. Although recounts and audits are not exactly the same, discussion of recounts includes audits. A brief summary of recounts in seven battleground states follows:

- **Arizona:** President-Elect Biden won in Arizona by approximately [10,500 votes](#), or a margin of 0.31% of total votes cast. The vote margin between incumbent Trump and winner Biden exceeded the statutory 0.1% or lower threshold required for a mandatory recount in Arizona, and state law does not permit candidates to request a recount. Consequently, there was no recount in Arizona.
- **Georgia:** President-Elect Biden won the state of Georgia by [11,779](#) votes. Georgia engaged in two statewide recounts of all votes: the first in the form of a risk-limiting audit that was conducted by a hand recount of all votes, and the second, requested by President Trump, was a subsequent machine recount of all votes. Neither the risk-limiting audit (the full hand recount) nor the machine recount showed a significant change from the original vote recount or changed the outcome of the election. [As a result of the audit](#) (the hand count), most counties found no change in their final tally. Some counties had changes of fewer than 10 ballots. The highest error rate found in any county recount was 0.73%. An [additional audit](#) of ballot signatures conducted in Cobb County revealed only two signature mismatches. [The statewide machine recount](#) also reaffirmed the election results. The [final official results](#), after the second recount, showed that Biden won the state of Georgia by [11,779](#) votes—reflecting 99.965% accuracy in the original vote count after Election Day.
- **Michigan:** Michigan certified the state's vote on November 23, [declaring](#) that Biden won the state by over 150,000 votes, far above the 2,000-vote or lower threshold necessary to trigger a statewide mandatory recount. State law did not permit President Trump to request a recount. However, Michigan performed a statewide audit of the election, which was completed in mid-February and [affirmed the results](#) of the Michigan election.
- **Nevada:** President-Elect Biden won the state of Nevada by approximately 34,000 votes, a 2.4% margin of victory. President Trump did not request a recount in the state, even though he was permitted to do so before November 16.
- **North Carolina:** President Trump won the presidential race in North Carolina by [74,500 votes](#), a 1.4% margin of victory. President-Elect Biden did not request a recount.
- **Pennsylvania:** President-Elect Biden [won](#) the state of Pennsylvania by about 81,600 votes, a margin of 1.2% of all votes cast. This margin exceeded the statutorily required threshold margin of 0.5% or less of all votes cast for a mandatory recount, and state law did not permit President Trump to request a

recount. President Trump did, however, file six challenges to the counting process, all of which were dismissed. Additionally, state senatorial candidate Nicole Ziccarelli filed three lawsuits challenging the vote-counting process for her race, none of which succeeded.

- **Wisconsin:** President-Elect Biden [won](#) Wisconsin by [just over 20,500 votes](#), a margin of 0.62% of total votes cast. This was within the 1% or lower vote margin required to request a statewide recount. President Trump requested recounts in Dane County and Milwaukee County, and the recounts resulted in an increase in the vote margin of victory for Biden. President Trump filed a lawsuit disputing the recounts in both counties, but the trial court and the Wisconsin Supreme Court affirmed the recount results.

Election contests: An election contest is a unique, state-specific proceeding to determine whether fraud or irregularity in an election was of sufficient magnitude to have changed the result of the election or rendered the outcome reasonably uncertain. An election contest is not the same as a challenge to block certification of the vote. While voters or candidates can sue to block vote certification in any state, not all states have “election contest” laws.¹ Certification challenges feature a kaleidoscope of constitutional, federal, and state claims and can be filed in both federal and state courts. Election contests are narrow, state-specific proceedings. The procedures, deadlines, and rules for election contests vary greatly from state to state. Candidates or voters who file election contests must follow specific state statutes, procedures, and deadlines, which often differ significantly from rules of procedure in typical state and federal judicial proceedings. Some states, for instance, permit election contests to be filed only in one specific county court, and others require the challenger to petition the county or state election board before going to court.

Although they may take place before a county or state board, election contests often bear some resemblance to court proceedings because they typically involve extensive fact-finding with witnesses, affidavits, briefs, and oral arguments. Potential outcomes include requiring that votes be recounted entirely or a declaration of new election results. In 2020, various Republican

¹ Many lawsuits to block vote certification allege violation of federal rights, specifically that the state denied its citizens rights under the First Amendment and violated equal protection under the Fourteenth Amendment. These lawsuits seek relief under 42 U.S.C. §§ 1983 and 1988, which place liability on “every person who . . . under the color of any statute . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” Some of these lawsuits to block vote certification also alleged violations of state election law. Certification challenges are a broad umbrella class of state or federal lawsuits to keep the state from certifying its election results, while election contests represent only a small, narrowly-defined subset of possible election challenges. Post-election lawsuits challenging vote certification are covered in detail in the Stanford-MIT Healthy Elections Project’s report on [Post-Election Litigation Analysis and Summaries](#) and mentioned just briefly here.

Party affiliates filed about a dozen election contests, alleging fraud, irregularity, and conspiracy in the administration of voting machines. The election contests in the various battleground states are summarized briefly as follows:

- **Arizona:** Three separate election contests were filed under Arizona law, but none succeeded.
- **Georgia:** Four separate election contests were filed under Georgia law, but none succeeded. Two were dismissed by the court due to a procedural defect that plaintiffs named the wrong defendant. The other two were voluntarily dismissed on January 7, 2021.
- **Michigan:** Michigan does not provide a specific statutory scheme for election contests relating to the presidential elections. Instead, President Trump relied primarily on lawsuits to block certification of the vote. While Michigan state law does include election contest procedures for candidates running for U.S. Congress, no such contests were filed.
- **Nevada:** Three separate election contests were filed under Nevada law. One was filed by Trump-supporting voters, and two were filed by Republican candidates for state office. All three alleged that the electronic voting machines counted illegal votes. None of these contests were successful.
- **North Carolina:** While North Carolina specifies robust procedures for election “protests,” none were filed after the election.
- **Pennsylvania:** While Pennsylvania has specific state procedures in place for election contests, President Trump did not file any election contests *per se* in the 2020 presidential election. Instead, Trump relied on lawsuits to try to block certification of the vote, at least one of which the court dismissed on the grounds that it was actually an election contest filed 11 days after the November 23 deadline, “styled” as a standard legal challenge.
- **Wisconsin:** Wisconsin state law does not provide for a specific statutory scheme for election contests relating to presidential elections.

The 2020 election was unique in the magnitude of post-election controversy. An analysis of the myriad recounts and election contests pursued and conducted across the battleground states underscores the deep partisan divide emerging from the 2020 election. Only time will tell whether the extreme partisanship of 2020 was an anomaly in the history of U.S. elections or whether it will be a new normal for elections moving forward. And only time will tell whether the damage caused by the fraud allegations and election challenges to the electorate’s perception that U.S. elections are fairly conducted is lasting or fleeting. But at least, in the end, the various state election laws, procedures, and judicial bodies were able to manage the partisan rancor and resolve the disputes lawfully and peacefully.

Arizona

A. Recounts

President-Elect Biden's margin of victory for the presidential race in Arizona was approximately [10,500 votes](#), or 0.31% of total votes cast. This was outside the 200-vote or 0.1% margin that would have triggered an automatic recount in the state. Because Arizona law does not permit candidates (or anyone) to request recounts, Arizona did not undergo any vote recounts in 2020.

Shortly after the election, however, the Trump campaign filed lawsuits that opponents argued amounted to a de facto recount:

- [Donald J. Trump for President v. Hobbs](#), No. CV2020-014248 (Ariz. Super. Ct., Maricopa Cnty. 2020) - The Trump campaign sought to bar the certification of election results until counties conducted a manual inspection of ballots that contained "overvotes," instances in which people voted for more candidates than permitted for a given race. The lawsuit alleged that tabulation machines rejected some ballots due to ink splotches and that poll workers either pressed or told voters to press a green button on the machine to override the error, resulting in some ballot selections being disregarded. While Trump's lawyers initially said there could potentially be thousands of Trump votes within the ballots in question, they later said that number would be lower, and the Trump campaign voluntarily [dropped](#) this lawsuit as moot before any ballots were actually reviewed.
- [Arizona Republican Party v. Fontes](#), No. CV2020-014553 (Ariz. Super. Ct., Maricopa Cnty. 2020) - The Arizona Republican Party sued the Maricopa County Recorder and the Maricopa County Board of Supervisors to challenge a provision of the Arizona Secretary of State's election manual that provides for only a "limited precinct hand count and early ballot hand count audit" to be conducted after each general election. Specifically, plaintiffs challenged the provision allowing the sample size to be limited to two percent of a county's polling places in counties that utilize a vote center model. The complaint alleged that the election manual instructions violate an Arizona statute that requires that two percent of precincts – not polling places – be audited. The court [dismissed](#) the case on November 19.

B. Election contests

Arizona permits election contests, and the Republican Party and its allies pursued several election contests in Arizona in 2020. The grounds for contesting an election, according to Arizona statute, are: (1) misconduct on the part of election officials; (2) ineligibility of the person elected; (3) an offense committed against the right to vote; (4) bribery of an election official or judge; (5) illegal votes; and (6) erroneous count of votes. Contests may be brought in the Superior Court of Maricopa County or in the superior court of the county in which the person contesting resides. The Republican Party and Republican voters in Arizona brought the following election contests in 2020:

- [*Ward v. Jackson*](#), No. CV2020-015285 (Ariz. Super. Ct., Maricopa Cnty. 2020) - The chair of the Arizona Republican Party filed an [election contest](#), broadly alleging three categories of “misconduct” in the general election: (1) that an insufficient opportunity was afforded to observe the actions of election officials; (2) that election officials overcounted mail-in ballots by not being sufficiently skeptical in their comparison of signatures on the mail-in envelope/affidavits with signatures on file; and (3) that ballots were duplicated. The Superior Court of Maricopa County [dismissed](#) the election contest on December 4, finding that plaintiff did not meet her burden of proof in establishing misconduct or fraud. Plaintiff then [appealed](#) her case to the Arizona Supreme Court, which [affirmed](#) the lower court’s denial. On December 11, plaintiffs filed a [petition for a writ of certiorari](#) in the U.S. Supreme Court, which the court denied on February 22.
- [*Stevenson v. Ducey*](#), No. CV2020-096490 (Ariz. Super. Ct., Maricopa Cnty. 2020) - Members of the Arizona Election Integrity Association contested the presidential election, alleging that (i) voters in “Democratic strongholds” were given greater opportunities to cure ballot defects than those in Republican-leaning counties, (ii) that out-of-state residents were allowed to vote in Arizona, (iii) that voters were allowed to vote twice, and (iv) that the results were skewed by the receipt of private philanthropic election grants by certain counties. The case was [voluntarily dismissed](#) on December 7 before the presentation of any evidence.
- [*Burk v. Ducey*](#), No. CV202001869 (Ariz. Super. Ct., Pinal Cnty. 2020) - On December 7, Plaintiff, an Arizona voter, [filed](#) an election contest, alleging the existence of a scheme that resulted in the counting of hundreds of thousands of fictitious ballots in Arizona and that Dominion Voting Systems software covered up this scheme. Plaintiff sought an audit and an injunction against transmitting Arizona’s results to the Electoral College. On

December 15, the court dismissed the case after determining the plaintiff lacked standing—she did not register to vote in the election.

Georgia

A. Recounts

Given the narrow margin of the presidential race in Georgia (~12,000 votes, or 0.3%), Secretary of State Brad Raffensperger [announced](#) on November 11 that he would select the presidential contest to be the subject of the pre-certification risk limiting audit (RLA). RLAs are used to confirm with strong statistical likelihood that the votes cast for a certain contest were tabulated correctly, thus limiting the risk that the wrong winner gets (or was) certified. Unlike traditional post-election audits, where the number of ballots to be examined is fixed in state law, the number of ballots subjected to an RLA [depends](#) on the margin of victory in a given race. Where the margin is wide, fewer ballots must be inspected to reach statistical confidence about the results; where the margin is narrow, significantly more sample ballots must be examined.

But November 2020 was not typical. Because the election in Georgia was so close, instead of selecting a random sample of ballots for each county to review, the secretary announced that the close margins would trigger a full hand re-tally of the approximately five million ballots cast across all 159 counties. (This announcement followed [pressure](#) from the Trump campaign and other Georgia Republicans on the secretary to conduct a full recount.) Although only approximately 1.5 million ballots technically needed to be audited in order to provide statistical confidence about the winner in this tight presidential contest, VotingWorks, a non-partisan non-profit that builds election technology, [explained](#) that it is actually “less work to sample every cast ballot, simply because attempting to audit a large subset incurs the work of retrieving and replacing specific ballots, while reviewing all ballots does not.”

The secretary’s office [directed](#) counties to begin the audit process no later than November 13 at 9 a.m. and complete it by 11:59 p.m. on November 18—two days prior to the state certification deadline. Essentially, the audit teams were responsible for re-tabulating the entire presidential vote by hand, instead of comparing electronic and paper results for randomly selected ballots. According to [Georgia Public Broadcasting](#), during the audit process, there were “inventory sheets to track which batch of ballots were counted when, audit board sheets [to] identify vote totals for each batch and the people that audited them and even a sign-in sheet for partisan monitors that can closely watch the process.” VotingWorks made copies of this paperwork

publicly available [online](#) (including a humorous [video](#) demonstrating the tasks required in a full hand tally). Some facilities offered a [live stream](#) of the audit process.

Given the short timeline for the audit, audit teams across Georgia worked around the clock until November 18 to carefully complete the recount and report the results to the secretary of state in time for the November 20 certification deadline. Fulton County (Georgia's largest) [estimated](#) that the manual re-tally of its 528,000 ballots would require around 300 people working 10-hours days Saturday through Wednesday. The audit was completed on November 18, and the state certified on November 20 that former Vice President Biden had won the state by 12,670 votes, or 0.25% of votes cast. According to the [secretary of state](#), "[t]he audit confirmed that the original machine count accurately portrayed the winner of the election."

Notably, Georgia law [permits](#) the losing candidate to request *another* recount within two days after the certification deadline (so, by November 22 in 2020) if the certification showed a margin of victory below 0.5%. Because Georgia certified that Biden had won the vote by 0.25%, President Trump [requested](#) another recount. Under Georgia law, this recount was required to be performed by optical scanning machines, which are considered more accurate and expeditious than the manual alternative.

This second recount, by optical scanning machine, again showed that Biden won the election in Georgia. But the machine recount showed Biden's lead [dropped](#), from 12,670 to 11,779, due to a discrepancy in Fulton County, the state's most populous county that includes most of Atlanta. Fulton County's recount results showed 880 fewer votes than the results certified November 20, with an overwhelming majority of those votes coming from Biden's total in the county. Gabriel Sterling, who oversaw the implementation of the state's new voting system, called the discrepancy in the county "a little worrisome" but said that Fulton County suffered from some managerial issues due to its size. The 880-vote difference was not enough to change the overall outcome of the election, and Georgia cast its 16 electoral votes for Biden on December 14.

Despite the multiple recounts, Donald Trump and other Republicans continued to make unsupported claims publicly that the Georgia election was not legitimate, largely blaming lack of proper signature verification. In response, Georgia Secretary of State Raffensperger stated that "signature matching has been attacked, again and again with no evidence, I feel we need to take steps to restore confidence in our elections." On December 14, Raffensperger [declared](#) that investigators would audit voter signatures on absentee ballot envelopes in Cobb County, to determine whether signatures on absentee ballot envelopes truly matched the voter signatures kept on file. The [audit](#) showed only two signature mismatches.

B. Election contests

Georgia [law](#) also permits candidates or voters to file an election contest on any of the following grounds:

- (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
- (2) When the defendant is ineligible for the nomination or office in dispute;
- (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
- (4) For any error in counting the votes or for declaring the result of the primary or election, if such error would change the result; or
- (5) For any other cause which shows that someone other than the declared winner was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

The following election contests were filed in Georgia:

- [Wood v. Raffensperger](#), 2020CV342959 (Super. Ct. Fulton Cnty. 2020) - On November 25, the president of the Georgia Voters Alliance sued the Georgia governor and secretary of state under Georgia's election contest statute. The plaintiff challenged Fulton County's procedures for processing absentee ballots; and alleged fraud, failure to enforce state law residency requirements, and failure to enforce the prohibition on double-voting. The contest also alleged violations of Georgia's election code, the Georgia Constitution, and the Fourteenth Amendment to, and the Elections and Electors Clauses of, the U.S. Constitution. The court [dismissed](#) the election contest on December 8 due to a procedural defect: The persons whom the plaintiff named as defendants were not eligible, under Georgia law, to be subjected to an election contest.
- [Trump v. Raffensperger](#), No. 2020CV343255 (Super. Ct., Fulton Cnty. 2020) - On December 4, President Trump, the Trump campaign, and a Republican presidential elector nominee [sued](#) the Georgia secretary of state, the vice chair of the Georgia State Election Board, and others, contesting the election on numerous grounds. Their allegations included claims that absentee ballots were wrongfully counted without election officials adequately verifying the signatures, that voters requested absentee ballots more than 180 days prior to the election, and that absentee ballots were submitted by deceased persons, out-of-state residents, and felons. On December 9, the court issued an [order](#) that the case would proceed on a non-expedited basis. On December 11, petitioners

filed an [emergency petition for writ of certiorari](#) in the Georgia Supreme Court, but the Georgia Supreme Court [dismissed](#) the petition on December 12.

- [Pearson v. Kemp](#), No. 1:20-cv-04809-TCB (N.D. Ga. 2020) - On November 25, Plaintiffs, six Georgia voters, filed an [election contest](#) alleging that election software and hardware from Dominion Voting Systems, which they claimed was developed by Venezuelans to manipulate votes in favor of Hugo Chavez, led to a fraudulent ballot-stuffing campaign in Forsyth, Spalding, Cherokee, Hall, and Barrow counties. Plaintiffs alleged that the state's use of Dominion software and hardware violated the U.S. Constitution's Election Code and the Fourteenth Amendment by processing "defective" ballots. The election contest sought an injunction against transmitting Georgia's certified results. On December 7, the court [dismissed](#) the case. In the minutes on the record, the judge [said](#) that "[the plaintiffs] ask the court to order the secretary of state to decertify the election results as if such a mechanism even exists, and I find that it does not." The judge also found that the plaintiffs did not have legal standing and that the suit did not belong in federal court. Plaintiffs filed an [emergency appeal](#) to the U.S. Supreme Court on December 11. On January 19, petitioners moved to withdraw their petition and, on February 11, the court dismissed it.
- [Boland v. Raffensperger](#), No. 2020CV343018 (Super. Ct., Fulton Cnty. 2020) - On November 30, an individual voter filed an election contest, alleging that the secretary of state and other election officials failed to remove ineligible voters from Georgia's voter rolls and failed to reject a sufficient number of absentee ballots (as compared with previous elections' rejection rates). The court [dismissed](#) the contest on December 8, saying, among other things, that the plaintiff lacked standing and had named ineligible defendants for the election contest.

Michigan

A. Recounts

Michigan certified the state's vote on November 23, [declaring](#) that Biden won the state by over 150,000 votes, far above the 2,000-vote threshold necessary to trigger a statewide automatic recount. There was controversy, however, surrounding the certification of Wayne County, the state's most populous county. The two Republican members of the Wayne County Board of Canvassers there initially blocked certification, citing a discrepancy between the number of votes recorded as cast and the number of ballots actually counted. They [reversed course](#) later

that evening, however, after public outcry, saying they were reassured by the promise of a comprehensive audit of the vote tally. With their approval, the election results in Wayne County were certified unanimously. For more details on the certification of the Michigan vote, and the related litigation, see the Stanford-MIT Healthy Elections Project report on [Counting and Certifying the Vote](#).

Following Michigan's statewide certification, Michigan Secretary of State Jocelyn Benson [declared](#) that the state would conduct a statewide risk-limiting audit to provide a further check on election results by inspecting a certain percentage of paper ballots. According to Bureau of Elections, the audit would be the "most comprehensive post-election audits in state history" and [would include](#):

- Hand-counting thousands of randomly selected paper ballots statewide to make sure those counts conformed with the machine tabulations.
- A "zero-margin risk-limiting audit of the presidential election" in Antrim County, where unofficial results were initially misreported as a result of what state and county officials said was a programming error by the local clerk. While the risk-limiting audit in other counties involved hand-counting *random samples* of ballots to compare with machine results, the Antrim County audit was a hand tally of *every* ballot, which was compared with the machine results." The Antrim County audit began on December 17 and concluded the same day, showing a net gain of 12 votes for Republican President Donald Trump, out of 15,962 votes cast.
- Procedural audits of precincts and absentee ballot counting boards in more than 200 jurisdictions, including a large number of precincts in Detroit and Wayne County, and all absentee ballot counting boards in Detroit. Officials reviewed election processes, machines, and ballots.

The statewide audit concluded in February and [affirmed](#) the results of the Michigan election. The Secretary's [press release](#) following the audit explained:

Hundreds of Republican, Democratic and nonpartisan municipal and county clerks from more than 1,300 local jurisdictions – more than had ever participated in such an audit anywhere – took part in Michigan's statewide auditing exercise, hand counting more than 18,000 ballots that were randomly selected throughout the state.

In the hand count, President Biden received more votes than former president Donald Trump, and the percentage of votes for each candidate was within fractions of a percentage point of machine-tabulated totals. In the state's three largest counties, each of which uses a different voting machine vendor, the audit results were also all within one percentage point of the November results. Although a random sample of 18,000 ballots would not be expected to exactly match the percentages of votes cast for candidates out of all 5.5 million ballots, the closeness in percentages between the hand-reviewed ballots

and the machine-tabulated totals provides strong additional evidence of the accuracy of the machine count.

In the statewide sample, Biden received votes on 50 percent of all ballots reviewed while Trump received 48 percent. In Wayne County, which uses Dominion machines, Biden received 68 percent, while Trump received 31 percent. In Oakland County, which uses Hart machines, Biden received 57 percent while Trump received 41 percent, and in Macomb County, which uses ES&S machines, Biden received 44 percent and Trump received 54 percent.

The audit exercise was conducted by generating a statewide manifest that included the number of ballots cast in every jurisdiction, and then using a randomly generated (by rolling 10-sided dice) 20-digit number to select 18,162 of them. Clerks then retrieved ballots that had been selected in their jurisdictions and shared if it had a vote for president and, if so, who it was for. Clerks retrieved a total of 18,084 ballots total. Twenty-one clerks did not retrieve 78 ballots in their jurisdictions, meaning the sample was 78 ballots short of a complete sample. For this reason, the audit is being considered a pilot exercise.

While no official recount took place in Michigan, the relevant state recount laws can be summarized as follows: Under Michigan Compiled Laws [§168.880](#), registered voters who believe that there has been fraud or error committed by the inspectors of an election can file a petition with the secretary of state, setting forth the nature and character of the alleged fraud or error. The secretary of state can then order a recount to correct any fraud or error. Under [§168.879](#), a candidate can also petition for a recount. The candidate must petition for a recount within 48 hours of the completion of certification and be able to allege a good-faith belief that, but for voter fraud or mistake, the candidate would have had a reasonable chance of winning the election. The [deadline](#) to complete a recount is 30 days after either the last day to file counter petitions or the first day that recounts may begin.

A number of lawsuits were filed in Michigan petitioning for a recount of the vote, all of which failed:

- [King v. Whitmer](#), No. 2:20-cv-13134-LVP-RSW (E.D. Mich. 2020) - Plaintiffs, six Michigan voters, alleged that Republican poll observers were denied meaningful access to observe the processing of absentee ballots, that election workers forged and altered ballots, and that defective ballots were counted. They asked the U.S. district court to either decertify the election results or to order a recount of the vote. The court held that: the suit was barred by the Eleventh Amendment; that the case was moot; that the doctrine of laches applied, in that plaintiffs waited too long to bring their claims; that abstention doctrine applied, since parallel state proceedings were ongoing; and that plaintiffs failed to establish an injury sufficient to meet standing requirements. Plaintiff

appealed all the way up to the U.S. Supreme Court, which denied the petition for certiorari on February 22.

- [*Johnson v. Benson*](#), No. 162286 (Mich. Sup. Ct. 2020) - Petitioners, members of Black Voices for Trump, alleged that respondent state officials failed to allow meaningful poll observation, instructed election workers to count invalid ballots, and permitted “improper” grant funding from a private individual, tech billionaire Mark Zuckerberg. Petitioners further alleged that election workers forged ballots and duplicated ballots without oversight. Plaintiffs asked the court to take “immediate custody and control of the ballots, poll books, and other indicia of the voting” and to order a recount of the election results. The court found that the plaintiffs claimed statutory authority for jurisdiction was lacking.
- [*Johnson v. Benson*](#), No. 1:20-cv-01098 (W.D. Mich. 2020) - On November 14, plaintiffs, two Michigan voters and TCF Center poll challengers, alleged that the Michigan secretary of state enabled fraud on Election Day. They petitioned the U.S. district court to order a recount but voluntarily dismissed the case on November 18.
- [*Costantino v. Detroit*](#), No. 20-014780-AW (Mich. Cir. Ct., Wayne County 2020) - Plaintiffs, two Wayne County voters, petitioned the circuit court of Wayne County for a recount. They alleged that the city of Detroit processed and counted ballots from voters whose names did not appear in the Qualified Voter File; that various city officials instructed election workers not to verify signatures on absentee ballots, to backdate absentee ballots, and to process such ballots regardless of their validity; and that city officials, “on a daily basis leading up to the election, coached voters to vote for Joe Biden and the Democrat party.” The court found that the plaintiffs’ complaint was “rife” with generalization, speculation, hearsay, and a lack of evidentiary basis. The court held that the evidence supported no credible finding of fraud at the TCF Center.

B. Election contests

Michigan does not appear to provide a specific statutory scheme for election contests relating to the presidential elections. The Republican Party did, however, file four separate lawsuits seeking to block certification or decertify the vote. None of these lawsuits have succeeded. These lawsuits are summarized in more detail in the Stanford-MIT Healthy Elections Project report [Post-Election Litigation Analysis and Summaries](#). (Michigan law does specify election contest procedures for candidates for the [Senate](#) and the [House](#), but no such election contests were filed.)

Nevada

A. Recounts

Under Nevada law, a candidate defeated in any election may request a recount within three business days of the canvass and the subsequent certification of votes. Nevada certified the vote on November 24, indicating that Biden won the state by approximately 34,000, or 2.4% of the total votes. President Trump did not request a recount, but Republican voters did file a lawsuit challenging the ballot counting process:

- [*Stokke v. Cegavske*](#), No. 2:20-cv-02046 (D. Nev.) - Plaintiffs, two individuals and two Nevada Congressional campaigns, sought injunctive relief directing defendants to (a) cease their use of the Agilis system to count ballots and (b) allow greater access to ballot-counting observers. Plaintiffs claimed that the Agilis system, which purportedly misidentified Plaintiff Stokke as having already voted by mail, was not able to properly verify signatures. The court denied the plaintiffs' request for preliminary injunction to mandate that Clark County permit observers to be closer to the ballot-counting process. Plaintiffs subsequently voluntarily dismissed their lawsuit.

For a detailed survey of the relevant recount laws in Nevada, please refer to the Appendix.

B. Election contests

While President Trump did not request a recount, his campaign and other candidates for office filed four election contests. Any candidate or registered voter in Nevada [can contest](#) the results of a presidential election. The following are grounds for contesting election results pursuant to Nevada Revised Statutes [293.410\(2\)](#):

- One or more members of the election board are guilty of malfeasance.
- The person elected is not eligible for office.
- Illegal or improper votes were counted, legal and proper votes were not counted, or some combination of the two.
- The election board made errors sufficient to change the results in the course of conducting the election or canvassing the returns.
- The winning candidate or a person acting on their behalf has given or offered anything of value for purposes of manipulating the outcome of the election.
- A malfunction of a voting device or other mechanism was sufficient to raise reasonable doubt as to the outcome of the election.

Under Nevada law, an election contest is a special judicial proceeding with its own rules. Parties to the contest [may take depositions, submit briefs, and make oral arguments](#). The following election contests were filed in Nevada after the 2020 election:

- [Law v. Whitmer](#), No. 20 OC 00163 1B (Dist. Ct., Carson City, 2020) - Six presidential electors supporting Trump sued six presidential electors supporting Biden, contesting the results of the election based on allegations of “substantial irregularities, improprieties, and fraud” in Nevada’s 2020 presidential election. They requested that Trump be declared the winner of the election. The statement of contest alleged violations of Nevada statutes and alleged that the use of signature comparison and electronic voting machines produced unreliable results, that 500 absentee ballots were received from deceased persons, that voters were improperly disenfranchised by arbitrary provisional ballot verification procedures, that poll watchers were not permitted meaningful access, and that the Nevada Native Vote Project conducted illegal vote drives. The defendants [filed](#) a motion to dismiss on November 23. On December 4, the court denied the election contest, [dismissed](#) the lawsuit with prejudice, and ordered plaintiffs to pay defendants’ costs. On December 8, the Nevada Supreme Court [affirmed](#) the lower court’s order.
- [Rodimer v. Gloria](#), No. A-20-825130-W (Dist. Ct., Clark Cnty. 2020) - A candidate for a Nevada state congressional district [sued](#) the Clark County Registrar of Voters and the Clark County Board of Commissioners, seeking a writ of mandamus for a new election in Clark County and a declaration that the use of the Agilis mail ballot processing machine for signature verification violated Nevada law. The petition challenged the defendants’ failure to convert to “inactive status” voters whose absentee ballot applications had been returned as undeliverable in the primary election. They also challenged the use and manner of use of the Agilis machines and alleged counting of illegal votes. The hearing was [delayed](#) after a “ministerial oversight” resulted in a new judge being assigned the case. The new judge subsequently [denied](#) the writ on November 25, citing no jurisdiction to grant the writ, and dismissed the case.
- [Becker v. Cannizzaro](#), No. A-20-825067-P (Dist. Ct., Clark Cnty. 2020) - April Becker, a Republican state senate candidate who narrowly lost to state Senate Majority Leader Nicole Cannizzaro, filed an [election contest](#) November 18, seeking a court-ordered new election over alleged inadequacies and voter fraud. In particular, she challenged the counting of alleged “illegal or improper votes and the failure to count “legal and proper votes” in the Clark County Commission District C election. The contest was [voluntarily dismissed](#) November 20.

North Carolina

President Trump won the presidential race in North Carolina by [74,500 votes](#), or 1.4%. Neither party requested any recount or filed any election protest in the 2020 general election.

The margin was greater than the threshold required for a recount. Under state law, a losing candidate on a statewide ballot has the right to demand a mandatory recount if the margin of votes between the losing and the prevailing candidate is less than 0.5% of the votes cast or fewer than 10,000 votes. Candidates also have the right to demand an *additional* recount if the initial recount did not recount the ballots manually.

Additionally, any registered voter can file an “election protest” with a county board of elections to dispute the way in which votes were counted and tabulated or any other “irregularities.” If the county board of elections does not find “substantial evidence” of irregularity or misconduct, it must dismiss the protest. If, however, the board does find substantial evidence of irregularity or misconduct that could affect the outcome of the election, the board can order any of the following remedies:

- (1) That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.
- (2) That votes be recounted.
- (3) That the protest and the county board's decision be sent to the state board for action by it.
- (4) Any other action within the authority of the county board.

Parties can appeal a county board of election's decision to the State Board of Elections, which can then resolve the protest on the existing record, request additional fact-finding, conduct its own hearing, or remand the protest back to the county board of elections for further proceedings. When the State Board of Elections renders a final decision, including a decision to order a new election, the board must serve the parties with a copy of the final decision. Parties [may appeal](#) the final decision to the Superior Court of Wake County.

For a detailed survey of the relevant laws on recounts and challenges in North Carolina, please refer to the Appendix.

Pennsylvania

A. Recounts

President-Elect Biden [won](#) the state of Pennsylvania by about 81,600 votes, or 1.2% of all votes cast. [Pennsylvania law](#) provides for a mandatory recount when candidates or ballot questions “appearing on the ballot in every election district in [the] Commonwealth” have a victory margin of [0.5% or less](#) of all votes cast. Because the margin in the presidential contest exceeded the statutory cap, Secretary of the Commonwealth Kathy Boockvar did not order any official recounts.

Under Pennsylvania [law](#), election officials can also order recounts if there is a discrepancy or “palpable error” (such as if the total vote count exceeds the number of registered voters). In addition, a recount must occur under a number of other circumstances, including if “a discrepancy is found in the comparison of the sealed and unsealed general returns.” However, no Pennsylvania election officials initiated any recounts of the 2020 general election.

Voters can also request recounts in Pennsylvania. Pennsylvania law requires three qualified voters to file “a petition duly verified by them, alleging that upon information which they consider reliable they believe that fraud or error, although not manifest on the general return of votes made therefrom, was committed in the computation of the votes cast . . . It shall not be necessary for the petitioners to specify in their petition the particular act of fraud or error which they believe to have been committed, nor to offer evidence to substantiate the allegations of their petition.” The group of three voters can petition for a recount either with a county board of elections or in state court, but must either deposit \$50 in cash or present a bond of \$100 for each election district in which they request a recount. In the 2020 general election, one petition for a recount was [filed](#) in Delaware County, in the state’s 165th House District race.

Candidates themselves [may appeal](#) the “order or decision of any county board regarding the computation or canvassing of the returns of any primary or election, or regarding any recount or recanvass thereof.” The appeal process can result in a recount or the disqualification (or qualification) of a limited number of ballots. In the 2020 general election, Republicans filed a number of challenges to the vote-counting process in Pennsylvania, and they were largely unsuccessful. The few wins impacted a very small number of votes or none at all. A summary of the vote-count challenges follows:

- [Ziccarelli v. Allegheny County Board of Elections](#) (a.k.a. *In re 2,349 Ballots in the 2020 General Election*), No. GD-20-11654 (Ct. Common Pleas, Allegheny Cnty. 2020). On November 12,

state senatorial candidate Nicole Zicarelli [sued](#) the Allegheny County Board of Elections, challenging the counting in the canvass of 2,349 mail-in ballots arriving in envelopes with minor defects. On November 18, the court [dismissed](#) the petition and affirmed the decision of the board of elections. On November 19, the Commonwealth Court [reversed](#) the lower court's decision and remanded for further proceedings. On November 23, the Pennsylvania Supreme Court [reversed](#) the Commonwealth Court's order and affirmed the Allegheny Court of Common Pleas dismissal of the petition.

- [Zicarelli v. Allegheny County Board of Elections](#), No. GD-20-11793 (Ct. Common Pleas, Allegheny Cnty. 2020). On November 16, Zicarelli again sued the Allegheny County Board of Elections, challenging the counting in the canvass of approximately 300 provisional ballots on which voters signed their names once instead of twice, in the two different locations requested. On November 18, the court [dismissed](#) the petition and affirmed the decision of the county board of elections. The commonwealth court reversed and held the ballots would not be counted. The Pennsylvania Supreme Court declined to review.
- [Zicarelli v. Westmoreland County Board of Elections](#) (a.k.a. *In re 2020 General Election Provisional Ballot Challenges*), No. 4152 of 2020 (Ct. of Common Pleas, Westmoreland Cnty. 2020). On November 18, Zicarelli sued the Westmoreland County Board of Elections, challenging the board's decisions to count the provisional ballots of voters who were erroneously instructed to sign the poll book and to count nine ballots that were missing the inner secrecy envelope. The court [reversed](#) the Westmoreland County Board of Elections' decision to permit the counting of 204 challenged provisional ballots in which the poll book was also signed by the voter. The court also reversed the board of elections' decision to permit the counting of the nine challenged ballots missing the inner secrecy envelope. Finally, the court affirmed the board of elections' decision to count 46 challenged provisional ballots in which the poll book was also signed by the voter but for which there was evidence showing that the voter had not voted twice.
- [In re Canvass of Absentee and/or Mail-in Ballots of November 3, 2020, General Election](#), No. 2020-5786 (Ct. Common Pleas, Bucks Cnty. 2020). On November 9, the Trump campaign, the Republican National Committee, and others filed an appeal of the decision of the Bucks County Board of Elections to count 2,175 allegedly defective absentee and mail-in ballots. On November 16, the Trump campaign conceded that plaintiffs were not alleging, nor did they have any evidence of, fraud, misconduct, impropriety, nor undue influence in relation to the challenged ballots. On November 19, the court [dismissed](#) the case, and on November 25, the Commonwealth Court [affirmed](#) the dismissal. On December 4, the plaintiffs filed an [emergency petition for appeal](#) in the Supreme Court

of Pennsylvania, but the state supreme court [denied](#) the emergency petition on December 8.

- [*In re Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*](#), Nos. 201100874, 20110085, 20110086, 20110087, 20110088 (Court of Common Pleas, Philadelphia Cnty. 2020). On November 10, the Trump campaign and an individual voter filed five separate appeals of decisions by the Philadelphia County Board of Elections, concerning the counting of a total of 8,366 absentee and mail-in ballots that were signed but allegedly suffered from minor defects, such as missing the voter's printed name or street address. On November 13, the Court of Common Pleas denied all five petitions, and the Trump campaign filed [notices](#) of appeal in all five cases. On November 23, the Supreme Court of Pennsylvania [affirmed](#) the Court of Common Pleas' denials of all five petitions.

B. Election contests

Pennsylvania has [different](#) election contest procedures for different classes of candidates for office. For President and Vice President of the United States, an election contest [must](#) be filed within 20 days after the election. The contest must be initiated by a [petition of at least 100 electors](#), then [verified by an affidavit](#) of at least five petitioners who are registered voters in Pennsylvania and who voted in the election. The complaint must "concisely set forth the cause of the complaint, showing wherein it is claimed that the primary or election is illegal." The complaint must also aver facts which, if proven, would change the results of the election.

President Trump did not file any election contests *per se* in the 2020 presidential election. Instead, Trump and various Republican plaintiffs filed at least three separate lawsuits seeking to block certification or to decertify the vote in Pennsylvania. None succeeded. The court dismissed [one of these cases](#) on the grounds that the lawsuit was actually an election contest, filed 11 days after the November 23 election content deadline, "styled" as a standard legal challenge. These lawsuits are summarized in more detail in the Stanford-MIT Healthy Elections Project report [Post-Election Litigation Analysis and Summaries](#).

Wisconsin

A. Recounts

In Wisconsin, Biden was [declared](#) the winner by [just over 20,500 votes](#), or 0.62% of total votes cast. Under Wisconsin law, there are no automatic recount procedures but, in elections with more than 4,000 votes cast, a candidate who trails the leading candidate by 1% or less of the total votes cast [can petition](#) for a recount. The petitioner is required to pay a fee unless the candidate trails by .25% or less following the canvass of all provisional and absentee ballots. President Trump petitioned and [spent \\$3 million](#) for recounts only in Dane and Milwaukee counties.²

The Wisconsin recounts [concluded](#) on Sunday, November 29. Dane County reported a 45-vote gain for Trump, and Milwaukee County reported a 132-vote gain for Biden. Taken together, the recounts gave Biden a net gain of 87 votes, improving his winning margin just slightly to about 20,600 votes. The largest change occurred in the Town of Westport, where Biden lost 28 votes and Trump lost eight. According to an explanation provided by the Elections Commission, the Westport changes were due to "absentee certificates found to be missing the witness address, 3 missing the witness signature and 1 missing the voter signature." On November 24, workers at Milwaukee County's recount site uncovered nearly 400 ballots that had not previously been opened or counted. Those ballots were included in the city of Milwaukee's recount tally. Milwaukee County Clerk George Christenson said in a [prepared statement](#) that the Milwaukee County recount was hampered due to initial delays caused by "several lengthy objections" from the Trump campaign and observers affiliated with the campaign.

Wisconsin also [permits](#) the losing party to appeal the results of a recount to a state district court. The appellant must file the appeal within five business days of the recount and must also file a complaint "enumerating with specificity every alleged irregularity, defect, mistake or fraud committed during the recount." The appeal must be heard by a judge without a jury. After the judge enters a judgment either affirming or denying the appeal, the losing party may further appeal the decision to an appellate court. On December 3, following the Dane and Milwaukee County recounts, Donald Trump and Mike Pence filed a timely recount [appeal](#) of the recounts in those counties, in *Trump v. Biden*, No. 2020CV2514 (Wis. Cir. Ct., Dane Cnty. 2020), No. 2020CV7092 (Wis. Cir. Ct., Milwaukee Cnty. 2020). On December 11, the Wisconsin circuit court for Milwaukee County [affirmed](#) the results of both recounts, and the plaintiffs filed [notice](#) of appeal to the state supreme court. On December 14, the Wisconsin Supreme Court [affirmed](#) the lower court's judgment. On December 29, the Trump campaign filed a [petition for a writ of certiorari](#) and a motion for expedited consideration in the U.S. Supreme Court. The Supreme Court denied the motion to expedite on January 11 and the petition for certiorari on February 22.

² Green Party presidential candidate Jill Stein [paid](#) nearly \$7.4 million to initiate a full state recount of the presidential vote four years ago, when Trump won Wisconsin. Stein complained that the voting system was a "mess." The 10-day recount increased Trump's margin of victory over Democrat Hillary Clinton by 131 votes.

B. Election contests

Wisconsin law does not specify procedures or rules for election contests. After the election, however, voters filed three separate lawsuits, seeking to block the certification of the Wisconsin vote under federal law. None of these lawsuits succeeded. For more detailed information on the lawsuits, see the Stanford-MIT Healthy Elections Project report [Post-Election Litigation Analysis and Summaries](#).

Conclusion

Long after Election Day passed, the 2020 election remained an historically contentious race, as the Trump campaign, the Republican Party, and their allies requested, litigated, and pursued dozens of recounts and election contests, prolonging uncertainty in statewide election results. Recounting and challenging election results for presidential races is a complex process that varies state by state. The narrow margins for the presidential race in various battleground states, particularly in Georgia and Wisconsin, resulted in mandatory recounts that, while time-consuming, did not change the outcome of the election. Other state laws, such as those in Nevada, permitted parties to file election contests to dispute the results of an election and petition for a recount of the vote. These challenges also did not change the outcome of the election.

It remains to be seen to what extent all of these challenges, coupled with highly publicized rhetoric claiming massive voter fraud, will result in a loss of confidence in the democratic process by the American populace. What is clear, however, is that the state laws and processes for channeling such challenges withstood the ultimate test. While the delays were nerve-racking for millions of Americans, the state laws, election administration bodies, and judicial institutions resolved all of these challenges legally and peacefully.

Appendix of State Laws

Below is a detailed description of state laws related to recount procedures and election contests in seven battleground states. While not all of these laws were invoked or came into play during the 2020 election, they are helpful in understanding the context in which the elections took place and in understanding how election officials and party strategists made their decisions regarding when to trigger or request a recount and, in the case of political parties and candidates, when to contest an election.

Arizona

A. Recount Procedures

Arizona uses paper and Direct Recording Electronic (DRE) systems [for its elections](#) and requires a voter-verified paper audit trail (VVPAT) in its election and recount procedures. [According to NCSL](#), DRE systems are voting machines “designed to allow a direct vote on the machine by the manual touch of a screen, monitor, wheel, or other device. A DRE records the individual votes and vote totals directly into computer memory and does not use a paper ballot.” [DREs come with a VVPAT](#), which “consists of physical paper records of voter ballots as voters have cast them on an electronic voting system. In the event that an election recount or audit is called for, the VVPAT provides a supporting record.” [These two systems](#) are used in conjunction with one another to ensure proper recording of ballots and paper records for canvassing, post-election audit, and in the event of a recount. Furthermore, a post-election logic and accuracy test is performed to ensure the proper functioning of the electronic equipment.

Once the initial electronic tabulating is complete, an [Audit Board reviews](#) election board logs, the Official Ballot Report, tabulation units, accessible voting device tapes/printouts, and a copy of the precinct results. The audit must occur before the canvass results are accepted “in order to ensure the integrity of the canvass results.” A limited precinct hand count audit may follow the electronic audit to ensure that the results of the hand count audit are within the designated margin of electronic results for the selected ballots. These limited precinct hand count audits are only permitted for certain races, including presidential elections.

Arizona state statute [A.R.S 16-661](#) mandates an automatic recount when the canvass of returns in a primary or general election shows the margin between the top two candidates is less than or equal to the lesser of the following:

1. One-tenth of 1% of the total number of votes cast for both candidates or measures or proposals.
2. Two hundred votes for offices where the turnout is 25,000 or more.
3. Fifty votes in the case of an office to be filled by state electors and for which the total number of votes cast is 25,000 or less.
4. Two hundred votes in the case of an initiated or referred measure or proposal to amend the constitution.
5. Fifty votes in the case of a member of the legislature.
6. Ten votes in the case of an office to be filled by the electors of a city or town or a county or subdivision of a city, town or county.

If the canvass shows that a recount is required, the secretary of state must, in the case of an office to be filled by voters of the entire state, a Congressional district, a legislative district, or a subdivision of the state greater than a county, certify the facts requiring the recount to the superior court in Maricopa County. [A.R.S 16-662](#). A required recount must be initiated by court order. Arizona does not permit candidates to request recounts.

The secretary of state is charged with supervising the recount and, for offices other than county supervisor, can designate a county board of supervisors to perform their recount duties permitted under [A.R.S 16-663-67](#). While the recount [is in progress](#), election officials may not publicly release vote totals.

On completion of the recount, the county chairs of the political parties must select at random 5% of the precincts “for the recounted race for a hand count, and if the results of that hand count when compared to the electronic tabulation... are less than the designated margins pursuant to section [16-602](#), the recount is complete.” [A.R.S 16-663](#).

Georgia

A. Recount Procedures

While Georgia law does not require automatic recounts under any circumstances, the Official Code of Georgia Annotated [O.C.G.A. § 21-2-495](#) establishes the mechanisms for triggering a recount. Prior to results certification, a county superintendent may order a recount of the ballots whenever there appears to be any discrepancy or error in the returns. Likewise, any candidate for state or federal office may petition the secretary of state for a recount prior to

certification on the same basis. The petition must describe the observed discrepancies or errors and any supporting evidence, and the secretary of state has the discretion to grant, deny, or request additional evidence of alleged inconsistencies.

After certification, candidates in very close races can also petition for a recount. Where the margin of victory in a federal or state race is <0.5%, the losing candidate is entitled to a taxpayer-funded recount upon written request to the secretary of state made within two days of certification, under [O.C.G.A § 21-2-495\(c\)\(1\)](#). After granting the request, the secretary of state notifies the county election superintendents in the districts involved in the contested race(s), and they oversee the recount process in accordance with [SEB Rule 183-1-15-.03](#).

The default under Georgia law is for election superintendents to use electronic ballot scanning machines to perform a recount of the county's results. Prior to initiating the recount, the election superintendent must test each ballot-scanning machine to be used in the recount. To do so, the superintendent selects a test deck of ballots made up of 75 ballots marked by an electronic ballot marking device and 25 absentee ballots marked by hand. If possible, these test ballots should be drawn from ballots from three different precincts and selected from throughout the ballot container. The superintendent then runs the test deck through the ballot scanner and also performs a manual hand tabulation. If the results of the hand tabulation and electronic tabulation match, the scanning machine is authorized to be used in the recount. If not, the error must be investigated and corrected. If all available machines are malfunctioning and not authorized for use in the recount, officials must undertake a manual hand recount in accordance with [Rule 183-1-15-.03\(2\)](#).

Once the ballot-scanning machines are successfully tested, the election superintendent can rescan all the ballots subject to the recount in the approved ballot-scanning machines, never opening more than one ballot container per ballot-scanning machine at a time. The scanning machines must be programmed to flag or reject overvotes, and contested selections must be manually reviewed by an adjudicatory panel to establish the voter's intent. Bent, torn, and damaged ballots must be duplicated, labeled "RECOUNT DUPLICATE," and scanned. Throughout the count, the superintendent must maintain a clear audit trail, including by logging "the seal numbers on ballot containers before and after the recount." Once all ballots subject to the recount have been rescanned by the ballot machines, the superintendent can print out tabulation results and compare the original and the new results and, if necessary, make corrections.

Like ordinary tabulation, ballot tabulation during a recount is open to public view by party-designated poll observers. The superintendent may designate a viewing area in order to

maintain order and preserve the integrity of the count, and only election personnel designated by the superintendent may handle ballots and ballot containers.

B. Risk-Limiting Audit Rules

In 2019, the Georgia legislature [updated](#) the state's election laws in a variety of ways, including by adopting a manual statewide pre-certification risk-limiting audit (RLA) for elections held in even numbered years. In general, RLAs are used to confirm with strong statistical likelihood that the votes cast for a certain contest were tabulated correctly (i.e. that the same results would have been reached had the ballots been counted by hand) and limit the risk that the wrong winner gets certified. Unlike traditional post-election audits where the number of ballots to be examined is fixed in state law, the number of ballots subject to a RLA [depends](#) on the closeness of a given race. Where the margin is wide, fewer ballots must be inspected to reach statistical confidence about the results; where the margin is narrow, significantly more sample ballots must be examined.

After the adoption of the audit provisions at [O.C.G.A. § 21-2-498](#), Georgia partnered with the non-partisan and non-profit civic technology company VotingWorks to roll out and implement the RLA, which VotingWorks [calls](#) the “gold standard of tabulation audits.” While the RLA was piloted in a few counties after the June 2020 presidential primary, the November 3, 2020, contest was the first in Georgia's history to be subject to a statewide RLA.

SEB [Rule 183-1-15.04](#) lays out the parameters for preparing for and conducting the RLA, which, in 2020, had to be completed by November 20—the state certification deadline. First, the secretary of state selects and publicly announces which race (e.g. presidential, senatorial) will be subject to the audit. In determining which race to audit, the secretary must consider 1) the closeness of the reported tabulation outcomes; 2) the geographical scope of the contests; 3) the number of ballots counted in the contests; 4) any cause for concern regarding the accuracy of the reported tabulation outcome of the contests; 5) any other benefits that may result from auditing certain contests; and 6) the ability of the county to complete the audit before the state certification deadline. The secretary must also publicly announce the time, date, and locations of the audit, and the risk limit for the audit, which the Rule states must not be greater than 10%. (If the risk limit is 5%, for example, enough ballots must be audited to provide 95% accuracy in the results.) Finally, the secretary's office informs each county—based on the computer algorithm—which ballots it must select for auditing.

To conduct the hand audit of the selected ballots, the county election superintendent must create audit teams comprised of at least two sworn designees (permitted to be non-employees)

who take an oath to conduct the audit accurately and securely. The teams work through the random sample of ballots selected for review and compare the electronic tabulation to the sampled paper ballot. In reviewing hand-marked ballots, “the auditors shall rely on the choices indicated by the voter by filling in the oval adjacent to the candidate or question,” and for electronically marked ballots, “the auditors shall rely on the printed text on the ballot to determine the voter's selection.” Election workers must maintain the chain of custody for all selected ballots during the audit process, including by logging the seal numbers on the ballot containers before and after the audit. The audit is complete once all selected ballots have been reviewed and the designated confidence level reached. Public observers and press are permitted to observe the audit process but are prohibited from handling ballots and may be sequestered in a viewing area at the direction of the election superintendent.

Michigan

A. Recount Procedure

Michigan elections trigger an automatic statewide vote recount if the margin of victory is 2,000 votes or fewer. The margin of victory in the 2020 presidential race in Michigan was [more than 150,000 votes](#), well in excess of the margin required for an automatic recount.

Under Michigan Compiled Laws [§§168.880](#) and [168.880a](#), registered voters in Michigan can also petition for a vote recount. Additionally, candidates can petition the Michigan secretary of state to conduct a vote recount in certain counties. Under Michigan Compiled Laws [§168.879](#), the candidate must petition for a recount within 48 hours of the completion of certification. The candidate must allege a good-faith belief that, but for voter fraud or mistake, the candidate would have had a reasonable chance of winning the election. The petition need only allege specific instances of wrongdoing if the candidate has such evidence, but the candidate must specify the counties in which he or she requests a recount. Under Michigan Compiled Laws [§§168.867](#) and [168.881](#), the candidate requesting a recount must pay a \$25 deposit per precinct. This fee is raised to \$125 per precinct if the pre-petition margin of victory for the winning candidate over the petitioner is greater than 50 votes, or 0.5% of all votes cast, whichever is greater. If the outcome of the election is altered as a result of the recount, the deposit is refunded. The [deadline](#) to complete a recount is 30 days after either the last day to file counter petitions or the first day that recounts may begin.

Precincts with ballots that are inaccurately counted³ [are ineligible](#) for a recount, even though one might expect such precincts to be the priority during a recount. A precinct is also [ineligible](#) for a recount if the seal on the ballot container was placed in such a way that ballots could be inserted or removed from the container without breaking the seal. Finally, ballots in a precinct where the total number of ballots reflected by a physical count [does not agree](#) with the number of voters as shown in the poll book are ineligible for a recount. However, for this last group, if an acceptable explanation⁴ for the discrepancy can be identified or if the number of ballots counted corresponds to the total number of ballots tabulated on election night as reflected on the Statement of Votes, the precinct is eligible for a recount. Since voting centers were expected to grapple with an incredibly high number of absentee votes in 2020, there were increased risks for errors that would make precincts ineligible for a recount. In Detroit, for example, [72% of voting centers](#) reported inaccurate ballot counts during the August 4 primary.

Per [MCL 168.870](#), the Michigan Board of State Canvassers has the authority to issue subpoenas to the persons in charge of the ballot boxes in those precincts where a recount was petitioned for. They [may](#) conduct the recount using a manual tally of the ballots, a tabulation of the ballots on a computer using a software application designed to specifically count only the office or ballot question subject to the recount, a tabulation of the ballots on a computer using the same software application used in the precinct on Election Day, or any combination of these three methods. However, if one of the following issues is present, the Board [may not](#) recount a precinct's ballots:

- The seal on the ballot container is broken or bears a different number than that recorded on the poll book and the breaking or discrepancy is not explained to the satisfaction of the board of canvassers;
- There is a breaking or a discrepancy, and ballot labels or rotation of candidates' names is different than that shown by other voting devices in the precinct and records of the board of election commissioners; or
- The number of ballots to be recounted and the number of ballots issued on Election Day do not match and the difference is not explained to the satisfaction of the board of canvassers.

³ If the following three numbers [do not match](#), absentee ballots in a precinct are considered to be inaccurately counted: The number of absentee ballots recorded in the precinct's poll book; the number on the ballot container seal; and the number recorded in the precinct's Statement of Votes or ballot container certificate that was signed, dated, and attested to by two election inspectors who have expressed a preference for different political parties.

⁴ In determining whether an acceptable explanation exists, the Board of County Canvassers [must](#) make "all efforts... to identify the reason for the discrepancy, including a review of the following: 1) spoiled and/or defective ballots 2) duplicate ballots and corresponding original ballots 3) provisional envelope ballots 4) remarks page notations and 5) Statement of Votes."

If the ballots are not eligible for a recount due to one or more of these issues, the Board of State Canvassers must [consider](#) the original vote tally correct.

The Board [must](#) conduct its recount in a public place where the petitioning candidate, their counsel, one watcher, and one tallier may be present. While these people may observe, they may also “take notes as they desire for their own records.” The board of canvassers [shall](#) identify ballots counted or rejected under protest and keep a record of said protests. If on the first recount of a precinct’s ballots, the vote count does not match the original count, the Board [must](#) conduct a second recount. If on the second recount, the count still does not match the original count, then the second count will be considered final. If the second recount matches the original count, then the Board must conduct a third recount. The third recount’s count is considered final.

Additionally, per [MCL 168.872](#), if the Board has “probable cause” to believe that there has been fraud, wrongdoing, or a violation of the law due to the recount, it must fully investigate. To this end, the Board [has complete authority](#) to subpoena witnesses and to open any ballot box, regardless of the condition of its seal. If the Board believes that a violation of the law occurred, it [may issue](#) a report to that effect to the Michigan attorney general and the circuit judge of the county of Ingham.

North Carolina

A. Recount Procedures

North Carolina has two types of vote recounts: discretionary and mandatory. Pursuant to [N.C. Gen. Stat. §163-182.7](#), a county board of elections or the State Board of Elections has discretion to order a recount “when necessary to complete its canvass,” so long as the state board has not already denied a recount to the petitioner of the recount. A losing candidate on a statewide ballot has the right to demand a mandatory recount if the margin of votes between the losing and the prevailing candidate is less than 0.5% of the votes cast or fewer than 10,000 votes.

If the losing candidate wants to exercise the right to a recount where the margin is under 0.5% or 10,000 votes, they must submit their demand in writing to the state board by “noon on the second business day after the county canvass.” If the executive director later revises the initial results and concludes that the winning margin qualifies the losing candidate to demand a

recount, then the executive director is required to notify the losing candidate immediately. After being notified, the losing candidate has 48 hours to exercise the right to a recount.

Under [N.C. Gen. Stat. §163-182.7A](#), candidates also have the right to demand an *additional* recount. The losing candidate following the recount can demand an additional recount only if the initial recount did not recount the ballots manually. The losing candidate must demand the additional recount within 24 hours of completion of the initial recount. The recount initially occurs in only a 3% sample of precincts, and the ballots in these precincts must be recounted manually. If the results of that recount differ from the initial recount within those precincts “to the extent that extrapolating the amount of the change to the entire jurisdiction...would result in the reversing of the results,” then the State Board of Elections must order a manual recount of the entire state. There is no cost to the candidate for that statewide recount.

[N.C. Gen. Stat. §163-182.7](#) requires the State Board of Elections to develop rules for recounts regarding “the goals of multipartisan participation” and “opportunity for public observation.” However, the rules pertaining to recounts in the North Carolina Administrative Code do not currently explicitly contain any mention of observers, partisan ballot challengers, or requirements that the recount be conducted publicly. Nevertheless, a North Carolina statewide memo planning for a recount in the 2016 election suggested that the state generally permits free access for all interested parties to observe the recount. Indeed, the memo explicitly [stated](#): “Any person may attend the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. These persons may observe the counting process, but may not observe individual ballots.”

B. Election contests

Under [N.C. Gen. Stat. §163-182.9](#), any registered voter can file an “election protest” with a county board of elections. The protest must state the remedy the protester is seeking and whether the dispute is over the manner in which votes were counted and tabulated or concerns some other irregularity. Any protest over the manner in which votes were counted and tabulated must be filed before the beginning of the county board of election's canvass meeting, unless the protest states good cause for a delay in filing, in which case the protester may file the protest until 5 p.m. on the second business day after the county board of elections has completed its canvass and declared the results. If the protest concerns any other irregularity, unrelated to vote counting or tabulation, the protest must be filed before 5 p.m. on the second business day after the county board of elections has completed its canvass and declared the results

Under [N.C. Gen. Stat. §163-182.10](#), when the protest is filed, the county board of elections [must](#) determine if the protest substantially complies with N.C. Gen. Stat. §163-182.9 (described above) and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred. If the board determines that one or both requirements are not met, the board must dismiss the protest. If the board permits the protest to proceed, it must notify any affected parties, including other candidates or county officials alleged of wrongdoing. The board must then conduct a hearing to examine the evidence that parties submit, including affidavits and witnesses. If the board does not find “substantial evidence” of irregularity or misconduct, it must dismiss the protest. If, however, the board does find substantial evidence of irregularity or misconduct that could affect the outcome of the election, the board can order any of the following remedies:

- (1) That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.
- (2) That votes be recounted.
- (3) That the protest and the county board's decision be sent to the state board for action by it.
- (4) Any other action within the authority of the county board.

[N.C. Gen. Stat. §163-182.11](#) permits parties to appeal a county board of election’s decision to the State Board of Elections, but parties must do so within five days after the day the original decision was filed by the county board office. The State Board of Elections can then resolve the protest on the existing record, request additional fact finding, conduct its own hearing, or remand the protest back to the county board of elections for further proceedings. The State Board of Elections can order a [new election](#) if four of its members agree that any of the following conditions are met:

- (1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.
- (2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.
- (3) Other irregularities affected a sufficient number of votes to change the outcome of the election.
- (4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

When the State Board of Elections renders a final decision, including a decision to order a new election, the Board must serve the parties with a copy of the final decision. Parties [may appeal](#) the final decision to the Superior Court of Wake County within 10 days of service.

Nevada

A. Recount Procedures

A candidate defeated in any election may request a recount within three working days of the canvass of the vote and the subsequent city or county clerk's certification of the abstract of votes. The candidate must also make a deposit that covers the estimated cost of the recount. [N.R.S. § 293.403\(1\)](#). Any voter at an election may also request a recount. The voter must file a demand with the secretary of state if the voter is demanding a recount of a ballot question that affects more than a single county—but, like a candidate, the voter must also make a deposit to cover certain estimated costs.⁵ [N.R.S. § 293.403\(2\)](#); [N.A.C. § 293.375](#). If the person who demanded the recount prevails, the deposit is returned and the costs are withdrawn from a state account; otherwise, the person remains responsible for these actual costs once the recount is complete (and will either be reimbursed if the deposit was greater than the actual costs or assessed additional costs if the deposit was insufficient). [N.R.S. § 293.405\(1\)-\(2\)](#). Each recount must begin within five days of the demand for a recount and then must conclude within five days from when it begins. [N.R.S. § 293.405\(3\)](#). At the county clerk's request, the secretary of state will also designate a representative to observe the recount. [N.A.C. § 293.371](#).

To conduct the recount, the county clerk unseals the ballots to be counted and gives them to the recount board. [N.R.S. § 293.404\(4\)](#). The recount board must count and inspect all ballots—including rejected ballots—and determine whether they were “marked as required by law.” [N.R.S. § 293.404\(3\)](#). Ballots must also be recounted in the same way that they were initially tabulated. *Id.* The individual who requested the recount may withdraw the request at any time before the recount is complete; in this case, he or she may not subsequently request a continuation of the recount or a new recount of those votes. [N.A.C. § 293.371\(2\)](#). In addition, if a recount or contest occurs, the county or city clerk must ensure that every election device that recorded votes electronically provides a paper record of each ballot voted on the device, which is deposited in the clerk's vault. [N.R.S. § 293B.400](#).

⁵ The estimated and actual costs of a recount include utilities for the building used for the recount before or after business hours, rent for use of a non-publicly owned building, and salaries for overtime work of regularly employed staff members, but exclude certain other costs. [N.A.C. § 293.375](#).

When the recount concludes, the board of county commissioners makes an abstract of votes and transmits a copy of that abstract as well as a “mechanized report” of that abstract to the secretary of state. [N.A.C. § 293.365\(2\)](#); [N.R.S. § 293.395\(1\)](#); [N.R.S. § 293.393\(2\)-\(4\)](#). Nevada’s regulations require that the results of a recount be canvassed within five working days after the completion of the recount. [N.A.C. § 293.365\(1\)](#). Once a recount concludes, that precinct cannot be subject to another recount for the same candidate or question in the same election. [N.R.S. § 293.405\(4\)](#).

B. Election contests

Election contests in Nevada are court cases where any candidate or registered voter [can challenge](#) the results for the presidential election. The following are grounds for contesting election results pursuant to [293.410\(2\)](#):

- One or more members of the election board are guilty of malfeasance.
- The person elected is not eligible for office.
- Illegal or improper votes were counted, legal and proper votes were not counted, or some combination of the two.
- The election board made errors sufficient to change the results in the course of conducting the election or canvassing the returns.
- The winning candidate or a person acting on their behalf has given or offered anything of value for purposes of manipulating the outcome of the election.
- A malfunction of a voting device or other mechanism was sufficient to raise reasonable doubt as to the outcome of the election.

A case constituting an election contest is a special proceeding with its own rules⁶. The challenger must file a written statement of contest with the clerk of the district court containing the grounds for the challenge within 14 days of the presidential election or five days of a recount of the presidential election. [N.R.S. § 293.407\(2\)](#); [N.R.S. § 293.413\(1\)](#). Statement of contests cannot be dismissed for certain procedural deficiencies of form. [N.R.S. § 293.410](#). After the filing of a statement of contest, the court will have a hearing in between five to 10 days. [NRS 293.413\(2\)](#). Parties to the contest [may take depositions, submit briefs, and have oral arguments](#). A recount of ballots in the presence of the parties can also be conducted as part of the contest hearing and entered into evidence. [N.R.S. § 293.423](#). Investigations may take place, witnesses deposed, and aspects in some complex cases may be referred to a special master.⁷

⁶ Bradley Scott Schrager, Esq., [Post-Election Law and Procedure in Nevada: Recounts and Election Contests](#), Nev. Law., September 2012, at 17

⁷ *Id.*

After the contest hearing, if a court finds that the challenging candidate received the greatest number of legal votes, as part of the judgment, that person shall be declared elected. [N.R.S. § 293.417\(1\)](#). The court can ultimately confirm, annul, or reserve election results.⁸ Generally, the loser of the case is responsible for the court costs. [N.R.S. § 293.420](#). Nevada law does not explicitly require specialized procedures for losing candidates to appeal the decision to appellate courts.

Pennsylvania

A. Recount Procedures

Under Pennsylvania [law](#), if there is a discrepancy or “palpable error” (such as when the total vote count exceeds the number of registered voters), the county board is authorized to recount the ballots. In addition, a recount must occur under a number of circumstances, including if “a discrepancy is found in the comparison of the sealed and unsealed general returns.”

[Pennsylvania law](#) also provides for a mandatory close vote margin recount when candidates or ballot questions “appearing on the ballot in every election district in [the] Commonwealth” have a margin of [0.5% or less](#) of all votes cast. Biden [won the presidential contest](#) in Pennsylvania by 80,555 votes, and a margin of 1.17%, exceeding the statutory cap for a mandatory recount. Close vote margin recounts may also occur “if three qualified [voters] of the election district shall file . . . a petition duly verified by them, alleging that upon information which they consider reliable they believe that fraud or error, although not manifest on the general return of votes made therefrom, was committed in the computation of the votes cast....It shall not be necessary for the petitioners to specify in their petition the particular act of fraud or error which they believe to have been committed, nor to offer evidence to substantiate the allegations of their petition.”

Candidates themselves cannot directly request a recount in Pennsylvania, but they [may appeal](#) the “order or decision of any county board regarding the computation or canvassing of the returns of any primary or election, or regarding any recount or recanvass thereof.” This process can result in a recount.

Although Pennsylvania law does not require recounts to be conducted in public, various types of recounts allow each candidate (or an attorney from the candidate) to be present at the

⁸ *Id.*

recount or recanvass. Moreover, “[a]ny candidate, attorney or watcher present at any recount of ballots or recanvass of voting machines [shall be entitled to examine the ballots](#), or the voting machine and to raise any objections regarding the same.”

When a recount is ordered, and “the election district uses an electronic voting system utilizing paper ballots,” Pennsylvania law applies a particular statutory provision called section 1701. 25 Pa. Stat. Ann. § 3031.18 (West). As of June 2020, all 67 of the state’s counties used voting systems with [voter-verifiable paper records](#), so section 1701 was likely to apply. Under that section, before any ballot boxes are opened, the court must first “direct that notice of time and place of proposed recount be given, either personally or by registered mail, to each candidate for the office or offices which are to be recounted by the order of the court.” 25 Pa. Stat. Ann. § 3261 (West). In addition, each candidate (or a representative) may be present during the recount.

Ballot boxes “may be opened . . . at any time within four months” after Election Day and, during this process, the Commonwealth Court shall “open the ballot box of each election district in which ballots were used” and “cause the entire vote of the election district to be correctly counted by persons designated by the court.” Typically, these recounts are governed by 25 Pa. Stat. Ann. § 3154 (West), which has specific rules for counties using “electronic voting system utilizing paper ballots” (which should apply to all counties in 2020). During a recount, each county board recounts “all ballots using manual, mechanical or electronic devices of a different type used for the specific election,” but all ballots containing “overvotes” must be counted manually. The results of the recount must then be submitted to the secretary of state by noon the day after the recount (or recanvass) is complete, and the secretary is required to issue a press release and publish the results of the recount on the internet.

Typically the costs of the recount are paid by the requester. However, if the recount finds any “fraud or substantial error,” then the court must certify such fact to a notary (who will then reimburse the requester).

Wisconsin

A. Recount procedures

In the recount petition, the candidate [must state the basis](#) for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for

the office; or more specific grounds, such as a particular defect, irregularity, or illegality in the conduct of the election. The petitioner must state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources (Wis. Stat. § [9.01\(1\)\(a\)2.b](#)).

Under [Wis. Stat. §9.01](#), in a recount, canvassers must review all absentee ballot certificate envelopes, including those previously rejected. Canvassers examine the rejected absentee ballot envelopes and make their own determination for each; improperly rejected ballots are marked and placed into the pool of ballots to be counted. Canvassers also examine all absentee ballot certificate envelopes for any defects not identified on election night. An absentee ballot envelope is [defective](#) only if it is not witnessed (with a witness signature), if it is not signed by the voter, or if the certificate accompanying an absentee ballot is missing. If a previously unidentified defect is found, the envelope is set aside.

Unless a court orders otherwise, the board of canvassers [may decide](#) to either hand-count or use voting equipment to tabulate the ballots. The board of canvassers may also choose to hand-count votes in certain wards, while using voting equipment to tabulate other wards. For wards that hand-count ballots, canvassers are [directed](#) to sort ballots by candidate, then create stacks by a fixed number, and finally tally the stacks to determine the total vote. If an optical scan tabulator is used, canvassers are first directed to examine the equipment for tampering and ensure it is programmed directly. They then compare duplicate ballots that were made by election officials from original ballots that could not be scanned by the tabulators due to defects, to ensure consistency. Canvassers then review each ballot, scan it, and ensure it was recorded correctly by the tabulator. Finally, the tabulators are placed in post-election mode and generate results. The board of canvassers adds any votes counted separately by hand using new tally sheets and records the total results as part of the revised canvass statement.

Wards that use Direct Record Electronic voting equipment in conjunction with paper ballots or optical scan ballots to enable individuals with disabilities to vote are [provided](#) additional instructions after completing the steps above. DRE equipment records votes two separate ways: electronically and on a paper tape that the voter can view to verify that the equipment is recording their votes correctly before casting their ballot. In a recount, canvassers are required to use the paper record. Canvassers are instructed to cut the paper record to separate the individual voter records, further cut the paper tape into the individual ballots, and then randomize these ballots. Canvassers carefully count each individual ballot record as recorded on the tape. Two individuals record the count on two tally sheets. After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals are then compared against the original results as generated by the DRE, and any discrepancies shall be recorded in the minutes.

Any person [may attend](#) the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. If there are multiple representatives from a single campaign, a single representative shall be identified as the designated primary representative to the board of canvassers. Secondary representatives may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative. All persons who are not under the supervision of the board of canvassers are considered observers and are subject to the observer rules established by the Wisconsin Elections Commission (WEC). If an observer engages in disruptive behavior that in the opinion of the board of canvassers threatens the orderly conduct of the recount, the board of canvassers must issue a warning and, if the observer does not cease the offending conduct, order the observer's removal.

Post-Election Litigation Analysis and Summaries

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Introduction

The 2020 general election was the [most litigious in modern history](#), with more than 400 lawsuits filed before Election Day. In the two-month post-election period from November 3 (Election Day) to January 6 (the date on which Congress counted the Electoral College votes), plaintiffs filed 82 cases in 10 states and the District of Columbia (excluding 13 lawsuits related to the U.S. Senate runoff elections in Georgia).

All but four of the 82 post-election lawsuits directly implicated the presidential race. Four focused purely on down-ballot races.¹ All but two of the 82 post-election lawsuits were filed by the Trump campaign and its allies.²

Republican plaintiffs filed 76 post-election lawsuits in matters pertaining to the presidential election. In accordance with state laws governing election challenges, the overwhelming majority of these cases were filed in state courts. In the courtroom, these lawsuits yielded no meaningful success for plaintiffs. In [the court of public opinion](#), however, they contributed to an erosion of trust in the democratic process. This article analyzes the evolution of these 76 post-election lawsuits relating to the presidential race and the unique nature of their claims in each of six battleground states. It also examines how judges reckoned with the issues in these lawsuits and what role the U.S. Supreme Court played. The Appendix briefly summarizes 95 post-Election Day lawsuits—82 related to the general election and 13 related to the U.S. Senate runoff election in Georgia.

Litigation Timeline

The post-election lawsuits brought by Trump loyalists tracked the constitutional milestones of a presidential election vote count. The initial wave of cases dealt with the immediate mechanics of the still-in-progress vote counting, alleging violations of poll observer requirements and problems with vote-tabulation machines. Subsequent lawsuits sought to stop, alter, or invalidate states' certifications of the vote and compliance with the procedural mandates in

¹ One of those four cases was filed by Claudia Tenney, the Republican candidate for New York's 22nd U.S. Congressional District seat, challenging the ballot count in her district in [a contest that remained undecided](#) even after the start of the 117th Congress; the other three cases were filed by Nicole Zicarelli, the Republican candidate who ran unsuccessfully for Pennsylvania state senate.

² The other two were filed *against* Trump or Trump allies: [Michigan Welfare Rights Organization v. Trump](#), which alleged that the president's pressures to de-certify Michigan election results disenfranchised Black voters, and [Pierson v. Stepien](#), which alleged that the president's fundraising to pay for a recount in Wisconsin violated federal statutes.

Article II of the U.S. Constitution (i.e. the appointment of a state's Electoral College slate, the Electoral College vote, and the Congressional counting of those votes). Along the way, many of the individual lawsuits simply repackaged allegations made in other courts.

In the 76 post-election lawsuits, pro-Trump plaintiffs succeeded only twice. Neither successful complaint advanced any allegation of fraud, and both rendered relatively minor victories. The first lawsuit extended poll opening times, so that some precincts in Nevada's largest county would be open for one extra hour ([*Donald J. Trump for President v. Gloria*](#)). In the campaign's second success, a Pennsylvania court held that the secretary of the commonwealth did not have the authority to extend the state's deadline by three days (from November 9 to November 12) for absentee voters to provide proof of identification (state ID number, last 4 digits of Social Security number, or photocopy of passport) that they had failed to include with their mail-in ballots ([*Donald J. Trump for President, Inc. v. Boockvar*](#)).

On November 3 (Election Day) and the days immediately following, plaintiffs concentrated on Pennsylvania. Five of seven lawsuits filed on November 3 were filed in Pennsylvania courts. Within the first week following Election Day, 18 of 29 election lawsuits were filed in Pennsylvania. All of the Pennsylvania cases concerned technical aspects of ballot counting and completion. Claims included allegations that voter information was improperly disclosed to election staff designated to contact voters to supplement missing information ([*In Re: Pre-Canvass*](#)), a request to block any cure period for voters to correct missing or incorrect ballot information ([*Hamm v. Boockvar*](#)), and requests to reject absentee ballots returned with unsealed security envelopes or with missing voter addresses or dates ([*Donald J. Trump for President Inc. v. Bucks County Board of Elections*](#)).

Pennsylvania's status as the litigation epicenter reflected what [pre-election polling](#) and strategizing had predicted: that the Keystone State would live up to its nickname in determining the candidates' fortunes. President Trump [echoed this expectation](#) in an October 31 Twitter post: "Pennsylvania is where the story of American Independence began—it is the state where the American Constitution was signed—and 3 days from now this is the state that will SAVE THE AMERICAN DREAM!" Leading up to the election, [journalists reported](#) on GOP strategies to file lawsuits challenging Pennsylvania ballot defects as the best means to pave a path to the U.S. Supreme Court—which President Trump [hoped might cede him a victory](#) after he appointed his third justice, Amy Coney Barrett, who was sworn in one week before Election Day.

However, the lawsuit landscape pivoted away from Pennsylvania after the [Associated Press called Pennsylvania, and the national election](#), for Democrat Joseph R. Biden Jr. on November 7. A slew of new lawsuits were filed in states that Trump had won in 2016 but which flipped to Biden in 2020 (Michigan, Wisconsin, Arizona, and Georgia). Beginning on November 9, cases

shifted focus to try to prevent state governments from certifying election results before their statutorily prescribed end-of-month deadlines. Those cases included [*Costantino v. Detroit*](#) in Michigan and [*Donald J. Trump for President, Inc. v. Boockvar*](#) in Pennsylvania.

About the same time, a jurisprudential shift emerged. Early cases relied on garden-variety “disparate treatment” equal protection allegations, in the vein of [*Bush v. Gore*](#). Following the 2000 presidential election, the U.S. Supreme Court had ruled that Florida’s recount violated voters’ rights because each Florida county, and even different recount teams within the same county, were using different recount procedures that amounted to an unconstitutional variation in treatment of voters. Though the Supreme Court expressly limited its ruling exclusively to the facts in *Bush v. Gore*, lower courts across the country have gone on to apply its logic dozens of times. Plaintiffs in 2020 sought to revitalize the *Bush v. Gore* holding with an updated hook. For instance, in [*Barnette v. Lawrence*](#), plaintiffs asked a court to rule that, if some counties in Pennsylvania were contacting voters to offer them an opportunity to correct defects with their mail-in ballots but other counties were not, the same *Bush v. Gore* equal protection violation was at play.

Starting on November 11, in [*Bally v. Whitmer*](#) and [*Brooks v. Mahoney*](#), plaintiffs imported a novel Fourteenth Amendment argument (used during the summer’s pre-election litigation), which usurped the mantle to become a dominant and conspicuous trend in post-election litigation: vote-dilution disenfranchisement. Prior to this election cycle, [vote dilution claims were the exclusive province](#) of cases involving malapportionment claims in electoral district drawing or in [cases alleging the disenfranchisement of minorities](#) under Section 2 of the Voting Rights Act. Following the general election, Harvard election law professor Nicholas Stephanopoulos [proposed a schema](#) by which courts could evaluate this new claim that alleges fraudulent ballots dilute lawful votes.

In late November, lawsuits across the country began to challenge certain election-funding grants to municipalities. These grants were distributed by the Center for Tech and Civic Life (CTCL), a Chicago-based nonprofit that [received large donations from Facebook founder and billionaire Mark Zuckerberg and his wife, Priscilla Chan](#). The Center distributed the grants to thousands of jurisdictions in nearly every state, to help defray unexpected election costs associated with the coronavirus pandemic. Local governments used the grants to fund election worker wages, purchase ballot sorting and counting equipment, and rent large spaces to use as polling locations. Though the initiative distributed grants nationwide, plaintiffs brought challenges only in swing states that voted for Biden (e.g. [*Wood v. Raffensperger*](#) in Georgia). These lawsuits tracked some similar pre-election challenges in which plaintiffs claimed that CTCL impermissibly formed public-private partnerships designed to aid Democratic jurisdictions in conducting elections, in violation of federal statute. But the post-election cases

added a twist: They alleged that the CTCL-sponsored activities enabled illegal and fraudulent voting. Judges ruled that the presented evidence never substantiated either of these claims.

Once all states had certified their election results at the beginning of December, the Republican litigation strategy shifted again, this time to requesting, as a remedy for alleged fraud, the decertification of election results (e.g. [Trump v. Evers](#)) or the recertification of election results entirely for Trump electors (e.g. [Bowyer v. Ducey](#)). In more audacious lawsuits, plaintiffs requested courts throw out the Electoral College slates chosen by popular vote and instead remand the issue to Republican-controlled state legislatures in Pennsylvania or Wisconsin, so that those legislatures could appoint their own slates of electors (e.g. [Trump v. Boockvar](#), [Trump v. Wisconsin Elections Commissions](#)). A small number of cases asked courts to order states to conduct the presidential election all over again, from scratch (e.g. [Trump v. Raffensperger](#)).

In early December, attorney Sidney Powell spearheaded four lawsuits she characterized as “Kraken” cases. Ms. Powell [named her suits](#) after a many-tentacled mythical sea creature of Scandinavian folklore, to capture the multi-pronged offensive she was launching against Biden’s victory. Powell was part of the Trump campaign’s legal team until the campaign issued a statement to [cut ties](#) with her following press conferences in which she implicated deceased Venezuelan President Hugo Chávez in Trump’s defeat. Her team filed the lawsuits in federal courts in Michigan ([King v. Whitmer](#)), Wisconsin ([Feehan v. Wisconsin Elections Commission](#)), Georgia ([Pearson v. Kemp](#)), and Arizona ([Bowyer v. Ducey](#)), alleging a wide range of fraudulent election misconduct: election officials themselves filling out ballots, internal manipulation of voting machines ([sparking a retaliatory \\$1.3 billion defamation lawsuit](#) from Dominion Voting Systems and an [even larger one from competitor Smartmatic](#)), and charges that states counted illegal votes. None of the lawsuits gained traction. In Michigan, for instance, Judge Linda V. Parker held that the suit was defective in virtually every aspect. She ruled that the claim was barred by the Eleventh Amendment (the court lacked jurisdiction over claims against sovereign states), that it was moot (legal action could provide no solution), that the doctrine of laches applied (plaintiffs waited too long to bring their claims), that the abstention doctrine applied (since proceedings on these issues were ongoing in state court), and that plaintiffs failed to prove any injury sufficient to meet the requirements for standing in court.

Following the “Kraken” suits, plaintiffs transitioned from alleging purely technical misadministration (unsealed ballot sleeves or insufficient poll watcher proximity) to mixing in allegations of widespread illegal votes cast by unqualified voters. For example, a plaintiff in Arizona recycled Ms. Powell’s numbers of alleged fraudulent ballots cast ([Burk v. Ducey](#)). The Arizona Supreme Court dismissed the case because the plaintiff had neither registered to vote nor voted in the election. Similarly, in Georgia, the Trump campaign filed a complaint on the heels of Ms. Powell’s case in that state, alleging for the first time that underage individuals and

felons cast ballots in the election ([Trump v. Raffensperger](#)). The Trump campaign voluntarily dismissed that suit. As described in the Judicial Reasoning section, below, when judges reached the merits of the cases, they consistently ruled that there was insufficient evidence of the purported fraud.

For the 2020 presidential election, December 8 was the [“safe harbor” deadline](#)—the date by which states must have resolved all election contests and finalized their electoral slates to ensure that the dust had cleared in time for the Electoral College, which meets six days following the deadline. Part of the logic of the Supreme Court’s opinion in [Bush v. Gore](#) in 2000, and of Vice President Gore’s concession at the time, turned on the fact that Florida’s recount was not on pace to meet the safe harbor deadline of 2000. Both the Supreme Court and the vice president acted to resolve the 2000 election before the safe harbor deadline.

In 2020, by contrast, new lawsuits were filed even after the safe harbor deadline, seeking either to nullify states’ ratified slates or to order the Electoral College not to hold its vote. Most significant among these, both in press attention and in novelty, was [Texas v. Pennsylvania](#) (treated in more depth in the U.S. Supreme Court section, below). The Supreme Court denied Texas’s motion to file its complaint against four battleground states for their alleged misadministration of their elections. The geographic scope of legal challenges also proliferated beyond the battleground states. By December 14, there were lawsuits in [Minnesota](#), [New York](#), the [District of Columbia](#), [Texas](#), and [New Mexico](#).

On [December 14](#) itself, electors for the Electoral College met in their respective states and cast their votes, as outlined in [Article II Section 1 of the Constitution](#). The Constitution establishes that the candidate who receives the sufficient threshold of votes (the “greatest number” of votes) in the Electoral College becomes the president. Democrat Biden, having won 306 Electoral College votes to Republican Trump’s 232, became the country’s president-elect.

Nevertheless, even after the Electoral College votes were cast, lawsuits persisted. At the end of December, President Trump’s campaign took legal aim at Congress’s largely ceremonial January 6 count of the Electoral College votes, filing lawsuits that sought to empower Vice President Mike Pence to exercise greater autonomy during the count. These suits, [Gohmert v. Pence](#) and [Wisconsin Voters Alliance v. Pence](#), challenged the constitutionality of the Electoral Count Act of 1887. That statute provides additional guidelines for resolving gridlock during Congress’s count of the Electoral College vote. Congress passed the law in response to the highly contentious Hayes-Tilden election of 1876. Both in [Gohmert](#) and in [Wisconsin Voters Alliance](#), plaintiffs sought rulings to declare the Electoral Count Act’s dispute resolutions provisions unconstitutional. In the first, they argued that the Act curbs the vice president’s purported [Twelfth Amendment](#) discretion to choose which votes to count and, in the second, that it unconstitutionally

disempowers state legislatures from certifying electoral slates. Pence himself, with the help of the Justice Department, [moved to dismiss](#) Trump's suit in *Gohmert*, a move that [reportedly incensed](#) President Trump. Both lawsuits failed and the Congressional count proceeded as mandated, on January 6. But the usually ceremonial and brief process was not without spectacle. President Trump, at a "Stop the Steal" rally he held that day on the White House Ellipse, [urged](#) his gathered supporters "to show strength... to demand that Congress do the right thing and only count the electors who have been lawfully slated." The resultant incursion on the nation's Capitol building, that forced the evacuation of both the Vice President and members of Congress, resulted in injury and death, [elicited pity worldwide](#), and marked the conclusion of President Trump's efforts to seek a solution in the courtroom.

Allegations Within Each Battleground State

Lawsuit allegations differed across the six 2020 battleground states of Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. Within each individual state, though, noticeable trends in allegations emerged. Most of these states faced many separate lawsuits with duplicative claims. This section notes the most frequent allegation, by state, with one or two illustrative examples.

Arizona has long been friendly to mail voting. In the 2018 midterm election, before the coronavirus pandemic, [79 percent of voters in Arizona voted by mail](#). State law enables voters to sign up to be on a permanent early voting list to vote by mail and, in contrast to many states, voters [are not required to provide a reason or excuse](#) for using a mail-in ballot. Thus, lawsuits in Arizona focused not on the procedures of mail voting but on alleged problems with voting machine technology. Specifically, complaints targeted the tabulation of the vote. Some questioned the counting machines' abilities to read ballots where votes were marked using Sharpie brand markers. Others alleged that machines designated numerous ballots as "overvotes" (where ballots show more than one choice for a given race). Plaintiffs voluntarily dropped some suits (e.g. [Aguilera v. Fontes](#)), and judges ruled in other cases that the number of ballots at issue was not sufficient to impact the election outcome (e.g. [Donald J. Trump for President Inc. v. Hobbs](#)).

Georgia plaintiffs took issue with a [consent decree](#) that Georgia Secretary of State Brad Raffensperger worked out with the Democratic Party in March, to resolve an early lawsuit related to the timeline for notifying voters when election officials were planning to reject ballots due to signature defects. The consent decree provided for prompt notice to voters when their absentee ballot was rejected and prescribed a review process for any determination that a

signature on a mail-in ballot envelope did not match the signature of the absentee voter on file. The Georgia cases (e.g. [Lin Wood v. Raffensperger](#)) argued that the March consent decree amounted to an impermissible executive and judicial alteration of the state's election code, which does not require three election officials to review signature-defect ballot rejections. When courts were able to consider the merits of the litigation, they concluded that the consent decree was a permissible exercise of the secretary of state's statutorily granted authority.

The main issue in the Michigan cases was the rights of poll observers, especially those assigned to the TCF Center in Detroit (e.g. [Johnson v Benson](#)). Plaintiffs alleged that poll observers were impermissibly removed from the TCF Center or were not allowed close enough to the ballot counting to sufficiently observe the process. Plaintiffs voluntarily dropped some cases, and judges ruled in others that the evidence presented amounted only to speculation and hearsay.

All Nevada suits filed after Election Day sought to replace Agilis, the software that Clark County used to conduct signature verification for mail-in ballots, with human review (see, e.g., [Stokke v. Cegavske](#) and [Law v. Whitmer](#)). While plaintiffs contended that the Agilis AI misidentified signatures, courts found no proof of such malfunctioning.

The gist of the lawsuits in Pennsylvania shifted over time. Prior to some media outlets declaring Biden's victory on November 7, the cases alleged various ballot defects and claimed some voters improperly had an opportunity to cure mistakes (e.g. [Barnette v. Lawrence](#)). Following the November 7 projection that Biden had won the White House, Pennsylvania cases mostly challenged county boards of elections, petitioning them to reject specific batches of ballots. These lawsuits alleged, for example, that counties instructed unregistered voters to come back later to vote or that polling staff forced voters to use provisional ballots (e.g. [Pirkle v. Wolf](#)). Plaintiffs voluntarily dismissed these claims or courts held that the state's election code should be construed toward counting votes when, as in the complaints, no fraud or impropriety was alleged ([In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election](#)).

Wisconsin was late to the fray—the first post-election lawsuit in Wisconsin was filed November 12, over a week after the election. Because the number of votes for Trump was within one percentage point of those for Biden, Trump was [entitled to](#) a [recount](#). Most Wisconsin cases were filed only after the state conducted this recount and certified its results. The complaints leveled broad allegations that election officials improperly expanded mail voting by erecting ballot drop boxes and that election workers altered ballots (e.g. [Trump v. Wisconsin Elections Commissions](#)). Courts held that state election officials had lawfully administered Wisconsin's election, as per the directives of the state legislature.

Judicial Reasoning in Post-Election Litigation

There are several observable trends in judges' reasoning in the post-election litigation across all states, in both federal and state courts. As a preliminary matter, it is worth noting that the plaintiffs in 10 of the 76 post-election cases brought by Trump supporters voluntarily dropped their cases themselves prior to a ruling. Of the remaining 66 cases, one of the most common bases on which judges rejected a case was for "lack of standing." That is, judges found that (i) plaintiffs had not articulated a particularized harm that they uniquely had suffered, (ii) that their injury was not traceable to the named defendant, or (iii) that a favorable decision would not redress the purported injury.

Standing problems took a variety of forms. Judges determined that plaintiffs could not sue in federal court over state election claims. They determined that plaintiffs who had not voted at all could not have suffered the harm they alleged. But most standing issues stemmed from one of two sources: a generalized harm or an improper defendant. In cases filed by individual voters, judges reasoned that private citizens, when stating a grievance with the way in which their state administered its election code, are not articulating a personal harm but a generalized one (e.g. [Lin Wood v. Raffensperger](#)). In cases filed by the president, judges held that the parties were wrong—that the plaintiff had not suffered harm and the defendant had not caused one. As applied to Georgia, the district court found that (i) the state assembly, not the president, was the proper entity to assess whether the laws it promulgated had been violated and bring suit and (ii) that allegations of illegal votes could neither be traced to the governor nor fixed by him ([Trump v. Kemp](#)). Even when courts dismissed cases for a jurisdictional or standing issue as a threshold matter, they would often, nevertheless, rule on the merits and address the core allegations of the case (see, e.g., [Marchant v. Gloria](#) and [Boland v. Raffensperger](#)).

Many of the post-election lawsuits were dismissed for lack of evidence. Judges ruled against plaintiffs because either no evidence was offered to support the claim of fraud or the evidence presented was, in fact, evidence of statutorily prescribed election procedures. In response to allegations in Georgia that late-submitted ballots had been counted, the court found that plaintiffs presented "no evidence" to substantiate their claims ([In Re: Enforcement of Election Laws and Securing Ballots Cast or Received After 7:00 P.M. on November 3](#)). In the Nevada cases alleging machine-based malfeasance, the judge found the allegations not credible when the plaintiffs' expert witnesses were "unable to identify the source" of their datasets and admitted to using "no quality control" ([Law v. Whitmer](#)). The Pennsylvania Supreme Court, in response to allegations that poll observers had insufficient access, reviewed the evidence and found that the individual in question, who had purported to the press to be a poll observer, had actually identified himself to staff at the polling location as a "representative designated by the Trump

campaign” and not as a “poll watcher” (*In Re: Canvassing Observation*). “Designated representatives” are, by law, afforded different proximity privileges than are “poll watchers,” and the court found that workers had adhered to the correct guidelines, established in the election code.

Once states had certified their election results, courts dismissed cases under the doctrine of mootness—finding there was no longer an ongoing controversy (see, e.g., *Costantino v. Detroit* and *Bowyer v. Ducey*). As plaintiffs began to cast wider nets and challenge statutory provisions that had been on the books before November 3, courts began dismissing cases based on the doctrine of laches—an unreasonable delay in bringing the suit. For example, in *Kelly v. Pennsylvania*, in which plaintiffs challenged the 2019 Pennsylvania law that implemented no-excuse mail voting in the state ([Act 77](#)), the court explained that plaintiffs did not file the lawsuit until more than a year after the statute’s enactment.

The reasoning and outcome of the post-election lawsuits did not turn on which president appointed the presiding judge. Many of the 76 cases brought by Trump loyalists were heard by judges appointed by Republican presidents, including Trump himself (who appointed [226 judges](#) in his single term). Trump-appointed judges dismissed case after case. In a Pennsylvania opinion, Third Circuit U.S. Court of Appeals Judge Stephanos Bibas authored the appellate ruling in which he wrote that “[the Trump campaign’s] charges require specific allegations and then proof. We have neither here.” The other two U.S. circuit court judges who signed onto Bibas’s opinion were appointed by Republican President George W. Bush. In a Georgia case, Trump appointee U.S. District Court Judge Steven D. Grimberg [found](#) that the request had “no basis in fact or in law” and would only “breed confusion, undermine the public’s trust in the election, and potentially disenfranchise over one million Georgia voters.” In Wisconsin, U.S. District Court Judge Brett H. Ludwig, a Trump appointee, [opened his order](#) noting, “This is an *extraordinary* case” (emphasis in the original) because the president is “[h]oping to secure federal court help in undoing his defeat.” After surveying the evidence, Judge Ludwig concluded that “[t]his [c]ourt has allowed plaintiff the chance to make his case and he has lost on the merits.”

The U.S. Supreme Court and the 2020 Election

Following the passing of Justice Ruth Bader Ginsburg, the rushed confirmation of Justice Amy Coney Barrett, and the [president’s exhortations](#) (“If the Supreme Court shows great Wisdom and Courage, the American People will win perhaps the most important case in history, and our

Electoral Process will be respected again!”), many observers across the political spectrum wondered and anticipated how the highest court would rule during the election.

In the end, the Supreme Court was relatively inactive in post-election litigation. It directly commented on only four election cases during the post-election period. Two of those rulings related to matters in lawsuits that were filed prior to the election. First, on November 3, Justice Samuel Alito denied an emergency application for an injunction against the Center for Tech and Civic Life’s private election grants to counties in Pennsylvania ([Pennsylvania Voters Alliance v. Centre County](#)). The Court denied certiorari in January.

And in a case filed in October, Justice Alito on November 6 ordered that all Pennsylvania absentee ballots received after 8 p.m. on November 3 be segregated and, if counted, that they be separately tallied ([Republican Party of Pennsylvania v. Boockvar](#)). The Republican Party had sought to stay a Pennsylvania Supreme Court decision that would have allowed ballots mailed by November 3 and received up to three days later to be counted. Petitioners argued that the Pennsylvania Supreme Court was intervening with the state legislature’s plenary authority to direct the time, place, and manner of holding elections, under the [Elections Clause](#) of the U.S. Constitution. The case was consolidated with *Donald J. Trump for President, Inc. v. Boockvar* (later *Degraffenreid*) after the election and denied certiorari as moot on February 22. The number of segregated ballots that had been sequestered was [insufficient to alter](#) Pennsylvania’s election results.

Justice Clarence Thomas [dissented](#) from the denial of certiorari, noting that the judiciary is more inclined to make hasty policy rulings in the truncated post-election timeline. Justice Alito, joined by Justice Gorsuch, filed a dissent that echoed Justice Thomas’s concern that state courts would continue to adjudicate in future elections, without direction on the issue of whether a state constitutional provision overrides a state statute governing the manner in which a federal election is to be conducted.

The Supreme Court addressed matters first raised post-election only twice. On December 8, in a unanimous decision, the court declined to grant the injunctive relief requested by U.S. Representative Mike Kelly (R-PA) to prevent Pennsylvania from certifying its election results ([Kelly v. Pennsylvania](#)). Rep. Kelly challenged Pennsylvania’s 2019 Act 77, a law passed by Pennsylvania’s Republican-controlled legislature that implemented a no-excuse absentee voting regime. The Pennsylvania Supreme Court, [in a per curiam decision](#), ruled that a provision of the law barred the claim due to the delay between when the complaint was filed and when the law was enacted. The Supreme Court, without comment, [denied](#) Rep. Kelly’s request to overturn the Pennsylvania Supreme Court decision.

The only post-election case in which the Supreme Court offered any elaboration was [Texas v. Pennsylvania](#), a lawsuit that accumulated a fair amount of online fervor and for which U.S. Senator Ted Cruz (R-TX) [offered to argue the case](#) before the Supreme Court. On December 8, the state of Texas [moved](#) to file a complaint in the U.S. Supreme Court against Georgia, Michigan, Wisconsin, and Pennsylvania, alleging that the defendant states had failed to properly administer the presidential election in their own states. Specifically, the Texas attorney general asserted that, when the secretaries of state in these four battleground states issued guidelines in response to the coronavirus pandemic and when judges invalidated state statutes leading up to the election, often in response to the pandemic, the state executive branches and judicial branches were impermissibly intervening in state election codes—a province reserved exclusively for state legislatures. Texas also incorporated the new “vote dilution” claim and broadened it, arguing that, if other states do not run their elections in the way Texas deems proper, Texan votes are diluted at the national level.

[President Trump](#), [126 members of the House of Representatives](#), and [17 states](#) filed briefs in support of the Texas motion. The Supreme Court, [in a brief statement](#) on December 11, denied Texas’s motion to file its complaint, saying Texas lacked standing. The Court held that Texas had failed to demonstrate “a judicially cognizable interest in the manner in which another State conducts its elections.” Justices Thomas and Alito dissented, stating that they would permit the filing, but refrained from commenting on the merits of the case.

On January 7, the court denied certiorari in [Gohmert v. Pence](#) (the case that challenged the Electoral Count Act of 1887). On January 11, the court, without comment, [denied motions to expedite](#) consideration in the majority of the pending election cases before it: *Ward v. Jackson*, *Lin Wood v. Raffensperger*, *King v. Whitmer*, *Donald J. Trump for President, Inc. v. Degraffenreid*, *Kelly v. Pennsylvania*, *Trump v. Biden*, *Trump v. Wisconsin Elections Commissions*, and *In Re Coreco Ja'Qan Pearson*. Plaintiffs in *Pearson*, a “Kraken” case, [voluntarily dropped](#) their suit on January 19, a day before Joe Biden’s inauguration. On February 22, the Supreme Court [denied certiorari](#) in all the remaining cases except three. On March 1, the Court [denied mandamus](#) in *In Re William Feehan* and *In Re Tyler Bowyer*. On March 8, the Court [denied certiorari](#) in the final case, *Trump v. Wisconsin Elections Commission*.

Conclusion

The sheer volume of litigation—and the number of its misfires and redundancies—led to a negative impact on public trust in the election system and democratic process beyond simply using the law to alter the election result. A [Fox News post-election poll](#) indicated that, among

voters polled between December 6-9, a supermajority of the country's Republicans believed that President Trump actually won the election.

The widespread publicity surrounding the suits also fostered an effective fundraising climate. President Trump and the Republican National Committee, in soliciting funds for voter fraud litigation, [raised over \\$250 million](#) from Americans in the two months following the election. It has been reported that only a [small fraction](#) of that money was actually spent on the legal costs of the litigation.

From a legal perspective, the lawsuits were remarkable in their volume, scope, and breadth. They advanced novel Fourteenth Amendment arguments, pitted states against states, and drove the vice president to quash attempts to aggrandize his own authority. The evidence they proffered failed to make headway with judges of all stripes, in federal and state courts, in district, appeals, and supreme courts, all across the country. While it is tempting to conclude that the post-election litigation notches a triumph for the rule of law and the judiciary, the precedential value of the cases themselves remains murky, due to the large volume of standing issues and the unusual nature of many of the claims. The thirteen lawsuits filed in relation to the January Georgia runoffs may reflect and foreshadow a lasting impact of the general election: the use of widespread litigation to seek favorable electoral outcomes through the judicial branch.

Appendix:

Case Summaries of the Post-Election Lawsuits

This Appendix to Post-Election Day Litigation Analysis briefly summarizes each of 95 Election Day and post-Election Day lawsuits regarding the 2020 general election.³ Most of these cases relate to the presidential race and were filed by the Trump for President campaign and various Republican groups and allies. A few relate to down-ballot races, and 13 relate to the U.S. Senate runoff election in Georgia (cases which were not discussed in the Post-Election Day Litigation Analysis). The summaries link to the legal complaints and court orders where possible.

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³ The summary additionally includes one case, *Bognet v. Boockvar*, that was filed prior to Election Day but decided after and is similar in nature to the post-election cases.

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Arizona

- ***Bowyer v. Ducey*, No. 2:20-cv-02321-DJH (D. Ariz.)**
 - **Closed Case**
 - **Issue: Range of fraud allegations.**
 - **3/1/21: [Mandamus denied](#).**
 - **12/09/2020: [Order/Ruling](#).** The federal district court held that plaintiffs lack standing because they were not candidates and alleged no concrete harm. The court held that plaintiffs failed to state a claim, delayed too long in bringing the claim, and attempted to bring claims that are moot. The court also held that *Colorado River* abstention was warranted in this case and that the Eleventh Amendment barred plaintiffs' request to mandate decertification. Noting that plaintiffs did not provide any evidence for their claims, the court dismissed the suit.
 - **Filed 12/02/20: [Complaint](#).** Plaintiffs, 13 Arizona voters and one candidate for the Republican slate of presidential electors, brought suit against Arizona state officials, including the governor and secretary of state. Plaintiffs alleged that poll watchers failed to adequately verify signatures on ballots, that Maricopa County ballot dispute referees were “biased and partisan” because they were registered Independents, that there was “no chain of custody” for the data backups from the voting machines supplied by Dominion Voting Systems, and that the Dominion machines suffered from errors during state evaluations. Plaintiffs claimed that defendants' actions violated the U.S. Constitution's Elections and Electors Clauses, and asked the court to decertify Arizona results or, in the alternative, to certify Arizona's results for Trump.
- ***Ward v. Jackson*, No. CV2020-015285 (Ariz. Super. Ct., Maricopa Cnty.)**
 - **Closed Case**
 - **Issue: Hand count audit.**
 - **2/22/2021: [Cert denied](#).**
 - **1/11/2021: [Motion to Expedite denied](#).**
 - **12/11/2020: [Petition for Cert](#).**
 - **12/08/2020: [Order/Ruling](#).** The Arizona Supreme Court, sitting en banc, unanimously held that plaintiffs had not provided any evidence to indicate that the hand count audit, required by the state election code prior to the final canvass, was insufficient to discover fraud. The court concluded that the superior court was correct in its determination that the hand count audit was adequate, and that there was no evidence of misconduct or illegal votes.

- **12/04/2020: [Order/Ruling](#).** The superior court held that the evidence did not demonstrate fraud or misconduct, noting that the court-ordered audit of a sample of absentee ballot signatures by forensic experts chosen by both parties in the case found a tiny number of duplicate ballots and a low error rate, without any impact on the outcome. The court denied relief and confirmed the election certification.
- **Filed 11/30/20: [Complaint](#).** Plaintiff, an Arizona voter, alleged that poll workers were not fit to verify absentee ballot signatures and that, in violation of state law, observers were not present for the replication of damaged ballots. The lawsuit requested an audit and that the election results be annulled.
- ***Burk v. Ducey*, No. CV202001869 (Ariz. Super. Ct., Pinal Cnty.)**
 - **Closed Case**
 - **Issue: Dominion software.**
 - **5/3/2021: [Cert denied](#).**
 - **1/5/2021: [Order/Ruling](#).** The Arizona Supreme Court affirmed the lower court's dismissal of appellant's election contest, agreeing that appellant was not a qualified elector under A.R.S. § 16-121(A) and failed to file a timely contest that complied with the election challenge statutes.
 - **12/15/2020: [Order/Ruling](#).** The court dismissed the case after determining the plaintiff lacked standing because she did not register to vote in the election.
 - **Filed 12/07/20: [Complaint](#).** Plaintiff, an Arizona voter, alleged that there was a scheme that resulted in the counting of hundreds of thousands of fictitious ballots in Arizona and that Dominion software covered up this scheme. Plaintiff sought an audit and an injunction against transmitting Arizona's results to the Electoral College.
- ***Stevenson v. Ducey*, No. CV2020-096490 (Ariz. Super. Ct., Maricopa Cnty.)**
 - **Closed Case**
 - **Issue: Illegal voting.**
 - **12/07/2020: [Voluntary Dismissal](#).**
 - **Filed 12/04/20: [Complaint](#).** Plaintiffs, members of the Arizona Election Integrity Association, alleged that grant aid from the Center for Tech and Civic Life helped fund the election in Maricopa County, that the absentee ballot error rate was impermissibly high, and that state officials did not enforce residency requirements and permitted double voting. Based on these purported violations of state law and the U.S. constitution, plaintiffs sought an injunction against the certification of the state election results.

- ***Arizona Republican Party v. Fontes*, No. CV2020-014553 (Ariz. Super. Ct., Maricopa Cnty.)**
 - **Closed Case**
 - **Issue: Hand count audit.**
 - **12/21/2020: Full [Order/Ruling](#):** The court held that Arizona's hand count audit, conducted by Republican, Democratic, and Libertarian Party appointees, verified that the machines had "counted the votes flawlessly." The procedures were as exactly outlined in state law.
 - **11/18/2020: [Order/Ruling](#).** The court dismissed the lawsuit, order to follow.
 - **Filed 11/12/2020: [Complaint](#).** Arizona law requires a hand-count of a random sampling of ballots at 2% of its precincts as a quality control check on vote counting machines. While Maricopa County has 748 precincts, voters in 2020 cast their ballots at 175 "vote centers," at which any registered voter across the county could vote. Plaintiffs, the Republican Party, urged the court to require the county to conduct its sampling from 15 precincts. Defendant, the Maricopa County Recorder, had indicated intent to follow the secretary of state manual, which would sample 2% of vote centers (4 centers). Plaintiffs seek a hand count by "precincts."
- ***Aguilera v. Fontes*, No. CV2020-014562 (Ariz. Super. Ct., Maricopa Cnty.)**
 - **Closed Case**
 - **Issue: Electronic voting systems.**
 - **11/30/2020: [Dismissed](#).** The court held that the plaintiffs failed to allege a particularized harm sufficient to achieve standing. The court also held that there were no violations of the election code and that the relief requested was not appropriate. The court dismissed the case with prejudice.
 - **Filed 11/12/2020: [Complaint](#).** Plaintiffs, two Arizona voters, alleged that the electronic system did not count one of their votes and that the other's ballot was rejected by the tabulator and subjected to off-site human adjudication. Plaintiffs sought the ability to cast a ballot that would be counted and an opening of the offsite adjudication process to the public.
- ***Donald J. Trump for President Inc. v. Hobbs*, No. CV2020-014248 (Ariz. Super. Ct., Maricopa Cnty.)**
 - **Closed Case**
 - **Issue: Request to halt the canvass until review of overvoted in-person ballots.**
 - **11/16/2020: [Dismissed](#).** The court dismissed the case as moot. Ballot totals at issue would not impact election outcome.

- **Filed 11/7/2020: [Complaint](#).** The Donald J. Trump for President campaign brought suit against Arizona Secretary of State Katie Hobbs and Maricopa County Recorder Adrian Fontes, alleging that qualified voters who cast their ballots in person on Election Day had their ballots improperly disqualified as an "overvote" without additional adjudication or review. It alleged violations of multiple clauses of the Arizona constitution, including equal protection and equal access to elections, as well as various elections-related statutes, including ARS 16-611. The complaint included declarations from six voters. Plaintiffs sought an injunction prohibiting canvassing until these overvotes were permitted to be reviewed and adjudicated.
- ***Aguilera v. Fontes*, No. CV2020-014083 (Ariz. Super. Ct., Maricopa Cnty.)**
 - **Closed Case**
 - **Issue: In-person ballots filled with Sharpie markers.**
 - **11/07/2020: [Dismissed](#).** Plaintiffs voluntarily dismiss suit without prejudice.
 - **Filed 11/04/2020: [Complaint](#).** Plaintiff, a Maricopa County voter, voted in person on Election Day, November 3, 2020, and claimed that Maricopa County failed to properly process and count her vote because of the Sharpie pen she was provided at the polling location to mark her ballot. Her claims arose out of the state constitution's Art. II Sections 13, 21 - Arizona's "equal privileges" clause, and A.R.S. sections 16-449(B), 16-452(A): failure to ensure maximum correctness, impartiality, and uniformity of election procedures. Plaintiff requested that all in-person ballots filled with Sharpie pens be allowed to be cured.

District of Columbia

- ***Wisconsin Voters Alliance v. Pence*, No. 1:20-cv-03791-JEB (D.D.C.)**
 - **Closed Case**
 - **Issue: Electoral Count Act Allegedly Violates Article II.**
 - **1/4/2021: [Order/Ruling](#).** The court held that plaintiffs' votes were counted and that plaintiffs articulated only a generalized grievance, thus lacked standing. As to the merits, the court held that "the suit rests on a fundamental and obvious misreading of the Constitution." The district court found it lacked authority to overrule the Supreme Court and that plaintiffs "readily acknowledge that their position also means that the Supreme Court's decisions in *Bush v. Gore*, 531 U.S. 98 (2000), and *Texas v. Pennsylvania*, No. 155 (Orig.), 2020 WL 7296814 (U.S. Dec. 11, 2020), 'are in constitutional error.'"
 - **12/22/2020: [Complaint](#).** Plaintiff individuals and groups (including the Wisconsin Voters Alliance, Pennsylvania Voters Alliance, Georgia Voters Alliance, Election Integrity Fund, and Arizona Election Integrity Alliance) alleged that the Electoral Count Act violates Article II of the U.S. Constitution, impermissibly disempowering state legislatures in post-election certification matters. The suit also commented extensively on the election funds disbursed through the Center for Tech and Civic Life, although it did not concretize this in any legal claim regarding these funds. Plaintiffs requested an injunction barring the vice president and Congress from counting the electoral votes.
- ***Michigan Welfare Rights Organization v. Trump*, No. 1:20-cv-03388 (D.D.C.)**
 - **Open Case**
 - **Issue: Voter disenfranchisement in violation of the Voting Rights Act.**
 - **11/20/2020: [Complaint](#).** Plaintiffs, three Detroit voters and a state chapter of a union that advocates for people with low income, alleged that defendant, the Trump campaign, in its pressure on state and local officials to not certify election results, was attempting to disenfranchise Black voters in violation of the Voting Rights Act.

Georgia

- ***Daugherty v. Fulton*, No. 2021CV344953 (Ga. Super. Ct., Fulton Cnty.)**
 - **Open Case**
 - **Issue: U.S. Senate Runoff.**
 - **Filed 1/25/2021: [Complaint](#).** Contestant, a Georgia voter, alleges a range of fraud. Contestant alleges the secretary of state certified "patently inaccurate" results, that Texas rejected the Dominion voting system used in Georgia, that county audits weren't composed of the proper parties, and that there were fraudulent ballots without creases or on different paper. Contestant requests the court invalidate the senate election results.

- ***Fair Fight v. True the Vote*, No. 2:20-CV-00302-SCJ (N.D. Ga.)**
 - **Open Case**
 - **Issue: U.S. Senate Runoff.**
 - **1/1/21: [Order/Ruling](#).** The federal district court denied Fair Fight's motion for a preliminary injunction. The court held that, while the plaintiff's concerns about the climate of voter intimidation were reasonable, there was not sufficient evidence presented connecting the defendant to that climate. The court retained control of the case and invited the parties to submit additional evidence, stating that "an eleventh-hour challenge to the franchise of more than 360,000 Georgians is suspect."
 - **Filed 12/23/2020: [Complaint](#).** Plaintiff Fair Fight, a voting rights advocacy group, alleged that the defendant, a Texas-based vote-monitoring organization, sought to engage in mass voter suppression in Georgia's U.S. Senate run-off election. Defendant had preemptively challenged the votes of over 364,000 Georgia voters, many of whom were first-time voters of color, based on the U.S. Postal Service's National Change of Address ("NCOA") registry. Plaintiff claimed that these challenges and True the Vote's other programming, which encouraged citizen watchdogs and offered monetary rewards, amounted to intimidation that violates the Voting Rights Act. Plaintiff requested an injunction to bar the defendant from contacting voters about their status and requiring the defendant to withdraw its voter challenges.

- ***New Georgia Project v. Cooney*, No. 2020CV343646 (Ga. Super. Ct., Fulton Cnty.)**
 - **Open Case**
 - **Issue: U.S. Senate Runoff.**

- **Filed 12/16/2020: [Complaint](#).** Plaintiff, a voter education and registration nonprofit, alleged that Fulton County was not providing early voting on all dates required by Georgia law. Plaintiff sought an emergency injunction ordering defendants to provide for early voting in Fulton County during regular business hours on December 31, 2020, and January 4, 2021.
- ***New Georgia Project v. Shelton*, No. 2020V123366K (Ga. Super. Ct., Houston Cnty.)**
 - **Open Case**
 - **Issue: U.S. Senate Runoff.**
 - **Filed 12/16/2020: [Complaint](#).** Plaintiff, a voter education and registration nonprofit, alleged that Houston County was not providing early voting on all dates required by Georgia law. Plaintiff sought an emergency injunction ordering defendants to provide for early voting in Houston County on December 19, 2020, from 9 a.m. to 4 p.m., and during regular business hours on January 4, 2021.
- ***New Georgia Project v. Willis*, No. 20-CV-003112 (Ga. Super. Ct., Paulding Cnty.)**
 - **Open Case**
 - **Issue: U.S. Senate Runoff.**
 - **Filed 12/15/2020: [Complaint](#).** Plaintiff, a voter education and registration nonprofit, alleged that Paulding County was not providing early voting on all dates required by Georgia law. Plaintiff sought an emergency injunction ordering defendants to provide for early voting in Paulding County on December 19, 2020, from 9 a.m. to 4 p.m.; and during regular business hours on January 4, 2021.
- ***New Georgia Project v. Evans*, No. SU20CV0594 (Ga. Super. Ct., Clarke Cnty.)**
 - **Open Case**
 - **Issue: U.S. Senate Runoff.**
 - **Filed 12/15/2020: [Complaint](#).** Plaintiff, a voter education and registration nonprofit, alleged that Athens-Clarke County was not providing early voting on all dates required by Georgia law. Plaintiff sought an emergency injunction ordering defendants to provide for early voting in Athens-Clarke County on December 19, 2020, from 9 a.m. to 4 p.m., and during regular business hours on January 4, 2021.
- ***New Georgia Project v. Kaplan*, No. 2020-CV-073305 (Ga. Super. Ct., Bibb Cnty.)**
 - **Open Case**
 - **Issue: U.S. Senate Runoff.**
 - **Filed 12/15/2020: [Complaint](#).** Plaintiff, a voter education and registration nonprofit, alleged that Macon-Bibb County was not providing early voting on all

dates required by Georgia law. Plaintiff sought an emergency injunction ordering defendants to provide for early voting in Macon-Bibb County on December 19, 2020, from 9 a.m. to 4 p.m., and during regular business hours on December 31, 2020, and January 4, 2021.

- ***Favorito v. Cooney*, No. 2020CV343938 (Ga. Super. Ct., Fulton Cnty.)**

- **Open Case**
- **Issue: Mail-in Ballot Fraud.**
- **Filed 12/23/2020: [Complaint](#).** Petitioners, a Fulton County tabulation observer and several hand count auditors, alleged a range of fraud. Petitioners said they detected a sudden 20,000-vote increase for Democratic presidential candidate Joe Biden and filed a corresponding report on the phenomenon that went unanswered; that they observed boxes of ballots containing mostly Biden votes; and that they believed certain cast ballots were fraudulent because they were not creased. Petitioners also alleged that an incident at the State Farm Arena voting center violated Georgia law. The incident, documented in a video posted on social media, purports to show that, during a water main break at the arena when some staff and reporters had left the premises, some election workers allegedly pulled out cases filled with ballots and scanned them. Petitioners, based on alleged equal protection and due process violations for those voters who had their votes tabulated in the State Farm Arena on the night of November 3, sought an order permitting them to inspect and scan all mail-in ballots for the general election.

- ***Lin Wood v. Raffensperger*, No. 1:20-cv-05155-TCB (N.D. Ga.)**

- **Closed Case**
- **Issue: U.S. Senate Runoff.**
- **3/8/2021: [Mandamus denied](#).**
- **12/28/2020: [Order/Ruling](#).** The court first noted that the plaintiff's previous lawsuit had been dismissed for articulating only a "generally available grievance about government" instead of a particularized injury. By contrast, this lawsuit purported to claim a particularized injury through vote dilution. The court held that vote dilution, under the Equal Protection Clause, is concerned with votes being weighed differently. A plaintiff lacks standing where, as here, he claims that his vote would be diluted by unlawful or invalid ballots. The court also held that Wood had failed to prove standing on another claim, disparate treatment, saying Wood's theory of harm vis-a-vis Venezuelan manipulation of Dominion voting machines was "astonishingly speculative."

- **Filed 12/18/2020: [Complaint](#).** Plaintiff, attorney L. Lin Wood, representing himself pro se, sought to halt the Georgia U.S. Senate runoff election. Plaintiff alleged, among other things, that the Georgia secretary of state usurped authority from the state legislature by promulgating rules related to signature verification, opening early ballots prior to Election Day, installing ballot dropboxes, and using the Dominion Voting System equipment.
- ***Lin Wood v. Raffensperger*, No. 1:20-cv-04651-SDG (N.D. Ga.)**
 - **Closed Case**
 - **Issue: Elections Clause.**
 - **2/22/2021: [Cert denied](#).**
 - **1/11/2021: [Motion to Expedite denied](#).**
 - **12/08/2020: [Petition for Cert](#).**
 - **12/05/2020: [Order/Ruling](#).** The Eleventh Circuit affirmed the district court's holding that Lin Wood lacks standing to sue because he failed to allege a particularized injury.
 - **11/20/2020: [Order/Ruling](#).** The district court considered whether defendants violated the state constitution by (1) executing and enforcing the pre-election settlement agreement to the extent that it required different procedures from the Georgia election code, and (2) not permitting designated monitors to have certain viewing privileges of the audit. The court held that Lin Wood lacked standing to bring these claims. The court also held the plaintiff had not demonstrated a likelihood of success on the merits. The court denied the request for a temporary restraining order.
 - **11/19/2020: [Order/Ruling](#).** The court denied the request for an injunction; order to follow.
 - **Filed 11/13/20: [Complaint](#).** Plaintiff, a Georgia voter, alleged that the secretary of state and other state election officials violated the Elections Clause by entering into a settlement agreement, in *Georgia Democratic Party v. Raffensperger*, in March. Plaintiff alleged that the officials changed the handling of absentee ballots to a manner inconsistent with state law. On a variation of this argument, plaintiff further alleged that the "disparate" treatment of absentee ballots was an equal protection violation. Plaintiff sought a temporary restraining order against certifying the general election results in Georgia.
- ***Majority Forward v. Ben Hill County*, No. 1:20-cv-00266-LAG (M.D. Ga.)**
 - **Closed Case**
 - **Issue: U.S. Senate Runoff.**

- **1/4/2021: [Order/Ruling](#).** In its final order in the case, the court held that plaintiffs failed to prove they would succeed on the merits of its National Voter Registration Act (NVRA) claim against Ben Hill. The court held that plaintiffs did succeed in their claim against Muscogee County, which violated the NVRA by failing to conduct the requisite individualized inquiry required for challenges made within 90 days of a federal election.
 - **12/30/2020: [Order/Ruling](#).** The court dissolved its prior temporary restraining order against Ben Hill but issued a preliminary injunction against the Muscogee County Board of Elections, enjoining it from upholding a challenge to any voter's eligibility based solely on information in the NCOA registry.
 - **12/28/2020: [Order/Ruling](#).** The federal district court granted a temporary restraining order against the Ben Hill County Board of Elections' decision to remove challenged voters from the voter roll. The court held that Section 8(d)(1)(A) of the NVRA clearly states, in relevant part, that a "State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant... confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered." The targeted voters did not provide this confirmation, so their removal violates the NVRA.
 - **Filed 12/23/2020: [Complaint](#).** Plaintiffs, a voter registration nonprofit group and a registered voter temporarily living out of state, alleged that True the Vote, a Texas-based vote-monitoring organization, was engaging in voter suppression in Georgia. Plaintiffs contended that True the Vote challenged the right of many registered voters to vote by submitting lists from the United States Postal Service's National Change of Address ("NCOA") database, purporting to show the voters' addresses had changed, thus making them ineligible to vote. Under Georgia law, NCOA data is an impermissible basis for challenging a voter's eligibility. Plaintiffs contested the decisions of the boards of elections in two counties—Ben Hill County and Muscogee County—to sustain True the Vote's challenges to more than 4,000 targeted registered voters. Plaintiffs requested an injunction preventing the boards from discarding the ballots of the targeted voters, on the basis that doing so violated the National Voter Registration Act (NVRA).
- ***Georgia Republican Party v. Raffensperger*, No. 1:20-cv-05018-ELR (N.D. Ga.)**
 - **Closed Case**
 - **Issue: U.S. Senate Runoff.**
 - **12/23/2020: [Voluntary dismissal](#).**

- **12/21/2020: [Order/Ruling](#).** The Eleventh Circuit denied appellants' motion for stay pending appeal and dismissed the case for lack of standing. It held that the motion impermissibly seeks to order a non-party county official to do something contrary to state law. Noting that the secretary of state and the state election board do not conduct the signature matching process, are not the election officials who review the voters' signatures, and do not control whether the signature matching process can be observed, the Senate campaigns' alleged injury is not traceable to the secretary of state. And the secretary of state does not have the authority to redress it.
- **12/17/2020: [Order/Ruling](#).** Finding that the campaigns lacked standing, the district court denied their motion for an injunction and dismissed their complaint.
- **Filed 12/10/2020: [Complaint](#).** Plaintiffs, the Georgia Republican Party and the campaigns of the Republican candidates for U.S. Senate, requested a declaration that the current Georgia signature-matching process was unconstitutional. They sought an order to implement signature review of all absentee ballots by three reviewers, public observation from at least one person from each political party represented by the candidates, and a requirement that ballots with mismatched signatures be segregated for additional review.
- ***Georgia Republican Party v. Raffensperger*, No. 2:20-cv-00135-LGW-BWC (S.D. Ga.)**
 - **Closed Case**
 - **Issue: U.S. Senate Runoff.**
 - **12/18/2020: [Order/Ruling](#).** In a brief order, the court dismissed the case for lack of standing.
 - **Filed 12/17/2020: [Complaint](#).** Plaintiffs, the U.S. Senate campaigns of Republican incumbents Kelly Loeffler and David Perdue, sought an injunction to prevent the counting of ballots cast in the Senate run-off race January 5 by registered Georgia voters who cast ballots for senators in other states in the November 3 general election, pursuant to 52 U.S.C. § 10307(e). Plaintiffs requested an order that all ballots cast by individuals who registered to vote between November 4, 2020, and December 7, 2020, be segregated and investigated.
- ***RNC v. State Election Board*, No. 2020CV3423319 (Ga. Super. Ct., Fulton Cnty.)**
 - **Closed Case**
 - **Issue: U.S. Senate Runoff.**
 - **12/29/2020: [Dismissed as moot](#).**

- **Filed 12/08/2020: [Complaint](#).** Plaintiffs, the Republican National Committee and state Republican Party, sought an injunction compelling the secretary of state to issue guidance to election officials on proper poll watcher access and to mandate that ballot dropbox hours be limited and their video surveillance footage be made available to inquiring parties.
- ***Twelfth Congressional District Republican Committee v. Raffensperger*, No. 1:20-cv-00180-JRH-BKE (S.D. Ga.)**
 - **Closed Case**
 - **Issue: U.S. Senate Runoff.**
 - **12/17/2020: [Order/Ruling](#).** The district court dismissed the case with prejudice.
 - **Filed 12/09/2020: [Complaint](#).** Plaintiff, the 12th Congressional District Republican Committee, sought prospective relief to: (a) invalidate State Election Board Rule 183-1-0.6-14 and prohibit the use of drop boxes for the receipt of absentee ballot envelopes; (b) invalidate State Election Board Rule 183-1-14-0.9-.15 and prohibit the opening of absentee ballot envelopes before Election Day; and (c) invalidate the secretary of state's Official Election Bulletin regarding absentee ballot signature review guidance.
- ***Still v. Raffensperger*, No. 2020CV343711 (Ga. Super. Ct., Fulton Cnty.)**
 - **Closed Case**
 - **Issue: Decertification.**
 - **1/7/2021: [Voluntary dismissal](#).**
 - **Filed 12/12/2020: [Complaint](#).** Petitioners, a candidate for presidential elector and a voter, initiated an election contest to decertify Georgia's presidential results in the general election. Petitioners contended that Coffee County experienced irregularities during its recount and was unable to certify its recount by the secretary of state's deadline. Petitioners extrapolated this, across Georgia's 159 counties, to claim that the election results might instead favor President Trump.
- ***Trump v. Raffensperger*, No. 2020CV343255 (Ga. Super. Ct., Fulton Cnty.)**
 - **Closed Case**
 - **Issue: Illegal votes.**
 - **1/7/2021: [Voluntary dismissal](#).**
 - **12/12/2020: [Order/Ruling](#).** The Georgia Supreme Court dismissed the petition to bring the case directly to the state supreme court, citing lack of jurisdiction. The court held that the case had not gone through the requisite interlocutory

appeals necessary for an election contest and that it did not meet one of the “extremely rare” exceptions that merits original jurisdiction.

- **12/09/2020: [Order/Ruling](#).** Order on case status notes that, because Petitioners on December 8 voluntarily withdrew their motion for emergency relief, the action would proceed in the normal course.
- **Filed 12/04/20: [Complaint](#).** Petitioners, Donald Trump, the Trump campaign, and a potential presidential elector, requested a new presidential election on the basis of alleged violations of the Georgia election code and state constitution. Petitioners alleged that respondents, the secretary of state and county elections officials, allowed unqualified people to vote, sent unsolicited absentee ballots to voters, entered into a consent decree that allocated more personnel to conduct signature verification, and that the number of absentee ballots was higher than in previous elections.
- ***Pearson v. Kemp*, No. 1:20-cv-04809-TCB (N.D. Ga.)**
 - **Closed Case**
 - **Issue: Dominion software.**
 - **1/19/2021: [Joint stipulation to dismiss](#).**
 - **1/11/2021: [Motion to Expedite denied](#).**
 - **12/11/2020: [Petition for Cert](#).**
 - **12/07/2020: [Order/Ruling](#).** In a minute order on the record, Judge Timothy C. Batten Jr. ruled that: “The relief that the plaintiffs seek this court cannot grant - they ask the court to order the secretary of state to decertify the election results as if such a mechanism even exists, and I find that it does not.” The judge dismissed the case.
 - **12/04/2020: [Appeal](#) and [Dismissal](#).** Plaintiffs sought an immediate appeal to the Eleventh Circuit. An Eleventh Circuit panel dismissed the appeal for lack of jurisdiction and allowed the proceedings to continue in the district court. The panel concluded that the district court had not yet issued an appealable order over which the circuit would have jurisdiction.
 - **11/29/2020: [Order/Ruling](#).** The court issued a 10-day temporary restraining order preventing defendants from altering or destroying Dominion machine data and ordering them to provide plaintiffs with a copy of the state contract with Dominion.
 - **Filed 11/25/20: [Complaint](#).** Plaintiffs, six Georgia voters, alleged that Georgia’s election software and hardware, obtained from voting equipment supplier Dominion Voting Systems, was developed by Venezuelans in 2004 to manipulate votes in favor of Hugo Chavez. They alleged that use of the equipment led to a fraudulent ballot-stuffing campaign in Forsyth, Spalding, Cherokee, Hall, and

Barrow counties. Plaintiffs further alleged that the state's use of Dominion violated the Georgia election code and the U.S. Constitution's Fourteenth Amendment by processing "defective" ballots. They sought an injunction for the decertification of Georgia's certified election results.

- ***Trump v. Kemp*, No. 1:20-cv-05310-MHC (N.D. Ga.)**
 - **Closed Case**
 - **Issue: Electors Clause.**
 - **1/5/2020: [Order/Ruling](#).** The Court denied President Trump's motion. The court held that the president lacked standing on each of his counts and that only the Georgia General Assembly could bring a claim on a count that alleges the November 3 general election violated the Electors Clause. The court also held that plaintiff's due process claim met neither the causation nor redressability prongs of Article III's standing requirements. The court, nevertheless, addressed the merits, stating that only Congress can intervene post-certification and that the plaintiff, in voluntarily dismissing his Fulton County case alleging illegal votes were cast, failed to allow the proper court to review his election challenge.
 - **12/31/2020: [Complaint](#).** President Trump requested an emergency injunction ordering Georgia officials to decertify Georgia's election results, alleging that Georgia's manner of conducting the election violated the Electors Clause of the U.S. Constitution because it purportedly interfered with the manner in which the state legislature had directed elections be held.
- ***Boland v. Raffensperger*, No. 2020CV343018 (Ga. Super. Ct., Fulton Cty.)**
 - **Closed Case**
 - **Issue: Illegal votes.**
 - **12/14/2020: [Order/Ruling](#).** In a one-sentence order, the Georgia Supreme Court denied relief.
 - **12/08/2020: [Order/Ruling](#).** The state superior court dismissed the suit. It held that, under state law, the named defendants were improper parties; that the suit is barred by laches; that plaintiff is not a candidate and so lacks standing; and that, even if the court were to reach the merits, presidential electors are not among those officers covered by Georgia's election contest statute.
 - **Filed 11/30/20: [Complaint](#).** Plaintiff, one Georgia voter, alleged that people who did not reside in Georgia voted in the election and that there was a low ballot rejection rate based on signature mismatch. Plaintiff alleged both issues arose from the secretary of state's failure to follow the Georgia election code. As a remedy, the plaintiff sought the decertification of election results.

- ***Wood v. Raffensperger*, No. 2020CV342959 (Ga. Super. Ct., Fulton Cnty.)**
 - **Closed Case**
 - **Issue: Elections Clause and Public-Private Partnerships.**
 - **12/08/2020: [Order/Ruling](#).** The court held that Georgia election law bars naming either the governor or the secretary of state as defendants in an election contest. Since the two officials are the only named defendants, the court dismissed the suit as barred by sovereign immunity.
 - **11/25/2020: [Complaint](#).** Plaintiff, president of the Georgia Voters Alliance, contended that Georgia officials violated the state election code and state constitution by accepting a grant from the Center for Tech and Civic Life to help fund the election, by following a consent decree that provided for more scrutiny of absentee ballot signatures and disqualification, and by counting purportedly illegal votes. Plaintiff requested that the court prevent the governor from certifying Georgia's results and instead mandate that any result determined by the Georgia General Assembly be the lawful result.

- ***Schmitz v. Fulton County Board of Registration and Elections*, No. 2020CV342969 (Ga. Super. Ct., Fulton Cnty.)**
 - **Closed Case**
 - **Issue:**
 - **4/22/2020: [Dismissed](#).** The court held that plaintiff had never served Representative Roberts, as was required, and dismissed the case.
 - **Filed 11/25/20: [Complaint](#).** Plaintiff sought to invalidate the results of the Georgia House race for District 52. Plaintiff alleges Fulton County permitted illegal voters to cast ballots.

- ***Rebecca Brooks v. Thomas Mahoney III*, No. 4:20-cv-00281-RSB-CLR (S.D. Ga.)**
 - **Closed Case**
 - **Issue: Request to exclude from the state's overall vote count the votes of counties with alleged voting irregularities.**
 - **11/16/2020: [Dismissed](#).** Plaintiffs voluntarily dismissed their suit.
 - **Filed 11/11/20: [Complaint](#).** Plaintiffs, four Georgia voters, filed suit against defendants, members of county boards of elections, the secretary of state, and the governor. Plaintiffs alleged that, during the election, voters were recorded as having voted absentee, even though they voted in person and did not register absentee; that voter registration exceeded 100% of eligible voters; and that non-citizens voted. Plaintiffs sought to exclude counties with any irregularities from the state's overall vote total, on the grounds that such counties' inclusion diluted plaintiffs' votes.

- ***In re: Enforcement of Election Laws and Securing Ballots Cast or Received After 7 p.m. on November 3, 2020***, No. SPCV20-00982 (Ga. Super. Ct., Chatham Cnty.)
 - **Closed Case**
 - **Issue: Request to sequester ballots received post-election day.**
 - **11/05/2020: [Order/Ruling](#).** The court held that there was no evidence that the 53 ballots in question were returned after 7 p.m. on Election Day or that Chatham County Board of Elections had violated any law.
 - **Filed 11/04/2020: [Complaint](#).** Petitioners, the Georgia Republican Party and Donald J. Trump for President, Inc., asked the court to order the Chatham County Board of Elections to follow specific ballot custody procedures, namely, to store all absentee ballots received after 7 p.m. on Election Day, as allegedly required by Ga. Code Ann. sec. 21-2-386(a)(1)(F). They also asked the court to order the board to provide an accounting of all such ballots to petitioners. Petitioners claimed this action was necessary to avoid the inadvertent counting of these ballots, which petitioners claimed would be contrary to Georgia law.

Michigan

- ***King v. Whitmer*, No. 2:20-cv-13134-LVP-RSW (E.D. Mich.)**
 - **Closed Case**
 - **Issue: Request to decertify results.**
 - **2/22/2021:** [Cert denied](#).
 - **1/11/2021:** [Motion to Expedite denied](#).
 - **12/11/2020:** [Petition for Cert](#).
 - **12/07/2020:** [Order/Ruling](#). The court held that the lawsuit was barred by the Eleventh Amendment, that the case was moot, and that plaintiffs waited too long to bring their claims. The court also held that the abstention doctrine applied, since parallel state proceedings were ongoing. Lastly, plaintiffs failed to establish an injury sufficient to meet standing requirements.
 - **11/25/2020:** [Complaint](#). Plaintiffs, six Michigan voters, alleged that Republican poll observers were denied the opportunity to meaningfully observe, that election workers forged and altered ballots, and that defective ballots were counted. Plaintiffs claimed these purported executive branch violations of the Michigan election code violated both the Elections and Electors Clauses of the U.S. Constitution and that, as remedy, the court should either decertify Michigan's results or certify them for Trump.
- ***Leaf v. Whitmer*, No. 1:20-CV-1169 (E.D. Mich.)**
 - **Closed Case**
 - **Issue: Request to preserve data.**
 - **12/07/2020:** [Order/Ruling](#). The court held that plaintiffs' complaint fell "far short" of the requirements for the relief sought. The court found that the complaint pleaded no specific causes of action, that the application was not verified, and that the notice certification requirement was not met.
 - **12/06/2020:** [Complaint](#). Plaintiffs, the Barry County Sheriff and seven potential Republican electors, sought injunctive relief against the Michigan Board of Elections to stop it from initiating the deletion of election records.
- ***Johnson v. Benson*, No. 162286 (Mich. Sup. Ct.)**
 - **Closed Case**
 - **Issue: Request to decertify results.**
 - **12/09/2020:** [Order/Ruling](#). The Michigan Supreme Court denied relief. Justice Elizabeth T. Clement, concurring, first analyzed the complaint, finding that the only recognized cause of action was Count Four, which requested 'Mandamus

and Quo Warranto,' the combination of which, since incongruous with the relief sought, "makes it unclear what petitioners are asking this Court to do." The court went on to find that plaintiffs' claimed statutory authority for jurisdiction was lacking. Finally, the court held that the injunction request was barred by mootness.

- **11/26/2020: [Complaint](#).** Petitioners, members of Black Voices for Trump, alleged directly to the state supreme court that respondent state officials failed to allow meaningful poll observation, that they instructed election workers to count invalid ballots, and that they permitted grant funding from Mark Zuckerberg. Petitioners further alleged that election workers forged ballots and duplicated ballots without oversight. Petitioners alleged that the above and the subsequent concealment of the above violated the state election code. They sought an investigation and an injunction against final certification.
- ***Bailey v. Antrim County*, No. 2020009238CZ (Mich. Cir. Ct., Antrim Cnty.)**
 - **Closed Case**
 - **Issue: Dominion Voting Software**
 - **5/8/2021: [Dismissed](#).** The court held that plaintiff was "not entitled to" any additional relief, as the case was moot. The court cited Michigan's statewide audit with respect to the presidential election, which confirmed the accuracy and integrity of the election, as part of the basis for dismissal.
 - **12/04/2020: [PI granted](#).** Defendant county agreed to preserve all records and "not turn on" the Dominion tabulator. The only issue before the court was whether plaintiff could take forensic images. The judge found irreparable harm to the plaintiff, because a proposed ordinance to authorize "one marihuana retailer establishment within the village," that was initially tied 262-262, passed when the ballots were retabulated. As a result, the judge ordered that the forensic images could be taken and that the Dominion tabulator should not be connected to the internet.
 - **Filed 11/23/2020: [Complaint](#).** Plaintiff, an individual voter, alleged potential malfunctions of Dominion software in the presidential election. Plaintiff brought suit on Michigan constitutional grounds as well as the fraud provisions of the state election code. Plaintiff requested an audit and requested that he could take "forensic images" of the Antrim county tabulators.
- ***Johnson v. Benson*, No. 1:20-cv-01098 (W.D. Mich.)**

- **Closed Case**
- **Issue: Request for injunction against certifying election results based on secretary of state's voter registration practices.**
- **11/18/2020: [Voluntary dismissal](#).**
- **Filed 11/16/20: [Complaint](#).** Plaintiffs, two Michigan voters who served as poll challengers at Detroit's TCF Center poll location, alleged that the defendant, the secretary of state, enabled fraud on Election Day. Specifically, plaintiffs claimed that the secretary of state's purportedly illegal plan to mail voters absentee ballot applications caused many invalid practices at the TCF Center, culminating in Democratic Party inspectors filling out "thousands" of ballots in violation of state law. Plaintiffs sought, on equal protection and due process grounds, an injunction against final certification until an audit could be conducted.
- ***Donald J. Trump for President Inc. v. Benson*, No. 1:20-cv-01083 (W.D. Mich.)**
 - **Closed Case**
 - **Issue: Request for injunction against certifying election results based on challenger access and ballot dates.**
 - **11/19/20: [Voluntary dismissal](#).**
 - **Filed 11/11/20: [Complaint](#).** Plaintiffs, the Trump campaign and seven Michigan voters, alleged that Wayne County and the secretary of state violated the Michigan election code by purportedly not permitting challengers to observe the conduct of the election and allegedly pre-dating ballots that were not eligible to be counted.
- ***Bally v. Whitmer*, No. 1:20-cv-1088 (W.D. Mich.)**
 - **Closed Case**
 - **Issue: Request to exclude from the state's overall vote count the votes of counties with alleged voting irregularities.**
 - **11/16/2020: [Dismissed](#).** Plaintiffs voluntarily dismiss suit.
 - **Filed 11/11/20: [Complaint](#).** Plaintiffs, four registered voters, filed suit against the secretary of state and boards of canvassers. Plaintiffs alleged that a certified poll watcher was excluded from canvassing and cites the complaints from *Costantino* and *Trump v. Benson* with claims of anomalous election practices, such as officials counting ineligible ballots and deceased individuals casting votes. Plaintiffs further cited websites to allege that programming errors, multiple ballot mailings, and voter registration exceeding 100% violated plaintiffs' fundamental right to vote by diluting their votes. The plaintiffs sought to exclude the presidential vote count from these counties in the state's overall total.

- ***Costantino v. Detroit*, No. 20-014780-AW (Mich. Cir. Ct., Wayne County)**
 - **Closed Case**
 - **Issue: Request for injunction against certifying election results based on various types of alleged misconduct.**
 - **11/23/2020: [Order/Ruling](#).** The Michigan Supreme Court, in considering plaintiffs' request to enjoin the Wayne County Board of Canvassers election certification, ruled that the case is now moot, since the board has already certified the election results.
 - **11/16/2020: [Order/Ruling](#).** The Michigan court of appeals denied plaintiffs' application for appeal and reversal of the decision below.
 - **11/13/2020: [Order/Ruling](#).** The state circuit court for Wayne County found that the affidavits supplied by plaintiffs, purporting fraud, were "rife" with generalization, speculation, and hearsay, and lacked evidentiary basis. The court held that the evidence supported no credible finding of fraud at the TCF Center. Furthermore, the injunctive relief plaintiffs asked for—against certification of Wayne County results—would amount to judicial activism in light of the other remedies available. The court denied the injunction.
 - **Filed 11/09/20 [Complaint](#).** Plaintiffs, two Wayne County voters who served as poll challengers, alleged several instances of election misconduct. Plaintiffs alleged that the City of Detroit processed and counted ballots from voters whose names did not appear in the Qualified Voter File; that it instructed election workers not to verify signatures on absentee ballots, to backdate absentee ballots, and to process such ballots regardless of their validity; and that, "on a daily basis leading up to the election, coached voters to vote for Joe Biden and the Democrat party." Plaintiffs sought an audit, an order to stop the count, an injunction against certifying election results, an order voiding the November 3, 2020, election results, and an order that a new election be held.

- ***Stoddard v. City Election Commission*, No. 20-014604-CZ (Mich. Cir. Ct., Wayne County)**
 - **Closed Case**
 - **Issue: Request to halt the vote count in Detroit until observers from both parties are present.**
 - **11/06/2020: [Order/Ruling](#).** Motion for injunctive relief denied for failure to state a cause of action and because plaintiffs provided no evidence to support their claims, while there was evidence refuting them. Further, the court noted that alternative remedies, such as a recount, exist.

- **Filed 11/04/2020: [Complaint](#).** Plaintiffs, a Michigan election challenger and the nonprofit organization that sponsored her credentials, alleged that absentee vote count centers in Detroit did not have one inspector from each political party present, in violation of state law. Plaintiffs sought to halt the counting of absentee ballots until observers from both parties were present.
- ***Donald J. Trump for President v. Benson*, No. 20-000225-MZ (Mich. Ct. Claims)**
 - **Closed Case**
 - **Issue: Request to halt the ballot count until inspectors were allowed at the absentee ballot counting boards and until challengers could review video surveillance footage of ballot dropboxes**
 - **12/11/2020: [Order/Ruling](#).** The Michigan Supreme Court denied review of the case.
 - **12/04/2020: [Order/Ruling](#).** Since the Michigan State Board of Canvassers certified the presidential election results on November 23, the court of appeals described how MCL 168.862 requires that the plaintiffs pursue their fraud allegations via a recount of the ballots cast in Wayne County. The court held that, because plaintiffs failed to follow the law in Michigan relative to such matters, its action was moot.
 - **11/05/2020: [Order/Ruling](#).** The state court of claims dismissed the case, stating, “At this point, the essence of the count is completed, and the relief is completely unavailable.”
 - **Filed 11/04/2020: [Complaint](#).** Plaintiffs, Donald Trump's re-election campaign and one Michigan poll challenger, alleged issues with Michigan's Absent Voter Count Boards. Plaintiffs asserted that Michigan violated state requirements for the presence of election inspectors and ballot challengers in counting absentee votes. Plaintiffs asked the court to halt Michigan's ballot count until the secretary of state allowed the campaign's inspectors to be present at the absentee ballot boards and until its challengers could review video surveillance footage of ballot drop boxes.
- ***Polasek-Savage v. Benson*, No. 20-000217-MM (Mich. Ct. Claims)**
 - **Closed Case**
 - **Issue: Request to have more than one challenger present at each absent voter counting board.**
 - **11/03/20: [Order](#).** Court denied the request for declaratory judgment, finding that the defendants (the secretary of state and Oakland County) did not have the power to grant the relief requested.

- **Filed 11/02/20: [Complaint](#).** Plaintiffs challenged the rule in Oakland County that organizations approved to appoint election challengers would be permitted to have only one challenger present at each absent voter counting board.

Minnesota

- ***Quist v. Simon*, No. 62-CV-20-5598 (Minn. Dist. Ct., Ramsey Cty.)**
 - **Closed Case**
 - **Issue: Election contest seeking audit.**
 - **12/29/2020: [Order/Ruling](#).** The court held that it did not have jurisdiction to hear election contests where, as here, the contestants failed to seek a change in the outcome of the election. That is, contestants failed to demonstrate that their allegations would have resulted in Tina Smith losing the race for U.S. Senate. Further, the court found that Secretary of State Steve Simon was not a properly named contestee within the jurisdictional boundaries established by Minnesota law. The court, therefore, lacked subject-matter jurisdiction over Secretary Simon, and so granted his motion to dismiss with prejudice.
 - **12/01/2020: [Complaint](#).** Election contest under Minn. Stat. §209. Contestants, three Minnesota voters, challenged the results of Minnesota's general election. They argued that the secretary of state's suspension of Minnesota's witness requirement for absentee ballots violated the Equal Protection Clause since it means the ballots were "processed differently." They further argued that the agreement to suspend the witness requirement was a violation of the state separation of powers. Finally, contestants claimed that Minnesota violated election law in its post-election review process. Contestants requested the guarding and inspection of all absentee ballots and related election materials, and the guarding of all Dominion voting machines.

- ***Braun v. Simon*, No. 62-CV-20-5602 (Minn. Dist. Ct., Ramsey Cty.)**
 - **Closed Case**
 - **Issue: Election contest seeking audit.**
 - **12/18/2020: [Order/Ruling](#).** Dismissed with prejudice.
 - **12/01/2020: [Complaint](#).** Election contest under Minn. Stat. §209. Contestants, three Minnesota voters, challenged the results of Minnesota's general election. They argued that the secretary of state's suspension of Minnesota's witness requirement for absentee ballots violated the Equal Protection Clause since it means the ballots were "processed differently." They further argued that the agreement to suspend the witness requirement was a violation of the state separation of powers. Finally, contestants claimed that Minnesota violated election law in its post-election review process. Contestants sought the guarding of the absentee ballots and all related election materials.

- ***Rodriguez v. Simon*, No. 62-CV-20-5601 (Minn. Dist. Ct., Ramsey Cty.)**
 - **Closed Case**
 - **Issue: Election contest seeking audit.**
 - **12/18/2020: [Order/Ruling](#).** Dismissed with prejudice.
 - **12/01/2020: [Complaint](#).** Election contest under Minn. Stat. §209. Contestants, two Minnesota voters, challenged the results of Minnesota's general election. They argued that the secretary of state's suspension of Minnesota's witness requirement for absentee ballots violated the Equal Protection Clause since it meant the ballots were "processed differently." They further argued that the agreement to suspend the witness requirement was a violation of the state separation of powers. Finally, contestants claimed that Minnesota violated election law in its post-election review process. Contestants requested the guarding and inspection of all absentee ballots and related election materials.

- ***Peterson v. Simon*, No. 62-CV-20-5600 (Minn. Dist. Ct., Ramsey Cty.)**
 - **Closed Case**
 - **Issue: Election contest seeking audit.**
 - **12/18/2020: [Order/Ruling](#).** Dismissed with prejudice.
 - **12/01/2020: [Complaint](#).** Election contest under Minn. Stat. §209. Contestants, three Minnesota voters, challenged the results of Minnesota's general election. They argued that the secretary of state's suspension of Minnesota's witness requirement for absentee ballots violated the Equal Protection Clause since it meant the ballots were "processed differently." They further argued that the agreement to suspend the witness requirement was a violation of the state separation of powers. Finally, contestants claimed that Minnesota violated election law in its post-election review process. Contestants requested the guarding and inspection of all absentee ballots and related election materials.

- ***Jensen v. Simon*, No. 62-CV-20-5599 (Minn. Dist. Ct., Ramsey Cty.)**
 - **Closed Case**
 - **Issue: Election contest seeking audit.**
 - **12/18/2020: [Order/Ruling](#).** Dismissed with prejudice.
 - **12/01/2020: [Complaint](#).** Election contest under Minn. Stat. §209. Contestants, three Minnesota voters, challenged the results of Minnesota's general election. They argued that the secretary of state's suspension of Minnesota's witness requirement for absentee ballots violated the Equal Protection Clause since it meant the ballots were "processed differently." They further argued that the

agreement to suspend the witness requirement was a violation of the state separation of powers. Finally, contestants claimed that Minnesota violated election law in its post-election review process. Contestants requested the guarding and inspection of all absentee ballots and related election materials.

- ***Hahn v. Simon*, No. 14-CV-20-4033 (Minn. Dist. Ct., Clay Cty.)**

- **Closed Case**
- **Issue: Election contest seeking audit.**
- **12/14/2020: [Order/Ruling](#).** Dismissed with prejudice.
- **11/30/2020: [Complaint](#).** Election contest under Minn. Stat. §209. Contestants, seven Minnesota voters, challenged the results in Legislative District 04A, Clay County. They argued that the secretary of state's suspension of Minnesota's witness requirement for absentee ballots violated the Equal Protection Clause since it meant the ballots were "processed differently." They further argued that the agreement to suspend the witness requirement was a violation of the state separation of powers. Finally, contestants claimed that Minnesota violated election law in its post-election review process. Contestants sought the guarding and inspection of all absentee ballots and related election materials.

- ***Kistner v. Simon*, No. 19AV-CV-20-2183 (Minn. Dist. Ct., Dakota Cty.)**

- **Closed Case**
- **Issue: Election contest seeking audit.**
- **12/15/2020: [Order/Ruling](#).** The court held that it lacked subject-matter jurisdiction, since contestants failed to allege that the contestees did not get the highest number of votes legally cast. The court further held that contestants were barred by laches, because the witness-signature requirement was suspended in August but contestants only filed their contest after the election. Lastly, with respect to contestants' allegations that Minnesota's post-election review process did not have judges present, the court held that Minnesota Election Law does not mandate the use of election judges at all.
- **11/27/2020: [Complaint](#).** Election contest under Minn. Stat. §209. Contestants, a group of Republican candidates for federal and state office, challenged the results of Minnesota's general election. They argued that the secretary of state's suspension of Minnesota's witness requirement for absentee ballots violated the Equal Protection Clause since it meant the ballots were "processed differently." They further argued that the agreement to suspend the witness requirement was a violation of the state separation of powers. Finally, contestants claimed that Minnesota violated election law in its post-election review process.

Contestants the guarding and inspection of all absentee ballots and related election materials.

- ***Kistner v. Simon*, No. A20-1486 (Minn. Sup. Ct.)**
 - **Closed Case**
 - **Issue: Request to block Minnesota certification.**
 - **12/04/2020: [Order/Ruling](#).** The Minnesota Supreme Court dismissed the case. It held that the doctrine of laches applied to petitioners' claims against the secretary of state and that they had adequate time to bring suit prior to the election but failed to do so. With respect to observer access to post-election review, the court held that Minnesota law requires that such charges be served against county election officials. The court asked petitioners to do so, and petitioners did not provide evidence that they did.
 - **11/24/20: [Complaint](#).** Petitioners, 25 candidates for U.S. Congress and the Minnesota state legislature and 10 Minnesota citizens, sought an immediate temporary restraining order from the Minnesota Supreme Court to enjoin the State Canvassing Board from certifying Minnesota's election results. Petitioners alleged that the secretary of state impermissibly removed barriers (suspended the witness requirement) to absentee voting, in violation of separation of powers, and did not provide adequate poll observer access, violating due process.

Nevada

- ***Law v. Whitmer*, No. 20 OC 00163 1B (Nev. Dist. Ct., Carson City)**
 - **Closed Case**
 - **Issue: Request to certify the Nevada election for Donald Trump.**
 - **12/08/2020: [Order/Ruling](#).** The Nevada Supreme Court affirmed the case's dismissal, holding that appellants had pointed to no errors of law in the district court's ruling. It also noted that, even if there were a lesser standard for the burden of proof, appellants would fail to meet it.
 - **12/04/2020: [Order/Ruling](#).** The state district ruled that the issues raised concerning the Agilis machines were “identical” to those already litigated and decided by the same court in *Kraus v. Cegavske* and that plaintiffs here are in privity with the *Kraus* parties—so issue preclusion applies. Nevertheless, the court went on to rule on the merits that there was no proof of machine malfunctions, improper votes, election board malfeasance, or improper vote manipulation. The court dismissed the case with prejudice.
 - **Filed 11/17/2020: [Complaint](#).** Plaintiffs, six Republican presidential electors for the state of Nevada, alleged widespread electronic voting systems malfunctions both due to the Agilis Ballot Sorting System machines in Nevada and generally across the country. Plaintiffs alleged that the Agilis machine, which was used to verify signatures in Clark County but not other Nevada counties, resulted in an equal protection violation. Plaintiffs also alleged that nonprofit group voting drives in Nevada to encourage Native Americans to vote offered incentives to vote and, in “at least one social media video,” depicted images of people wearing Biden-Harris promotional material, so Native American votes associated with such incentives should be disqualified. Plaintiffs sought, as relief, that Donald Trump be certified the winner of Nevada.

- ***Rodimer v. Gloria*, No. A-20-825067-P (Nev. Dist. Ct., Clark Cty.)**
 - **Closed Case**
 - **Issue: Request to block the use of Agilis in signature verification.**
 - **11/25/2020: [Order/Ruling](#).** The state district court held that, because the plaintiff was a candidate for federal office, he was excluded from state law governing election contests and from this court's jurisdiction. The court dismissed the case.
 - **Filed 11/18/2020: [Complaint](#).** Plaintiff, a candidate for Nevada's seat from U.S. Congressional District 3, contended that the Registrar of Voters for Clark County found discrepancies in ballot tracking, used the purportedly unreliable Agilis

system, and should have moved certain voters to the inactive list and not sent them ballots. Plaintiff sought a new election.

- ***Becker v. Cannizzaro*, No. A-20-825130-W (Nev. Dist. Ct., Clark Cty.)**
 - **Closed Case**
 - **Issue: Request to block the use of Agilis in signature verification.**
 - **11/20/20: [Voluntary dismissal](#).**
 - **Filed 11/19/2020: [Complaint](#).** Plaintiff, a candidate for state Senate District 6, sought a revote of her contest, alleging that Clark County Registrar of Voters Joseph Gloria's use of the Agilis system to verify signatures, when state law requires verification be conducted by a human, warranted that all votes verified by the system be invalidated and a new election be held.

- ***Marchant v. Gloria*, No. A-20-824884-W (Nev. Dist. Ct., Clark Cty.)**
 - **Closed Case**
 - **Issue: Request to block the use of Agilis in signature verification.**
 - **11/23/2020: [Order/Ruling](#).** The state district court held that it lacked jurisdiction to hear the writ, which was, in fact, a claim for an election contest. Nevada's election contest statute excludes the federal legislative election at issue in plaintiff's petition. The court went on to hold that, even if the claim were able to proceed, it would fail on the merits. The plaintiffs invoked a statute that relates to ballot loss or destruction, neither of which was demonstrated. The court dismissed the case.
 - **Filed 11/16/2020: [Complaint](#).** Petitioner, a candidate for Nevada's Fourth Congressional District seat, sought injunctive relief against Clark County's use of the Agilis system to verify signatures. Petitioner alleged that state law required that signature verification be conducted by a human.

- ***Becker v. Gloria*, No. A-20-824878-W (Nev. Dist. Ct., Clark Cty.)**
 - **Closed Case**
 - **Issue: Request to block the use of Agilis in signature verification.**
 - **12/02/2020: [Order/Ruling](#):** The court ruled that plaintiff's complaint was incorrectly styled as a petition for injunctive relief but was, in actuality, a claim for an election contest under NRS 293.407. Election contests, by law, are not within district court jurisdiction. Even if the court had jurisdiction and reached the merits, it held that no ballots were lost or destroyed and so the plaintiff's case failed.
 - **Filed 11/16/2020: [Complaint](#).** Petitioner, a candidate for Nevada Senate District 6 seat, sought relief against the use of the Agilis system in signature verification.

Petitioner alleged that the system's artificial intelligence was flawed and state law required human review, therefore a new election should be held.

- ***Stokke v. Cegavske*, No. 2:20-cv-02046 (D. Nev.)**
 - **Closed Case**
 - **Issue: Request to (i) allow greater access to observers, and (ii) cease use of automated systems to count ballots.**
 - **11/06/2020: [Order/Ruling](#).** Judge Andrew Gordon denied plaintiffs' request for an injunction to prevent Nevada's largest county from using its signature-matching technology. The court also denied the plaintiffs' request to mandate that Clark County permit observers to be closer to the ballot-counting process.
 - **Filed 11/05/2020: [Complaint](#).** Plaintiffs, two individuals and two Nevada Congressional campaigns, sought injunctive relief directing defendants to (a) cease their use of the Agilis system to count ballots and (b) allow greater access to ballot counting observers. Plaintiffs claimed that the Agilis system, which purportedly misidentified Plaintiff Stokke as having already voted by mail, was not able to properly verify signatures. Additionally, Plaintiffs alleged that, while Clark County officials allowed Plaintiff Prudhome to observe the ballot count, he was not allowed to stand in a position that would allow him to meaningfully observe.

- ***Kraus v. Cegavske*, No. 82018 (Nev. Sup. Ct.)**
 - **Closed Case**
 - **Issue: Request that election officials stop duplicating ballots and using AI to authenticate ballot signatures unless observers are granted access.**
 - **11/10/2020: [Order Dismissing Case](#).** Court granted the appellants' motion to dismiss the case. State agreed to allow more observers, in accordance with a settlement agreement.
 - **11/03/2020: [Order/Ruling](#).** In an order signed by all seven members, the Nevada Supreme Court granted the request to expedite the appeal but denied the motion for an emergency stay to stop the county from processing ballots. The court denied appellants' request to enjoin the registrar from duplicating ballots that could not otherwise be fed into the vote tabulation machine and from using artificial intelligence to authenticate ballots. The court said that appellants had not demonstrated a sufficient likelihood of success to merit a stay or injunction. The court cited the district court's conclusion that appellants' allegations lacked evidentiary support and noted that "appellant's request for relief to this court is not supported by affidavit or record materials supporting many of the factual

statements made therein.... It is unclear from the motion how appellants are being prevented from observing the process or that the use of the Agilis machine is prohibited under AB 4.... Appellants motion, on its face, does not identify any mandatory statutory duty that respondents appear to have ignored. Further, appellants fail to address the district court's conclusion that they lack standing to pursue this relief."

- **11/03/2020: [Emergency Motion for Stay and to Expedite Appeal](#)**. Donald J. Trump for President, the Nevada Republican Party, and a registered voter sought a stay of a lower court order allowing duplication of mail ballots without observation and the use of Agilis. Appellants filed an emergency motion seeking immediate relief under NRAP 8, pending appeal, prohibiting the Clark County Registrar from continuing to duplicate mail ballots unless observers were granted an opportunity to meaningfully observe the process and from using artificial intelligence to authenticate ballot signatures. Appellants also sought to expedite this appeal.
- ***Donald J. Trump for President v. Gloria*, No. A-20-824153-C (Nev. Dist. Ct., Clark Cty.)**
 - **Closed Case**
 - **Issue: Request to extend in-person voting hours.**
 - **11/03/20: [Order/Ruling](#)**. Select polling places in Clark County, Nevada, to stay open an extra hour, to 8 p.m.
 - **Filed 11/03/2020: [Complaint](#)**. Plaintiffs, Donald J. Trump for President and Nevada Republican Party, sought injunctive relief to require Clark County to keep open until 8 p.m. poll locations affected by voting machine malfunctions.

New Mexico

- ***Donald J. Trump for President v. Toulouse Oliver, No. 1:20-cv-01289 (D.N.M.)***
 - **Closed Case**
 - **Issue: Dropboxes.**
 - **1/11/2021: [Voluntarily dismissed](#).**
 - **Filed 12/14/2020: [Complaint](#).** Plaintiff, the Trump campaign, sought an injunction to prevent the presidential electors selected by New Mexico voters from casting the state's electoral votes for president and vice president. Plaintiff alleged that the New Mexico secretary of state violated the U.S. Constitution's Electors Clause by enabling voters to return ballots at ballot dropboxes.

New York

- ***Tenney v. Oswego County Board of Elections*, No. EFC-2020-1376 (N.Y. Supr. Ct.)**
 - **Closed Case**
 - **Issue: Request to secure ballots.**
 - **2/5/2021: [Order/Ruling](#).** The court oversaw three boards of election to correct several canvassing errors. As a result, Tenney led by 109 votes. The court denied her opponent, Brindisi's, injunction to stay certification.
 - **12/08/2020: [Order/Ruling](#).** The court held that the relevant election boards failed to catalogue and adjudicate ballot challenges, when the candidates might be separated by only 12 votes, necessitating a partial recount. The court ordered that the elections boards account for all votes and correct all canvassing errors. Where canvassing errors could not be corrected, the court ordered the elections boards to recanvass those ballots.
 - **Filed 11/04/2020: [Complaint](#).** Petitioner, the Republican candidate for New York's 22nd Congressional district, sought to have the court order the relevant elections boards in that Congressional district to sequester and secure the absentee ballots cast until a canvass and recanvass could be conducted.

Pennsylvania

- ***In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election, Nos. 20110894-20110898 (Penn. Ct. Common Pleas, Philadelphia Cnty.) / Nos. J-118A-2020, J-118B-2020, J-118C-2020, J-118D-2020, J-118E-2020 and J-118F2020 (Penn. Sup. Ct.)***
 - **Closed Case**
 - **Issue: request to reserve county election board's refusal to throw out ballots based on various ballot completion omissions.**
 - **2/22/2021: [Cert denied](#)** (sub. nom. *Donald J. Trump for President, Inc. v. Degraffenreid*). Justices Thomas and Alito dissenting.
 - **1/11/2021: [Motion to Expedite denied](#).**
 - **12/20/2020: [Petition for Cert](#).** Petitioner, President Trump, consolidated and sought review of three Pennsylvania Supreme Court decisions: *In re Canvass of Absentee & Mail-In Ballots of Nov. 3, 2020 Gen. Election* (date and signature), *In re Canvassing Observation* (poll observation), and *In re November 3, 2020 Gen. Election* (a pre-election case on signature verification standards). The Petitioner alleged that the Pennsylvania Supreme Court impermissibly altered the manner of elections in violation of the Electors Clause. Petitioner requested that the U.S. Supreme Court remand the matter to the Pennsylvania state legislature, which can select its own slate of electors in place of those selected by popular vote.
 - **11/23/2020: [Order/Ruling](#).** The Pennsylvania Supreme Court held that, absent fraud, the state election code did not require boards of elections to disqualify mail-in or absentee ballots submitted by qualified voters who signed the declaration on their ballot's outer envelope but did not handwrite their name, their address, and/or date, where no fraud or irregularity had been alleged. The court affirmed the lower courts' decisions to count the ballots, saying the state election code's directives in question were not mandatory and that Pennsylvania jurisprudence had long held that courts must construe the law to save, not void, ballots.
 - **11/13/2020: [Orders/Rulings 1, 2, 3, 4, 5](#).** For each petition, the court of common pleas affirmed the decision of the county board. The court ruled that the election code did not require that the outer envelope have a date, the elector's printed name, and address. The court noted that the ballot envelopes already contained the voters' names and addresses pre-printed on the envelope. The Philadelphia County Board of Elections decisions to count the challenged absentee ballots, in each case, were affirmed.

- **Filed 11/10/2020: [1](#), [2](#), [3](#), [4](#), [5](#).** In five separate petitions, the Trump campaign asked the court to overturn five decisions of the Philadelphia County Board of Elections: to count 1,211 absentee ballots where the voter signed the declaration envelope but provided no other information; to count 1,259 ballots where the voters signed but did not date their signature; to count 553 ballots where all the information was complete except for the voter's printed name; to count 860 ballots missing a street address; and to count 4,466 ballots where the voters signed and dated but did not print their name and street address.
- ***In re: Canvassing Observation, No. 7003 (Penn. Ct. Common Pleas, Philadelphia Cnty.)/ No. 30 EAP 2020 (Penn. Sup. Ct.)***
 - **Closed Case**
 - **Issue: Request for broader right to observe the canvassing**
 - **2/22/2021: [Cert denied](#)** (sub. nom. *Donald J. Trump for President, Inc. v. Degraffenreid*). Justices Thomas and Alito dissenting.
 - **12/20/2020: [Petition for Cert.](#)** Petitioner, President Trump, consolidated and sought review of three Pennsylvania Supreme Court decisions: *In re Canvass of Absentee & Mail-In Ballots of Nov. 3, 2020 Gen. Election* (date and signature), *In re Canvassing Observation* (poll observation), and *In re November 3, 2020 Gen. Election* (signature verification standards). The Petitioner alleged that the Pennsylvania Supreme Court impermissibly altered the manner of elections in violation of the Electors Clause. Petitioner requested that the court remand the matter to the Pennsylvania state legislature, so it could select its own slate of electors in place of those selected by popular vote.
 - **11/13/2020: [Order/Ruling](#).** The Pennsylvania Supreme Court found that the procedures for poll observing that the Philadelphia Board of Elections implemented were reasonable under law. The court held that the legislature left proximity parameters to the discretion of county boards of elections. The court concluded that, based on the plaintiff witness's own testimony, he had sufficient access to observe under the election code.
 - **11/05/2020: [Order/Ruling](#).** The appeals court reversed the court of common pleas and held that all candidates, watchers, or candidate representatives be permitted to be present for canvassing processes pursuant to 25 P.S. § 2650 and/or 25 P.S. § 3146.8, and they be able to observe within six feet.
 - **11/03/2020: [Order/Ruling](#).** The presiding election day judge, based on a witness's testimony, held that Philadelphia was complying with canvassing observer requirements as set forth in Pennsylvania law. The judge denied the oral motion of Petitioner for closer observation of the canvassing of ballots.

- **11/03/2020: [Hearing](#).** Petitioner, the Trump campaign, alleged that poll observers did not have sufficient proximity to canvassing.
- ***Kelly v. Pennsylvania*, No. 620 MD 2020 (Penn. Commonw. Ct.)**
 - **Closed Case**
 - **Issue: Request not to certify election results.**
 - **2/22/2021: [Cert denied](#).**
 - **1/11/2021: [Motion to Expedite denied](#).**
 - **12/11/2020: [Petition for cert](#).**
 - **12/08/2020: [Order/Ruling](#).** The U.S. Supreme Court, with no dissents, declined to grant the injunctive relief to prevent Pennsylvania from certifying its election results.
 - **12/03/2020: [Emergency application](#).** Plaintiffs filed an emergency motion to the U.S. Supreme Court, seeking an injunction against certification.
 - **11/28/2020: [Order/Ruling](#).** In a per curiam decision, the Pennsylvania Supreme Court vacated the Commonwealth Court's preliminary injunction and dismissed the case with prejudice. The court held that a dismissal was warranted "based upon Petitioners' failure to file their facial constitutional challenge in a timely manner," since the campaign filed the suit more than a year after the enactment of Act 77 and after a general election in which millions of voters had cast mail-in votes.
 - **11/25/2020: [Order/Ruling](#).** The court, without elaboration, held that the Commonwealth of Pennsylvania is enjoined from certifying any remaining election results, pending a court hearing on the matter.
 - **Filed 11/21/2020: [Complaint](#).** Plaintiffs, a U.S. representative, two candidates for office, and six voters, sought to have the court declare as unconstitutional Pennsylvania's Act 77, enacted in 2019, that contains a no-excuse mail-in voting provision. Plaintiffs also requested an injunction against certifying the state's election results.
- ***Metcalfe v. Wolf*, No. 636 MD 2020 (Penn. Commonw. Ct.)**
 - **Closed Case**
 - **Issue: Request to decertify results.**
 - **12/09/2020: [Order/Ruling](#).** The state court held that plaintiffs were not entitled to relief because what they submitted as a complaint was "really an improper and untimely election contest." The court held that this election contest was not filed in the proper venue nor within the correct time frame, as required by the election code.
 - **Filed 12/04/2020: [Complaint](#).** Plaintiffs, 11 Pennsylvania voters, filed suit against

the governor, the secretary of state, and Pennsylvania's Democratic presidential electors. Plaintiffs alleged that local Democratic Party officials and the Pennsylvania Supreme Court violated numerous portions of the state election code related to ballot signatures, secrecy envelopes, and poll observers. Plaintiffs sought a writ of mandamus directing the governor to withdraw the certification of the 2020 presidential election.

- ***Zicarelli v. Westmoreland County Board of Elections*, No. 4152 (Penn. Ct. Common Pleas, Westmoreland Cnty.)**
 - **Closed Case**
 - **Issue: Request to count ballots that were challenged.**
 - **11/23/2020: [Order/Ruling](#).** The court held that Pennsylvania law did not allow a voter to sign both a provisional ballot and a poll book indicating a machine vote. Only 46 of the 250 voters were able to submit affidavits indicating that they had voted only once, so the court ordered the other 204 ballots be invalidated. On the secrecy sleeve issue, the court ordered that 12 provisional ballots lacking secrecy sleeves, which the board had accepted, should not be counted.
 - **Filed 11/18/2020: [Complaint](#).** Plaintiff, a candidate for Pennsylvania state senate, appealed a Westmoreland County Board of Elections decision to count nine ballots received without secrecy envelopes and 250 ballots where the voter submitted a provisional ballot but was improperly instructed to sign the poll book indicating they had voted by machine at the polling place.

- ***Zicarelli v. Allegheny County Board of Elections*, No. GD-20-011793/No. 1161 CD 2020 (Penn. Commonw. Ct.)**
 - **Closed Case**
 - **Issue: Request to exclude ballots with various defects from the vote count.**
 - **11/23/2020. [Appeal denied](#).** The Pennsylvania Supreme Court denied Allegheny County's appeal.
 - **11/19/2020: [Order/Ruling](#).** The commonwealth court held that the plain language of the statute required both signatures. The court reversed the lower court's decision, holding that the 270 ballots would not be counted.
 - **11/18/2020: [Order/Ruling](#).** The court of common pleas ruled that the 270 provisional ballots should be counted. Voters were meant to have signed twice but should not be penalized because they were given, and relied on, incorrect information from the election administration.
 - **Filed 11/16/2020: [Complaint](#).** Plaintiff, a candidate for Pennsylvania state senate, challenged the decision of the Allegheny County Board of Elections to

accept 270 provisional ballots that included one requisite signature but not a second requisite signature.

- ***In Re: 2,349 Ballots in the 2020 General Election (Zicarelli v. Allegheny County Board of Elections)*** No. GD-20-11654/No. 1162 CD 2020 (Penn. Commonw. Ct.)
 - **Closed Case**
 - **Issue: Request to exclude ballots with various defects from the vote count.**
 - **11/23/2020: [Order/Ruling](#).** The Pennsylvania Supreme Court reversed, holding that the election code did not require boards of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot's outer envelope but did not handwrite their name, their address, and/or date, where no fraud or irregularity has been alleged. The court affirmed the court of common pleas' decision to count the ballots, saying the election code directives in question were not mandatory and that Pennsylvania jurisprudence had long held that courts must construe the law to save, not void, ballots.
 - **11/19/2020: [Order/Ruling](#).** The commonwealth court held that the state election code required voters date their declaration. It reversed the lower court decision and directed that the 2,349 ballots not be counted.
 - **11/18/2020: [Order/Ruling](#).** The court of common pleas held that the ballots at issue were sufficient even without a voter-supplied date. The ballots were processed in the Statewide Uniform Registry of Electors ("SURE") system and time-stamped when they were timely delivered to the board on or before November 3, 2020. They were signed and otherwise properly completed by a qualified elector.
 - **Filed 11/12/2020: [Complaint](#).** Plaintiff, a candidate for Pennsylvania state senate, challenged the decision of the Allegheny County Board of Elections to accept 2,349 mail-in ballots with undated declarations of voter identity on the ballots' return envelopes.

- ***In Re: Canvass of Absentee and/or Mail-in Ballots of November 3, 2020 General Election***, No. 20-05786-35 (Penn. Ct. Common Pleas, Bucks Cnty.)
 - **Closed Case**
 - **Issue: Request to exclude ballots from the vote count.**
 - **12/08/2020: [Order/Ruling](#).** The Pennsylvania Supreme Court denied the application for appeal.
 - **11/25/2020: [Order/Ruling](#).** The appeals court first described how Appellants withdrew some of the challenges in their complaint and, of the remaining challenges, the status of all but 69 ballots were resolved by the Pennsylvania

Supreme Court. These 69 ballots were received with secrecy envelopes that were “unsealed.” The court held that, since: (i) it could not be established whether the electors did not seal the secrecy envelopes; (ii) the parties stipulated that the instructions on the outer envelope stated only that the ballot should be placed in the secrecy envelope and did not specify that the envelope needed to be securely sealed; and (iii) there were no allegations of any fraud, impropriety, misconduct, or undue influence, or that the secrecy of the ballots cast had been jeopardized, the 69 ballots would count. The court held prospectively that ballots must be securely sealed.

- **11/24/2020: [Order/Ruling](#).** The Pennsylvania Supreme Court denied the applications to Exercise Extraordinary Jurisdiction.
 - **11/19/2020: [Order/Ruling](#).** The court of common pleas denied the petition for review, holding that the Pennsylvania Supreme Court had already made it clear that voters should not be disenfranchised based on advisory portions of the election code. Even following a “strict” interpretation of the state election code, the address, date, or secrecy envelope errors were not mandated by statute.
 - **Filed 11/09/2020: [Complaint](#).** Petitioners, the Trump campaign and RNC, sought review of the Bucks County Board of Elections’ counting of absentee ballots. Petitioners alleged that the defendant improperly accepted ballots with date or address defects, or with unsealed secrecy sleeves. Petitioners sought a reversal of the county election board’s decision.
- ***Donald J. Trump for Pres., Inc. v. Boockvar, No. 4:20-cv-02078 (M.D. Pa.)***
 - **Closed Case**
 - **Issue: Omnibus lawsuit requesting an injunction against certifying the state’s election results, alleging mail-in ballot fraud, insufficient poll observer access, and violations of the Elections, Elector, Equal Protection and Due Process clauses of the U.S. Constitution.**
 - **11/27/2020: [Order/Ruling](#).** The Third Circuit U.S. Court of Appeals denied the requested injunction and affirmed the district court’s denial of leave to amend. Judge Stephanos Bibas, writing for the panel, held that the Trump campaign had tried to “repackage” state-law claims about ballot corrections and poll observer access as unconstitutional discrimination. Yet the campaign never alleged that anyone treated the Trump campaign or Trump votes worse than it treated the Biden campaign or Biden votes. An injunction to undo Pennsylvania’s certification was not warranted, said the decision, since “the number of ballots it specifically challenges is far smaller than the roughly 81,000-vote margin of victory” and “it never claims fraud or that any votes were cast by illegal voters.” The circuit panel held that the district court had not abused its discretion in

denying leave to amend the complaint a second time, since the campaign's delay was undue and an amendment would have been futile.

- **11/21/2020: [Order/Ruling](#).** Due to the Third Circuit's decision in *Bognet*, the only remaining claim was plaintiffs' contention of an equal protection violation, alleging that Pennsylvania's lack of a uniform prohibition against notice-and-cure was unconstitutional. The federal district court held that plaintiffs lacked standing to make the equal protection claim but, nevertheless, went on to reach the merits: Plaintiffs failed to even make an equal protection argument. The court described the attempt as a "Frankenstein's Monster... haphazardly stitched together from two distinct theories in an attempt to avoid controlling precedent." The court dismissed the case, characterizing it as having amounted to "strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence."
 - **Filed 11/09/2020: [Complaint](#).** Plaintiffs, the Trump campaign and two registered voters, alleged that defendants, the Pennsylvania secretary of the commonwealth and seven county boards of election, violated the U.S. Constitution's Elections Clause, did not allow for sufficient poll observation of absentee ballot counting, and "did not undertake any meaningful effort to prevent the casting of illegal or unreliable absentee or mail-in ballots." Plaintiff alleged that a purported lack of uniform statewide standards for curing mistakes violated voters' equal protection and due process rights. As remedy, plaintiffs sought an injunction to prohibit Pennsylvania from certifying the election results statewide or, in the alternative, an injunction to prohibit Pennsylvania from including in the count absentee and mail-in ballots for which plaintiffs' watchers were allegedly prevented from observing and those which some counties allegedly improperly permitted to be cured.
- ***In re: Pre-Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election, No. 2020-05627 (Penn. Ct. Common Pleas, Bucks Cnty.)***
 - **Closed Case**
 - **Issue: Request to enjoin election workers from providing observers the identity of ballots with defects during pre-canvass.**
 - **11/03/2020: [Order/Ruling](#).** In a one-sentence order, the court dismissed the petition.
 - **11/03/2020: [Petition](#).** Petitioner, the Trump campaign, asked the court to reverse a decision of the Bucks County Board of Elections denying petitioner's objection to the disclosure of the identification of voters whose ballots were defective (e.g. naked ballots) during the pre-canvass review for the November 3, 2020, general election prior to the close of the polls. Petitioner contended that

the disclosure of such information to authorized observers in the pre-canvass meeting was, in turn, being disclosed to persons outside of the pre-canvass meeting in violation of the election code, 25 P.S. Sec. 3146.8(g)(1.1), which provides that "No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls." Petitioner also contended that absentee ballots cast in violation of mandatory requirements were void and cannot be counted.

- ***Pirkle v. Wolf*, No. 4:20-cv-02088-MWB (M.D. Penn.)**
 - **Closed Case**
 - **Issue: Request to exclude from the state-vote tabulation the votes from multiple counties, due to alleged illegal practices.**
 - **11/16/2020: [Dismissed](#).** Plaintiffs voluntarily dismissed the suit.
 - **Filed 11/10/2020: [Complaint](#).** Plaintiffs, four Pennsylvania voters, cited the complaint in *Trump v. Boockvar* and promised forthcoming data-backed analysis to allege that several counties violated voters' Fourteenth Amendment rights by counting "illegal votes." As a remedy, plaintiffs sought to exclude all votes from those counties, including Philadelphia County, in the tabulation of the state's final vote count.

- ***Bognet v. Boockvar*, No 20-3214 (3rd Cir.) / No. 3:20-cv-00215 (W.D. Pa.)**
 - **Closed Case**
 - **Issue: Ballot receipt deadline.**
 - **4/19/21: [Vacated](#).** The Supreme Court vacated the judgment, and remanded the case to the United States Court of Appeals for the Third Circuit with instructions to dismiss the case as moot
 - **11/13/20: [Order](#).** In a lawsuit filed before the election but relevant to much of the post-election litigation, the U.S. Circuit Court of Appeals for the Third Circuit upheld the district court's rejection of a constitutional challenge to Pennsylvania's post-Election Day ballot receipt deadline on the grounds that the plaintiffs lacked standing. The panel held that, "when voters cast their ballots under a state's facially lawful election rule and in accordance with instructions from the state's election officials, private citizens lack Article III standing to enjoin the counting of those ballots on the grounds that the source of the rule was the wrong state organ or that doing so dilutes their votes or constitutes differential treatment of voters in violation of the Equal Protection Clause. Further, and independent of our holding on standing, we hold that the District Court did not err in denying Plaintiffs' motion for injunctive relief out of concern for the settled

expectations of voters and election officials. We will affirm the District Court's denial of Plaintiffs' emergency motion for a TRO or preliminary injunction."

- **10/28/2020: [Order/Ruling](#).** The federal district court denied the motion for injunction, holding that the one candidate plaintiff lacked standing because his claims were too speculative and not redressable, and the voter plaintiffs lacked standing on their Equal Protection voter dilution claim because they alleged only a generalized grievance. Although the voter plaintiffs had standing on their Equal Protection arbitrary-and-disparate treatment claim and were likely to succeed on the merits (that the ballot deadline extension violated Equal Protection), the court said the *Purcell* principle mandated that no injunction be awarded since there were fewer than two weeks before the election, and injunctive relief would result in significant voter confusion.
- **10/22/2020: [Complaint](#).** Plaintiffs, one candidate for office and four residents of Pennsylvania, brought suit against the Pennsylvania secretary of commonwealth and every Pennsylvania county board of election, alleging violations of the Elections Clause and Presidential Electors Clause as well as the Equal Protection Clause for planning to count ballots received after Election Day but postmarked by Election Day in accordance with a recent Pennsylvania Supreme Court decision. Plaintiffs sought declaratory and injunctive relief to prevent the counting of ballots received after the original Election Day receipt deadline set by statute and a declaration that the Pennsylvania Supreme Court's decision in *Pennsylvania Democratic Party v. Boockvar* was contrary to the U.S. Constitution.
- ***Boockvar v. Republican Party of Pennsylvania*, No. 20A84 (S. Ct)**
 - **Closed Case**
 - **Issue: Request for order to sequester post-Election-Day ballots and exclude them from the vote count.**
 - **11/06/2020: [Order/Ruling](#).** Justice Samuel Alito ordered that all absentee ballots received after 8 p.m. on November 3 be segregated and that, if such ballots are counted, that their tally be counted separately. The Court did not order Pennsylvania to exclude such ballots from its vote count.
 - **11/06/2020 [Emergency Application for Injunction Pending Certiorari Review](#).** The Republican Party of Pennsylvania petitioned the Supreme Court to order election boards to keep separate all ballots received after Election Day through November 6, 2020, and to refrain from counting them while the Republicans' legal challenge to those ballots remained pending. The challengers acknowledged that Secretary of Commonwealth Kathy Boockvar did direct county election boards to segregate later-arriving ballots, but they contended that the guidance was insufficient to preserve the challengers' potential right to a

targeted remedy of tossing those ballots later because (i) the election boards were not required to follow the directions from the secretary of the commonwealth, (ii) the secretary could change her mind, and (iii) it was “currently unclear whether all 67 county boards of elections” in the state were following instructions to segregate mail-in ballots that arrived after Election Day and they may have been unable to confirm whether they were. Petitioners requested the court to instruct election boards “to log, to segregate, and otherwise to take no further action” on mail-in ballots received after Election Day, suggesting that the order might also prohibit the state from counting the ballots.

- ***Donald J. Trump for Pres., Inc. v. Philadelphia Cnty. Bd. of Elections*, No. 2:20-cv-05533-PD (E.D. Pa.)**
 - **Closed Case**
 - **Issue: Requesting broader observer access.**
 - **11/05/2020: [Order/Ruling](#).** The federal district court denied the request for injunction, without prejudice.
 - **Filed 11/05/2020: [Complaint](#).** Plaintiff, the Trump campaign, sought an injunction halting the count of ballots in Philadelphia County unless Republican observers were permitted to monitor the count. The complaint alleged that the board of elections was ignoring an unspecified Order that purportedly required Republican observers to be present.

- ***Donald J. Trump for President Inc. v. Montgomery County Bd. of Elections (In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election)*, No. 2020-18680 (Penn. Ct. Common Pleas)**
 - **Closed Case**
 - **Issue: Appeal of decision by the election board to count 592 absentee ballots missing some information on outer envelope**
 - **11/13/2020: [Order/Ruling](#).** The court of common pleas agreed with the Montgomery County Board of Elections’ interpretation of the state election code, saying the law did not require that voters provide their addresses on the declaration envelope and the 592 challenged ballots should be counted.
 - **Filed 11/05/20: [Petition](#).** Petitioners, Donald J. Trump for President, the RNC, and three statewide candidates, requested that the court reverse the decision by the Montgomery Court Board of Elections to deny petitioners’ objections to counting absentee ballots that failed to include all of the required information (i.e. signature, address, and/or date of execution) on the outer declaration

envelope. Petitioners objected to “approximately 600” such ballots and claimed the board’s decision was in violation of 25 P.S. sections 3146.6(a) and 3150.16(a).

- ***Donald J. Trump for President, Inc. v. Kathy Boockvar, et al.*, No. 602 MD 2020 (Penn. Commonw. Ct.)**
 - **Closed Case**
 - **Issue: Request to discard absentee ballots cured between Nov 9-12 with proof of ID.**
 - **11/12/2020: [Order/Ruling](#).** The court held that the secretary of the commonwealth did not have authority to extend the proof of ID period by three days (from November 9 to November 12). It granted an injunction requiring that ballots for which the voter’s ID was verified after November 9 be excluded from the vote count.
 - **Filed 11/04/20: [Petitioner’s Application](#).** Petitioners, the Trump campaign and RNC, sought injunctive relief to prohibit the respondent, the Pennsylvania secretary of the commonwealth, from allowing absentee and mail-in voters to cure their ballots by providing proof of ID after November 9. Petitioners claimed the state’s plan to accept such IDs through November 12 violated the Pennsylvania election code. Petitioners also sought injunctive relief to prohibit the respondent from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020.
- ***Barnette v. Lawrence*, No. 2:20-cv-05477-PBT (E.D. Pa.)**
 - **Closed Case**
 - **Issue: Request to discard and sequester defective ballots that were cured, request to stop allowing voters to cure defects.**
 - **11/06/2020 [Order](#):** The court denied the motion for a temporary restraining order. The court would not order the county to toss ballots that initially contained errors that were later cured.
 - **Filed 11/03/2020: [Complaint](#).** Plaintiffs, two Republican Congressional candidates, alleged Montgomery County illegally pre-canvassed mail-in ballots and contacted some voters whose mail ballots had defects (such as a missing signature) to give them a chance to correct the problem. Plaintiffs, whose districts included Montgomery County, argued that, since not all Pennsylvania counties were doing this, under *Bush v. Gore*, it was a federal equal protection violation for some voters to be notified about curing their ballots and others not. Plaintiffs asked the court to order the Montgomery County election officials to stop the practice of reaching out to voters and not count the ballots that had

been cured. Plaintiffs also alleged that the county was restricting the ability of “canvass watchers” to monitor the process.

- ***Hamm v. Boockvar*, No. 600 MD 2020 (Penn. Commonw. Ct.)**
 - **Closed Case**
 - **Issue: Request to stop allowing ballots with errors to be cured by the submission of provisional ballots.**
 - **11/06/20: [Order](#).** The commonwealth court granted in part and denied in part the petitioners’ request. The court ordered that all provisional ballots cast on Election Day (in cases where the voter’s absentee or mail-in ballot was timely received) be segregated and secured from other provisional ballots pending the legal determination of whether such provisional ballots were valid and could be counted. The court ordered the secretary of the commonwealth to distribute the order to county election boards statewide.
 - **Filed 11/03/20: [Petitioner’s Application](#).** Petitioners, a candidate for the U.S. House, the Pennsylvania House, and others, sought injunctive relief to (i) block Secretary of the Commonwealth Kathy Boockvar from permitting absentee and mail-in ballots that were submitted with errors to be “cured” by the submission of provisional ballots, and (ii) prohibit the state from disclosing identifying information about voters who had submitted ballots rejected for non-compliance with the Pennsylvania election code (so that party and candidate representatives could not reach out to help them cure). Petitioners contended that Secretary Boockvar’s guidance allowing election officials to provide such information to parties and candidate representatives violated Pennsylvania law (25 P.S. Sec. 3146.8) and the Pennsylvania Supreme Court’s decision in *In re November 3, 2020 Gen. Election* (Pa. Oct. 23, 2020) because it allowed voters an opportunity to cure ballot defects.

- ***In re: Motion for Injunctive Relief of Northampton County Republican Committee*, No. C-48-CV-2020-6915 (Penn. Commonw. Ct.)**
 - **Closed Case**
 - **Issue: Request to enjoin election workers from providing observers the identity of ballots with defects during pre-canvass.**
 - **11/03/2020 [Order/Ruling](#).** The court of common pleas denied the oral motion of the Northampton County Republican Committee to enjoin the Northampton Board of Elections from disclosing the identity of cancelled ballots during pre-canvassing.

- Northampton County Republican Committee made an oral motion to enjoin the Northampton County Board of Elections from disclosing the identity of voters of cancelled ballots during pre-canvassing.

Texas

- ***Gohmert v. Pence*, No. 6:20-cv-00660 (E.D. Tx.)**
 - **Closed Case**
 - **Issue: Electoral Count Act.**
 - **1/7/2021: [Application denied](#).**
 - **1/6/2021: [Emergency Application for Stay](#).**
 - **1/1/2021: [Order/Ruling](#).** The federal district court held that plaintiffs lacked standing and dismissed the case. The court said Rep. Louie Gohmert did not provide evidence of personal injury and the Arizona Republican electors did not trace their injury to the defendant.
 - **Filed 12/27/2020: [Complaint](#).** Plaintiffs, the United States Representative for Texas's First Congressional District and the slate of Republican presidential electors for the State of Arizona, alleged that the elector dispute resolution provisions in Section 15 of the federal Electoral Count Act are unconstitutional. The plaintiffs argued that the provisions violate the Electors Clause and the Twelfth Amendment of the U.S. Constitution. Plaintiffs alleged that the Electoral Count Act violates the Electors Clause by transferring the "manner of appointing" electors from the state legislatures to the state executive. Plaintiffs alleged that it violates the Twelfth Amendment because it limits the defendant's—Vice President Mike Pence's—exclusive authority and sole discretion to determine which slates of electors for a state may be counted and replaces the Twelfth Amendment's dispute resolution procedure, under which the U.S. House of Representatives has authority to choose the president. Plaintiffs sought declaratory judgment that Sections 5 and 15 of the Electoral Count Act were unconstitutional and that Vice President Pence, on January 6, 2021, would be subject solely to the requirements of the Twelfth Amendment.
- ***Texas v. Pennsylvania et al.*, No. 220155 (U.S. Supr. Ct.)**
 - **Closed Case**
 - **Issue: Decertification.**
 - **12/11/2020: [Order/Ruling](#).** In a brief statement, the U.S. Supreme Court denied Texas's motion to file a bill of its complaint, for lack of standing. The court said Texas failed to demonstrate "a judicially cognizable interest in the manner in which another State conducts its elections." Justices Alito and Thomas dissented, stating they would have permitted the motion, yet refrained from commenting on the merits.

- **12/08/2020: [Complaint](#).** The State of Texas filed a motion, on the basis of 28 U.S.C. § 1251(a) (to settle controversies between states) and the Supreme Court's Rule 17, to submit a bill of complaint against the states of Georgia, Michigan, Wisconsin, and Pennsylvania, challenging their administration of the 2020 presidential election. The complaint alleged three unconstitutional practices: 1) that defendant states' executive and judicial branches amended their election codes, in violation of the Electors Clause of the U.S. Constitution; 2) more favorable treatment of Democratic voters; and 3) that these states relaxed absentee ballot regulations, such as signature verification standards. Plaintiff cited *Anderson v. Celebrezze* for the proposition that Texas votes were diluted by the alleged maladministration in defendant states and sought injunctive relief.

Wisconsin

- ***Trump v. Wisconsin Elections Commission, No. 2:20-cv-01785 (E.D. Wis.)***
 - **Closed Case**
 - **Issue: Request that Wisconsin legislature decide results.**
 - **3/8/2021: [Cert. denied.](#)**
 - **1/11/2021: [Motion to Expedite denied.](#)**
 - **12/30/2020: [Petition for Cert.](#)**
 - **12/24/2020: [Order/Ruling.](#)** A panel of the U.S. Court of Appeals for the Seventh Circuit rejected appellant's appeal, stating, "Wisconsin lawfully appointed its electors in the manner directed by its Legislature." It upheld Wisconsin's election results and affirmed the district court's ruling that there was no violation of the Electors Clause. The panel further commented that the president's claim also fails because of the "unreasonable delay" in bringing suit.
 - **12/12/2020: [Order/Ruling.](#)** The federal district court ruled that the plaintiff failed to prove that the WEC violated his rights under the Electors Clause. The court found that the record showed Wisconsin's presidential electors were "determined in the very manner directed by the Legislature, as required by Article II, Section 1 of the Constitution." With respect to plaintiff's three complaints about the WEC's guidance on indefinitely confined voters, the use of absentee ballot drop boxes, and corrections to witness addresses, the court ruled that these were not challenges to the "Manner" of Wisconsin's appointment of Presidential Electors, but rather disagreements over election administration. "The record establishes that Wisconsin's selection of its 2020 Presidential Electors was conducted in the very manner established by the Wisconsin Legislature."
 - **12/02/2020: [Complaint.](#)** Plaintiff Donald Trump alleged that defendants, local government officials in Wisconsin, undermined the election. Specifically, plaintiff alleged that defendants ignored limits on the availability of mail-in balloting, created ballot drop boxes, misapplied the state's "indefinitely confined" exception, did not provide adequate access to poll observers, "eliminated state laws requiring that voters provide information on the mail-in ballot envelope," and permitted election workers to alter ballots. Plaintiff claimed that the alleged conduct violated both the Wisconsin election code and the U.S. Constitution's Electors Clause. As a remedy, plaintiff requested that the result of the Wisconsin election be remanded to the Wisconsin state legislature.

- ***Feehan v. Wisconsin Elections Commission*, No. 2:20-cv-1771 (E.D. Wis.)**
 - **Closed Case**
 - **Issue: Request to decertify results.**
 - **3/1/2021: [Writ denied](#).**
 - **12/09/2020: [Order/Ruling](#).** The federal district court held that it lacked the jurisdiction to grant the relief sought—“federal judges do not appoint the president in this country.” The court held that the plaintiff lacked Article III standing to sue in federal court over a state election claim. But the court went on to dismiss the claims on the additional basis of mootness.
 - **12/01/2020: [Complaint](#).** Plaintiffs, a candidate for Republican presidential elector for Wisconsin and a U.S. Congressional candidate, alleged that the Wisconsin Elections Commission violated the state election code and the U.S. Constitution’s Electors Clause. Plaintiffs alleged that the defendant commission used the Dominion voting equipment; directed clerks to keep on the absentee voter rolls individuals identified as having been “indefinitely confined” to home; permitted ballot certificates that were missing the addresses of witnesses; and, on October 19, directed clerks to fill in missing ballot information. Plaintiffs asserted that the election results must either be decertified or certified for Trump. The U.S. Congressional candidate eventually withdrew his name from the complaint.

- ***Trump v. Biden*, No. 2020CV007092 (Wis. Super. Ct., Milwaukee Cnty.)**
 - **Closed Case**
 - **Issue: Contesting Recount.**
 - **2/22/2021: [Cert denied](#).**
 - **1/11/2021: [Motion to Expedite denied](#).**
 - **12/29/2020: [Petition for Cert](#).**
 - **12/14/2020: [Order/Ruling](#).** The Wisconsin Supreme Court held that the Trump campaign was not entitled to the relief it sought. It held that the challenge to the indefinitely confined voter ballots was meritless on its face and that the challenges to the other three categories of ballots failed under the doctrine of laches.
 - **12/11/2020: [Appellant Brief](#).** Appellants, Trump and Pence, focused their objections on four different categories of ballots—each applying only to voters in Dane and Milwaukee counties. First, they sought to strike all ballots cast by absentee voters who claimed “indefinitely confined” status since March 25, 2020. Second, they argued that a form used for in-person absentee voting was not a “written application” and, therefore, all in-person absentee ballots should be

struck. Third, they maintained that municipal officials improperly added witness information on absentee ballot certifications and that these ballots were, therefore, invalid. Finally, they asserted that all ballots collected at "Democracy in the Park," two City of Madison events in late September and early October, were illegally cast.

- **12/11/2020: [Order/Ruling](#).** The court affirmed the final recount determinations of the Dane County Board of Canvassers and Milwaukee County Elections Commission.
- **12/03/2020: [Complaint](#).** Pursuant to state law, President Trump and Vice-President Pence filed an appeal and posted a surety in cash to contest the Wisconsin recount.

- ***Trump v. Evers*, No. 2020AP1971-OA (Wis. Sup. Ct.)**

- **Closed Case**
- **Issue: Request to decertify results.**
- **12/03/2020: [Order/Ruling](#).** The state supreme court denied the petition for leave to commence an original action. Judge Brian Hagedorn, concurring, specified that Wisconsin law requires that challenges to election results be brought to the circuit court.
- **12/01/2020: [Complaint](#).** Petitioners, President Trump, Vice President Pence, and the Trump campaign, asked the Wisconsin Supreme Court to void Wisconsin's election certification. Petitioners asked the court to reject early in-person absentee votes in Milwaukee and Dane counties, where the ballot envelope contained a voter certification and application. Petitioners also alleged violations of the election code with respect to "indefinitely confined" voters having different identification requirements, election workers allegedly filling in missing voter information, and pre-Election Day "Democracy in the Park" initiatives.

- ***Mueller v. Jacobs*, No. 2020AP1958-OA (Wis. Sup. Ct.)**

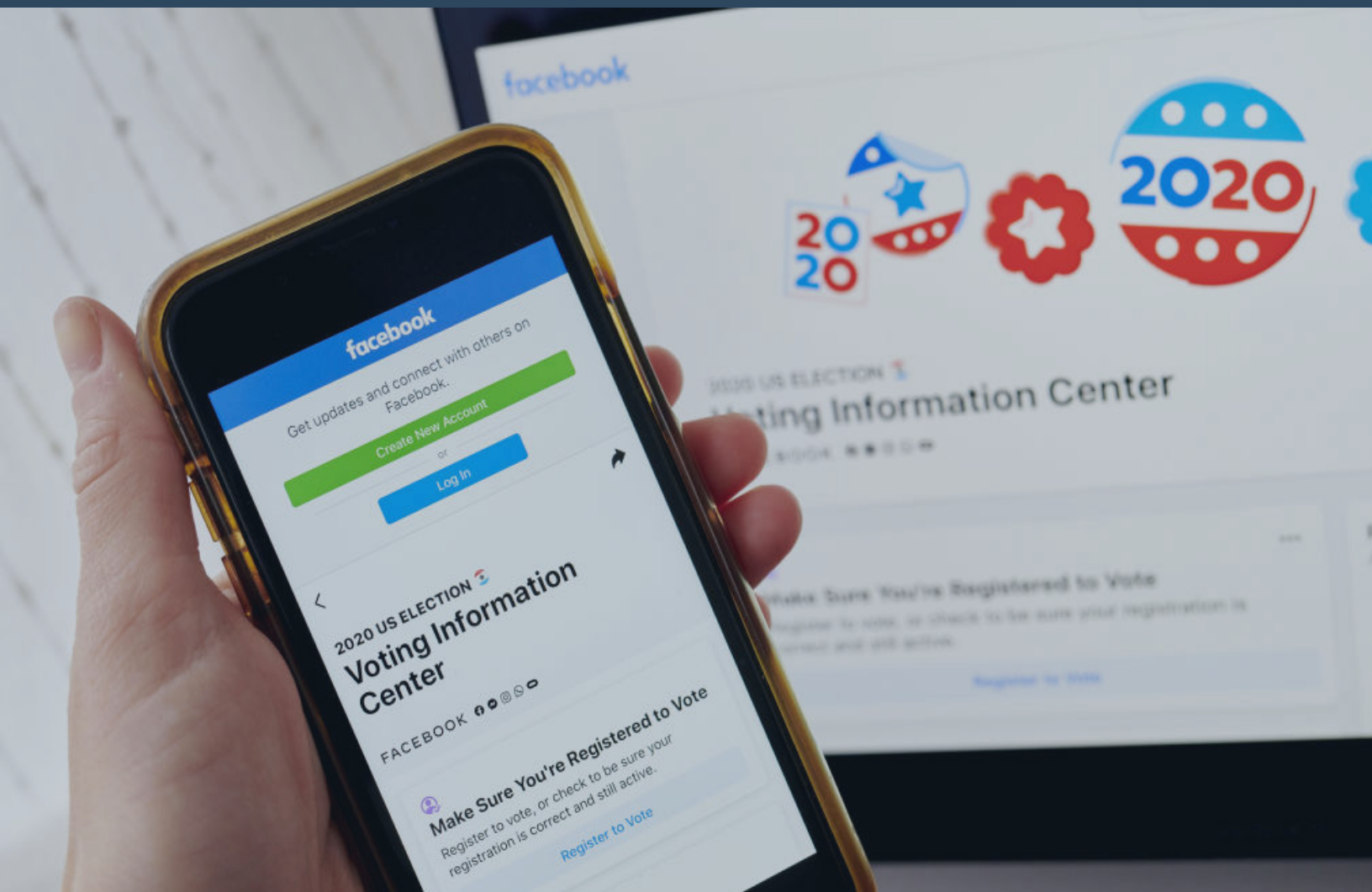
- **Closed Case**
- **12/03/2020: [Order/Ruling](#).** Petition for leave to commence an original action was denied.
- **11/27/2020: [Complaint](#).** Petitioner, a Wisconsin voter, requested that the Wisconsin Supreme Court take original jurisdiction over his case, in which he alleged that Wisconsin's ballot drop boxes and all ballots placed in such drop boxes were illegal. Petitioner alleged that the Wisconsin Election Commission improperly made law by advising counties to establish such drop boxes.

- ***Wisconsin Voters Alliance v. Wisconsin Election Commissions*, No. 2020AP1930-OA (Wis. Sup. Ct.)**
 - **Closed Case**
 - **Issue: Request to block certification of results, Private-Public partnership.**
 - **12/04/2020: [Order/Ruling](#).** The Wisconsin Supreme Court denied the petition, saying that “issues of material fact” prevented the court from addressing the legal issues presented. Justice Brian Hagedorn, in his concurrence, explained that the petition “falls far short of the kind of compelling evidence and legal support we would undoubtedly need to countenance the court-ordered disenfranchisement of every Wisconsin voter.”
 - **11/23/2020: [Complaint](#).** Petitioners, 30 Wisconsin voters and a Wisconsin voter confidence group, alleged that the Mark Zuckerberg-funded Center for Technology and Civic Life, which granted money to municipalities to help them conduct elections, circumvented absentee ballot laws and caused illegal votes to be cast, without which Trump would have won Wisconsin. Petitioners asked the court to block certification of the state’s results.

- ***Langenhorst v. Pecore*, No. 1:20-cv-01701 (E.D. Wis.)**
 - **Closed Case**
 - **Issue: Request to exclude the votes of counties with alleged voting irregularities from the state's overall vote count.**
 - **11/16/2020: [Dismissed](#).** Plaintiffs voluntarily dismissed their lawsuit.
 - **11/12/20: [Complaint](#).** Plaintiffs, three Wisconsin voters, stated that Wisconsin had many absentee ballots this year and that there was a “fraud risk inherent” in mailed ballots. Plaintiffs further alleged that votes in the name of three deceased individuals were cast in Wisconsin and that voters who had received absentee ballots voted in person, after election officials tore up their unvoted absentee ballots. Plaintiffs claimed that these practices violated plaintiffs' fundamental right to vote by diluting their votes. They sought to exclude the presidential vote count from three counties from the state's overall total.

CHAPTER 6

TECHNOLOGY PLATFORMS AND MISINFORMATION



CHAPTER 6: TECHNOLOGY PLATFORMS AND MISINFORMATION

INTRODUCTION

Because of the various controversies involving social media and the 2016 election, concerns about disinformation and the ways social media companies would address it preoccupied observers of the 2020 campaign even before the pandemic complicated the election's administration. Companies, like Google and Facebook, set out to address those concerns by adopting measures to limit the reach of disinformation and to dilute its impact by promoting authoritative information on the voting process. The spectre of foreign sponsored disinformation, which had gained great attention with the Russian meddling in the 2016 election, was quickly replaced in significance, though, by organized domestic sources spouting lies about the voting process. The pandemic's destabilization of election administration and adaptations, such as the massive shift to mail balloting, helped fuel conspiracy theories about the voting process and unfounded claims of widespread fraud even before a single ballot had been cast. After the election, during the vote count and related litigation, and in the intervening period culminating in the disrupted January 6th meeting of Congress, the conspiracy theories spread broadly online. Although the platforms had attempted to promote accurate information about the vote casting and counting process, those efforts could never compete with the volume of disinformation disseminated by the Trump campaign itself and its supporters in the media (social or otherwise).

These concluding reports to our volume provide updated descriptions of civic information tools developed on key internet platforms (such as Facebook's Voting Information Center) and a listing of state-specific election misinformation narratives that appeared online. For a more thorough examination of election-related misinformation and social media, please see the report, "[The Long Fuse: Misinformation and the 2020 Election](#)," prepared by our sister project at Stanford, The Election Integrity Partnership (eipartnership.net). A summary of each report follows.

Civic Engagement and Internet Platforms

The 2016 election represented a turning point in the public's view of social media companies and the role they play in elections. After experiencing four years of unrelenting criticism for their mistakes related to disinformation and foreign interference in 2016, these companies looked to the 2020 election as an opportunity for redemption. In addition to adopting new policies regarding disinformation and other content violations, they also took proactive steps to help

facilitate voter registration, poll worker recruitment, voter education, and other forms of civic participation. This chapter examines election-related policy changes and initiatives designed by Facebook/Instagram, Google/YouTube, Snapchat, Twitter, and TikTok. This chapter relies largely on the policies and accomplishments as stated by the companies themselves, given that the firms provide very limited data to outsiders relating to the success of their policies. Their efforts to provide accurate information and tools for voters to navigate the election may not have been able to compete with self-serving propagation of disinformation from the Trump campaign and its supporters. Nevertheless, the role that the platforms played in facilitating participation and informing the public about voting-related changes codified their position as key players in the administration of the election.

Social Media Misinformation and Administration in the 2020 General Election

Following the conclusion of the 2020 general election, the perception of fairness in American elections became increasingly politically polarized. The attack on the U.S. Capitol on January 6, 2021, was driven in part by high profile political figures promoting unproven claims of widespread election fraud. Many of these claims had originated on or had been spread through viral social media posts created on or shortly after Election Day. This report traces many of the narratives and viral falsehoods that focused on election administration in eight key states, as well as analyzes national patterns in election-related disinformation.

Civic Engagement and Internet Platforms

March 10, 2021

Authors: Bronte Kass, Michelle Ly, Chase Small, Liv Jenks, and Mikaela Pyatt

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I. Introduction

The 2016 Election represented a turning point in the public's view of social media companies and the role they play in elections. After experiencing four years of unrelenting criticism for their mistakes related to disinformation and foreign interference in 2016, these companies looked to the 2020 election as an opportunity for redemption. In addition to adopting new policies regarding disinformation and other content violations, they took proactive steps to help facilitate voter registration, poll worker recruitment, voter education, and other forms of civic participation. This memo examines election-related policy changes and initiatives designed by Facebook/Instagram, Google/YouTube, Snapchat, Twitter, and TikTok.¹

In the run-up to the 2020 U.S. elections, social media platforms launched a series of initiatives related to voter registration and civic engagement. With hundreds of millions of users, technology companies are well positioned to influence the attitudes and behaviors of their audiences. [According to the Pew Research Center](#), in 2018, roughly three-quarters of the public used one or more of eight platforms (Twitter, Instagram, Facebook, Snapchat, YouTube, WhatsApp, Pinterest, and LinkedIn), with a typical (median) American using a minimum of three of these platforms. Usage of digital communication technologies has only increased since then, especially in the pre-election period as the coronavirus pandemic made Americans ever more reliant on technology and connectivity.

Following the 2016 U.S. presidential election, during which foreign interference and misinformation played an influential role, several technology companies were criticized for inaction towards abuse on their platforms. Consequently, many platforms designed new initiatives and introduced changes to their policies, enforcement mechanisms, and products for the 2020 U.S. presidential election.

Facebook/Instagram, Google/YouTube, Snapchat, Twitter, and TikTok, in particular, have taken steps to promote voter registration and civic education. For example, through the creation of the Voter Information Center, Facebook claims to have reached its goal of registering [over 4 million Americans](#) to vote by providing verified information from election officials and nonpartisan partners. Google added [over 125,000 early voting locations](#) to its Google Maps tool

¹ This chapter relies largely on the policies and accomplishments as stated by the companies themselves, given that the firms provide very limited data to outsiders relating to the success of their policies. Moreover, this chapter does not deal with the problem of pervasive online disinformation, which is covered separately in a chapter dedicated to that purpose. Finally, those wishing to evaluate the success of the platforms' policies confronting election-related disinformation should refer to the work of the Election Integrity Project, and its report: [The Long Fuse: Misinformation and the 2020 Election](#).

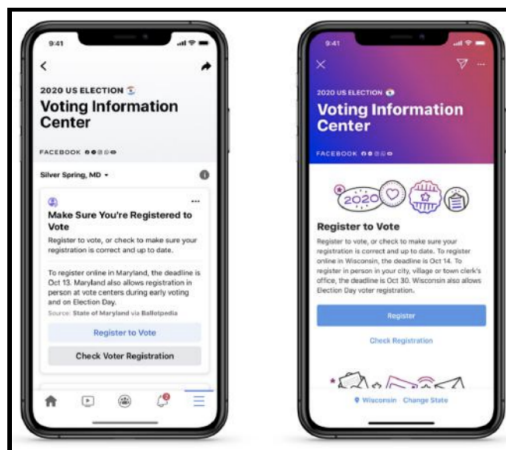
and updated its search features for voter registration and information on a state-specific level. The company's voter engagement features were seen [nearly 500 million times](#), and reminders for "how to register" and "how to vote" were viewed [over 2 billion times](#) by users across the country using Google Search, Google Maps, and YouTube.

Snapchat undertook a different approach by designing four applications on its platform: a voter registration tool, voter guide, user-specific sample ballots, and checklist. By October, more than [one million users](#) had registered to vote, surpassing the company's 2018 record when similar tools were rolled out. In parallel with multiple policy and enforcement changes, Twitter launched [an election hub](#) that communicated information on voter registration, early voting, and voting safely during the coronavirus pandemic. And, TikTok created [an in-app guide](#) to the 2020 U.S. elections that was accessible for 100 million platform users.

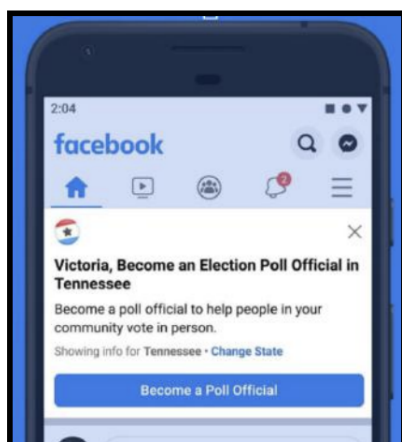
II. Specific Initiatives

A. Facebook/Instagram

In June 2020, Facebook announced its plan to launch ["the largest voting information campaign in American history"](#). With a goal of registering four million new voters, the company unveiled [the Voting Information Center](#), through which it expected to reach at least 160 million Americans. Facebook CEO Mark Zuckerberg [announced](#) that, in the tool's first three days, nearly 24 million clicks were driven to registration websites. By late September, the tool recorded [39 million visits](#), and the company projected that [an estimated 2.5 million Americans](#) had registered to vote across Facebook, Instagram, and Messenger (Facebook's messaging platform) collectively. By late October, [4.4 million Americans](#) had registered to vote via Facebook products.



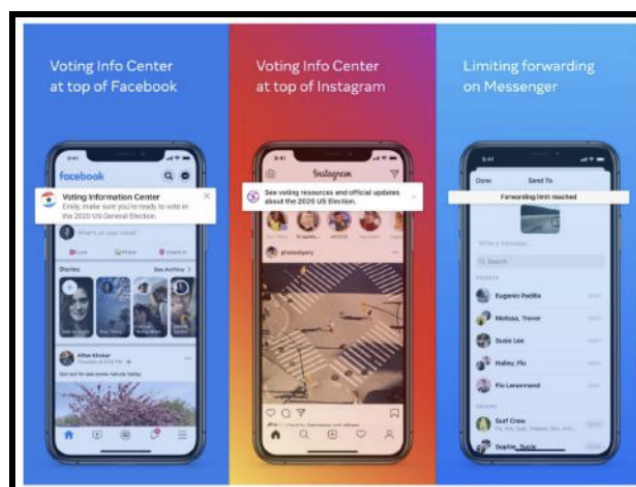
[Critics suggested](#), however, that the effort got off to a slow start, since the Voting Information Center was not launched until August, two months after the initial announcement. Moreover, a planned voter registration drive, originally intended to run on July 3rd and 4th across all of Facebook's platforms (Facebook, Instagram and Messenger), ran only on Facebook for one day.

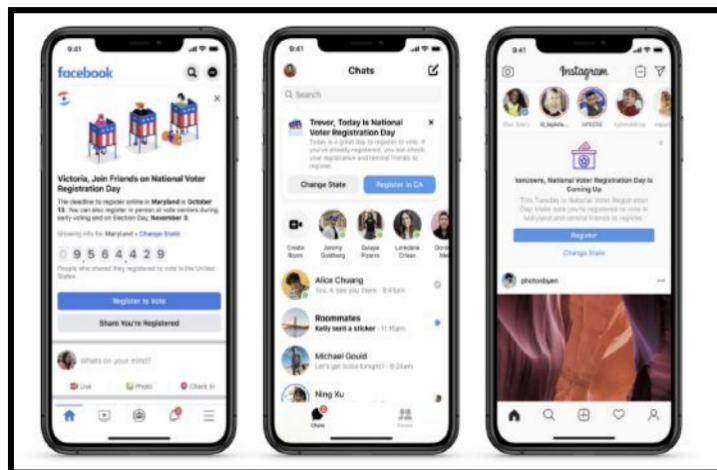


Facebook incorporated elements from its Coronavirus Information Center in crafting the Voting Information Center, which served as the company's primary tool for providing platform users with information about how to register and vote. Notifications were sent at the top of Instagram and Facebook and targeted users by age and location, so individuals of voting age could view relevant information in their state. The tool helped users check registration status or register directly through a state elections board or [TurboVote](#), a nonprofit service providing voting information.

[Available in 12 languages](#), the Voting Information Center sourced its information directly from election officials, as well as partners such as [VoteRiders](#), [Ballotpedia](#), and [the Bipartisan Policy Center](#). It summarized state-specific vote-by-mail information, upcoming deadlines, and early voting options. It also displayed information for U.S. voters who serve in the military or live overseas. The tool featured opportunities for platform users to serve as poll workers and provided state election authorities with free ad credits to assist with poll worker recruitment. Alongside this effort, Facebook scaled up [poll worker recruitment](#) by pushing a message to U.S. users over the age of 18 and offering paid time off to its U.S.-based employees who volunteered to staff the polls.

The Voting Information Center also functioned as a component of [Facebook's approach to preventing election interference](#). A voting alert feature helped state and local authorities reach constituents with important voting-related updates, and Facebook added labels to federal politicians' posts that discussed voting. Facebook ran a campaign for the company and its apps together—titled ["More Questions, More Answers"](#)—to encourage individuals to use the Voting Information Center. The campaign was featured across national broadcast, cable, radio, and digital homepage takeover ads within lifestyle and news outlets. Facebook Watch hosted [a special Vote-A-Thon 2020](#) stream to promote voter registration using notable public figures as guests.





In September, Facebook [announced](#) additional updates, including plans to publish information (e.g., video tutorials about absentee voting; state deadlines for registration and voting) on a daily basis at the top of Facebook and Instagram until Election Day. Furthermore, the platform [collaborated](#) with officials to remove misinformation related to voting; to highlight on its feeds accurate information about voting safely; to attach informational labels

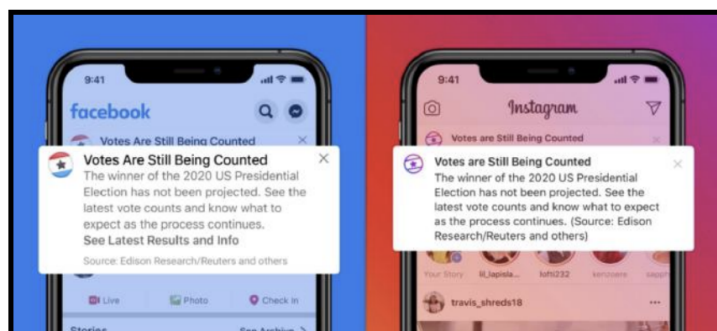
to content seeking to delegitimize the outcome of an election or the legitimacy of voting methods; and to protect election officials from threats of violence and harm. For National Voter Registration Day, September 22, Facebook unveiled a campaign with a multi-day promotion of notifications about voter registration across Facebook, Messenger, and Instagram, and added themed stickers, new challenges, and a designated “Register to Vote” story.

WhatsApp, another messaging platform owned by Facebook, collaborated with the Poynter Institute’s International Fact-Checking Network to create a fact-checking chatbot. The chatbot, available in [English](#) and [Spanish](#), provided voting information for the 2020 election. Similarly, WhatsApp created a chat feature with [Vote.org](#) to provide users with information and help, if necessary.

Beginning October 27, Facebook [temporarily paused](#) new political and issue ads. Some experts [contended](#) this pause would muzzle important speech (e.g., time-sensitive reminders) and disproportionately burden challenger campaigns, while favoring more powerful incumbents. All political ads were paused after the polls closed on November 3 in an effort to reduce opportunities for abuse or confusion. On December 16, the company [re-allowed political ads in Georgia](#) during the lead-up to the U.S. Senate runoff elections on January 5, 2021, after which the ban was reinstated. As of March 2021, the pause on social issues, electoral, or political ads on the platform remained in effect.

Facebook launched [The Elections Operations Center](#) in 2018 for real-time monitoring of potential abuse across the network. A parallel viral content review system was in operation to flag posts and serve as an additional safety net. One month prior to the 2020 election,

Facebook banned all accounts representing [the QAnon conspiracy theory](#) and [suspended](#) its practice of recommending political groups to users based on their demonstrated interests. Instagram temporarily [removed](#) a feature from its hashtag pages to slow the spread of



misinformation. In [an error](#), however, Instagram's 'Tomorrow is Election Day' notice was cached for users who had not restarted the app and appeared at the top of their app on Election Day itself, November 3. Instagram [declined](#) to publicize the number of individuals affected by the caching issue.

Regarding [election results](#), Facebook and Instagram acted quickly to display notifications and apply labels to candidates' posts, directing users to its Voting Information Center for facts. To determine projected winners, Facebook [specified](#) it would use "consensus results from the National Election Pool/Edison via Reuters, the Associated Press, and six independent decision desks at major media outlets." Specific information [was provided](#) to alert users about races where the counting process was ongoing and a winner had not yet been determined. Warnings were placed on at least [150 million posts](#) debunked by fact-checkers. Despite Facebook contending that labels provided context, some users, especially political conservatives, levied criticism of these policies and [shifted their messaging to alternative sites](#).

Facebook removed content that featured weapons in polling places or that appeared to be coordinating election interference by a group. In tandem with this policy, Facebook also [removed](#) calls for poll watching that used militarized language or language that suggested a goal of intimidating, exerting control, or displaying power over election officials or voters. For example, [Facebook removed the "Stop the Steal" group](#), which accumulated over 360,000 members, on November 5 for promoting false claims and organizing in-person protests. The morning of its removal, [interactions](#) in the group had increased to 36 posts a minute. Because of increased activity by individual users and groups to coordinate potentially violent actions, Facebook introduced [interim measures](#) to reduce the spread of viral election misinformation, including demoting content on the News Feed, limiting distribution on election-related Facebook Live streams, and adding friction (i.e., forcing people to perform an additional click or two before being able to complete a post). It also [suspended](#) accounts behind inauthentic behavior, such as fake accounts or users who misrepresented themselves on social media.

Facebook developed tools to assist users voting in the U.S. Senate runoff elections in Georgia. With the aim of helping users in Georgia register and vote, information about voter registration,

in-person voting, and vote-by-mail ballot requests and returns [was provided](#) at the top of Facebook and Instagram in multiple languages. Facebook [labeled](#) content that sought to delegitimize voting, providing accurate information from the Bipartisan Policy Center and directing users to the Voting Information Center. To address voter suppression, misinformation, and interference, Facebook [announced](#) it would continue to use the teams and technology it used in the general election to protect election officials' accounts in the Georgia runoffs; to stop coordinated networks from running influence operations to manipulate public debate; to enforce voter interference policies; and to work with state authorities to identify and stop potential voter suppression; among other efforts. In a December [update](#), Facebook explained that its ad pause would be lifted starting December 16th for authorized advertisers running ads about social issues, elections or politics specifically in Georgia.

Nevertheless, many critics viewed the platform as an engine of harm for enabling viral disinformation. After the platform temporarily lifted its ad pause in Georgia for the runoff election, research [assessed](#) that "News Feeds became dramatically more partisan and less informative" for users in Georgia, with political content from news organizations such as the *Atlanta Journal-Constitution* or *The Wall Street Journal* replaced by paid political content. Numerous ads that were demonstrably false were [promoted](#) on the site, even after Facebook moderators had taken down earlier versions. Although their specific critiques differed, both political conservatives and liberals [expressed](#) grievances over Facebook's handling of ads during the Georgia runoff.

Facebook also faced criticisms that its platform specifically fueled far right misinformation. A 2021 Cybersecurity For Democracy [study](#) surveying 8 million posts from 3,000 accounts found that far right misinformation Facebook accounts drove 65% more engagement per follower than other far right pages. Sources of misinformation categorized as "slightly right" marginally outperformed non-misinformation content; in all other partisan categories, misinformation sources did not drive engagement as much as non-misinformation sources. In response, a Facebook spokesperson emphasized the difference between engagement and total viewers, and claimed that data (which the company did not cite or release) demonstrated that the total reach of misinformation posts was "not at all as partisan as this study suggests." A researcher on the study further [criticized](#) Facebook for its lack of transparency in "how it tracks impressions and promotes content."

B. Google/YouTube

In parallel with equipping campaigns against threats, Google supported election-related communications by educating voters, connecting individuals, and enhancing election security

and transparency. YouTube released [a summary](#) that similarly reviewed its support of and policies surrounding elections.

In helping voters access information from official sources, Google released [two new Google Search features](#) which provided detailed information about how to vote and how to register to vote. If a Google user searched “how to register to vote,” relevant state-specific information would appear, including deadlines and registration options. For example, a user in North Carolina would see the following:

How to register to vote
2020 US general election

State
North Carolina

North Carolina offers [online voter registration](#). You can register by mail to vote in North Carolina by printing a voter registration form, filling it out, and mailing it to your local election office. You can also register to vote in person if you prefer.

Who can vote

To register in North Carolina you must:

- be a citizen of the United States
- have lived at the registered address for at least thirty days immediately before the next election at which you want to vote
- be 18 years of age by the day of the next general election
- have your rights of citizenship restored if you have been convicted of a felony and completed your felony sentence including probation, post release supervision, parole or a prison term
- not be registered or vote in any other county or state
- **find more information on voting rights restoration [here](#)*

The tool also offered information in a dropdown menu about voter registration online, by mail, on Election Day, in-person, and for military and overseas voters.

Similarly, if a user searched for “how to vote,” the search engine generated details on any requirements, registration and voting deadlines, and guidance for different means of voting, i.e., in-person or by mail. A user in Wisconsin would therefore see the following:

How to vote
2020 US general election

State
Wisconsin

Election day is Tuesday, November 3, 2020. Wisconsin will mail all registered voters an application to vote absentee prior to the election. You can also vote in person. Wisconsin offers early voting.

Vote in person

Vote on election day
Voters registered in Wisconsin can look up where to vote on [Wisconsin's site](#).

Vote early
Wisconsin voters can also vote before Election Day through a process called absentee in-person voting. The period for absentee in-person voting runs from Tuesday, October 20, 2020 to Sunday, November 1, 2020, but dates and hours may vary based on where you live.

What to bring

- You will need to show a photo ID to vote in Wisconsin. An acceptable photo ID is not required to contain a current address. These photo IDs are acceptable and can be unexpired or expired after the date of the most recent general election, currently, the November 6, 2018 election: Wisconsin DOT-issued driver license, even if driving privileges are revoked or suspended; a Wisconsin DOT-issued identification card; military ID card issued by a U.S. uniformed service; U.S. passport; an identification card issued by a federally recognized Indian tribe in Wisconsin
- The following photo ID is also acceptable for voting purposes, and can be expired after November 6, 2018: a photo identification card issued by a Wisconsin accredited university or college that contains date of issuance, expiration date no later than two years after issuance, and signature of student (must be accompanied by a separate document that proves enrollment).
- The following photo IDs are also acceptable for voting purposes, but must be unexpired: a veteran's photo identification card issued by the Veterans Health Administration of the federal Department of Veterans Affairs; a certificate of naturalization that was issued not earlier than two years before the date of an election at which it is presented; a driving receipt issued by Wisconsin DOT (valid for 45 days); an identification card receipt issued by Wisconsin DOT (valid for 45 days).
- Voters without ID: If you are unable to provide photo ID, you will be able to vote a provisional ballot. Your provisional ballot will not count unless you provide an acceptable photo ID to your municipal clerk in person by 4:00 p.m. the Friday after the election.

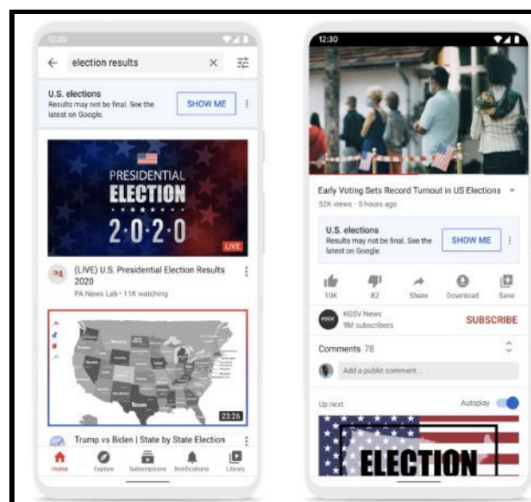
In collaboration with non-partisan, third-party partners, such as [Democracy Works](#) (a team of software developers, public policy experts, and civic organizers), Google aggregated official data from state and county election administrators and provided links to official state government websites. The company updated its ["2020 US Election" experience on Google News](#) to include extensive coverage of major issues, live-streams of major events, and reminders of registration and voting timelines. It also promoted YouTube as a platform for people to access and watch political debates and live-streamed events, emphasizing attempts to [elevate](#) "quality content" from authoritative voices for election-related search results that were previously prone to misinformation.

Through a partnership with the University of Southern California Annenberg School for Communication and Journalism program, Google expanded [its efforts](#) to protect political campaigns from digital attacks, aiding nearly 4,000 participants in all 50 states. As part of Google's [Civics Outreach Virtual Training Series](#), Google held [21 training sessions](#) for more than 900 candidates, public officials, campaigns, and nonprofit leaders and [a total of 45 trainings](#) for nearly 3,000 election workers learning to use Google tools and better connect with voters through digital events. Alongside these initiatives, Google created [Protect Your Election](#), a suite of free tools to protect candidates, campaigns, and journalists from phishing scams and denial of service (DoS/DDoS) attacks. Protect Your Election aimed to support campaigns and ensure that voters received transparent, accurate, and reliable information. And Google subsequently distributed [over 10,500 Advanced Protection kits](#) (including [free security keys](#), that are the strongest form of two-factor authentication).

Google committed to enforcing policies against [advertisements](#) that undermined the democratic process, such as those promoting false information about the U.S. Census or voting process, but it announced that it expected to take action on a limited number of political ads. Google said it would take action [only on ads that included clear violations](#) of its policies or [illegally obtained materials](#), adding that “robust political dialogue is an important part of democracy, and no one can sensibly adjudicate every political claim, counterclaim, and insinuation.” The Tech Transparency Project, however, found that Google users who typed in such search terms as “register to vote” and “vote by mail” were presented with ads linking to websites that charged large registration fees to register, harvested user data, or planted software on devices. Google later [removed](#) those ads, saying it did not know how the ads got past its policy. Google enforced its Sensitive Events ad policy after the polls closed, temporarily pausing over five million ads as results were certified; the pause [was lifted](#) for advertisers in early December.

In October, [Google Search and Maps](#) began displaying information about voting or ballot drop box locations (e.g., if a user searched “early voting locations” or “ballot drop boxes near me”). From mid-October until Election Day, [over 125,000 locations](#) were added to Google Maps. Google Assistant also could share details about the locations on an enabled phone, smart speaker, or Smart Display.

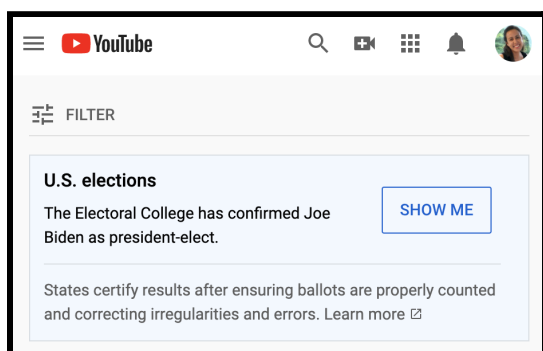
[In collaboration with The Associated Press](#), Google provided election results on federal and state-level races in over 70 languages through Google Search and Google Assistant. Real-time election search results were consulted by users [more than six times](#) as much in 2020 as in 2016, and YouTube’s link to [this feature](#) in its election results information panel was shown [over 4.5 billion times](#). Voter engagement features were seen [nearly 500 million times](#), while reminders for “how to register” and “how to vote” were seen [over 2 billion times](#) across the country on Google Search, Google Maps, and YouTube.



YouTube claims that it elevated authoritative content, reduced the spread of borderline content, removed videos, and created [information panels](#) for federal and presidential candidates and voting by mail. YouTube’s community guidelines prohibit misleading claims about voting or content encouraging voting interference, in addition to prohibiting harassment, deceptive practices, hate speech, and incitement of violence. YouTube promoted links to

relevant information on its homepage, including Google's [how to vote feature](#) and [where to vote feature](#). Election night live streams and coverage from what it deemed authoritative news providers were available on YouTube and elevated related news and information queries in the search results and "watch next" panels. YouTube claims that the recommendations system sought [to limit](#) the spread of borderline content and election-related misinformation.

From September through early December 2020, YouTube claims that it removed [thousands of channels and videos](#) that violated site policies, with more than 77% of them removed before reaching 100 views. Information panels from third-party fact checkers were triggered [over 200,000 times](#), including voter fraud narratives. [According to YouTube](#), 88% of videos in the top 10 most searched results related to elections were from what it described as authoritative news sources. Over 70% of the video and channel recommendations on election-related topics came from authoritative news sources, YouTube claims. YouTube [noted](#) that on election-related content, the top 10 authoritative news channels were recommended over 14 times more frequently than the top 10 non-authoritative channels.



YouTube's policy was seen by some as a ["light-touch approach"](#) towards misinformation relative to other platforms. Its policy [was denounced](#) by many critics, including those who noted that [videos falsely endorsing widespread fraud](#) were viewed [over 138 million times](#) during the week of November 3. Researchers identified nearly 5,000 videos that mentioned voter fraud, with a combined 409 million views. The company [acknowledged](#) that there was room for "ongoing

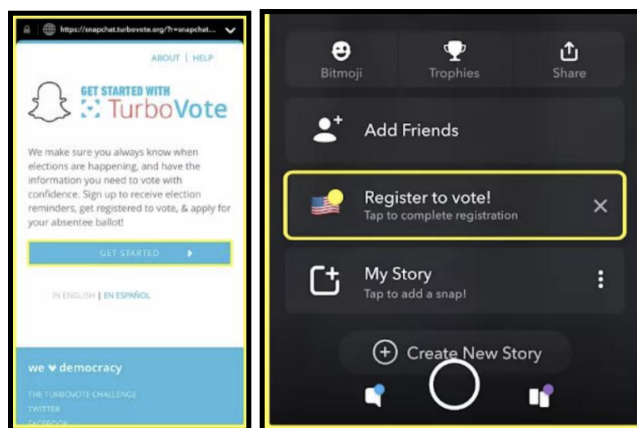
improvements" and that videos which were not prominently recommended continued to receive a high number of views. YouTube [said](#) it "understands the need for intense scrutiny on our elections-related work... to ensure we are striking a balance between allowing for a broad range of political speech and making sure our platform isn't abused to incite real-world harm or broadly spread harmful misinformation." On December 9, YouTube [announced](#) that, given the fact that enough states had certified their presidential results to have essentially determined the winner, it would begin removing uploaded content "alleging that widespread fraud or errors changed the outcome of the 2020 U.S. Presidential election."

C. Snapchat

During the 2018 U.S. midterm elections, [Snapchat](#) partnered with [TurboVote](#) to promote [National Voter Registration Day](#) to its users. Democracy Works reported that [450,000 individuals](#) on Snapchat used the tool to register successfully in 2018, of whom [57% cast a ballot](#). In the 2020 general election, [over 1 million Snapchat users](#) registered to vote via the app, surpassing Snapchat's 2018 record. In partnership with [Get to the Polls](#), Snapchat also helped [users determine their voting locations](#) using its Snap Map feature, a location sharing and mapping tool.

For the 2020 U.S. presidential election, Snapchat promoted four applications on its platform, with features that included a voter registration tool, voter guide, user-specific sample ballots, and checklist:

1. *Voter Registration.* The voter registration tool allowed users [to register to vote](#) directly on Snapchat, and it included a tracker to monitor how many users had registered through the app. (By mid-September, [over 400,000 users](#) had already registered using the tool.) [Its voter registration initiative](#) also pushed alerts and reminders to U.S. users when their profiles indicated they turned 18, with directions about registering to vote. The messages contained a link to a TurboVote registration page, which was also accessible from relevant news stories on the platform. Snapchat encouraged users to register and vote with curated "Our Stories" centered on the election and an "I'm Registered to Vote" filter. Throughout the fall, nonpartisan public service announcements featured notable politicians and celebrities.



2. *Voter Guide.* The voter guide featured [resources](#) from initiatives and organizations, such as the NAACP, the ACLU, BallotReady, Democracy Works, APIA Vote, I Am a Voter, Vote Early Day, and National Voter Registration Day.

3. *"Before You Vote."* Created in partnership with BallotReady, this feature [informed](#) users on how to vote and voting options (e.g. in-person voting, vote-by-mail, etc.) offered within their state.

4. *Voter Checklist*. Lastly, the voter checklist was [an interactive platform](#) to ensure that users were registered and ready to vote; this tool was a key part of Snapchat's effort in registering thousands of voters in 2018.

Snapchat claimed that its 100 million U.S. users included [75% of](#) people in the U.S. between the ages of 13 and 34. It also claimed that 80% of its U.S. users were of voting age, and that between 300,000 and 500,000 users turned 18 every month. By October, [over one million users](#) had registered to vote on Snapchat, surpassing Snapchat's 2018 record. Over 80% of these individuals were younger than 30 years of age.

D. Twitter

For the 2018 midterm elections, Twitter designed several initiatives related to voter registration and civic engagement. The [#BeAVoter campaign](#) promoted voter registration and election-related information and became the top U.S. trend on the platform. The 2018 U.S. midterm elections were [the most Tweeted-about midterm elections in history](#). In addition, five days before the 2018 elections, U.S. users saw [an Election Day countdown](#) on the site. [In the week before Election Day](#), users saw labeled accounts approximately 100 million times per day. Twitter also partnered with TurboVote; [68% of Twitter users](#) who viewed TurboVote's resources turned out to vote.



[For the 2020 election](#), Twitter says it undertook numerous policy, enforcement, and product changes to “add context, encourage thoughtful consideration, and reduce the potential for misleading information to spread on Twitter.” In September 2020, Twitter created a “2020 US Election” [hub](#) to help platform users access accurate information and guidance on voter registration, early voting and voting safely during the coronavirus pandemic. (In an update from the 2018 elections, political ads—including those from state-owned media—were [banned](#) from the platform beginning October 2019.)

Appearing at the top of the “Explore” tab, [the election hub](#) provided information about poll worker recruitment, and featured local news and resources. It included a series of public service announcements that ran through Election Day. Related news in English and Spanish, as

well as live-streamed debates and other major events, was also available. Platform search results about voter registration led [with official sources](#). Timely updates were shared on [TwitterGov](#) and [TwitterSupport](#).

In late September, in partnership with [National Voter Registration Day](#) Twitter [launched](#) new tools and in-app experiences: 1) a timeline prompt encouraging U.S. users to register to vote or confirm their registration via TurboVote; 2) a push alert directing users to a landing page with additional registration information; 3) a promoted campaign with registration resources; and 4) a Twitter hashtag emoji with #VoteReady and #NationalVoterRegistrationDay to empower civic engagement. Both the prompt and push alerts were available in over 40 languages. [A new voter registration search prompt](#) directed individuals who searched for key terms related to voter registration toward official sources. Twitter also launched efforts within the company: employees were provided with resources through [PowerThePolls](#) to sign up to serve as poll workers.

To inform users about primary and presidential election candidates, Twitter used the same [Election Labels](#) it initially launched in 2018. Through its partnership with [Ballotpedia](#), Twitter [identified](#) the accounts of candidates for U.S. House of Representatives, Senate, or Governor who qualified for the general election ballot based on users' location. Twitter also [announced](#) the proactive implementation of several security measures for designated election-related accounts (e.g., U.S. Executive Branch; Congress; Governors; Secretaries of State; presidential campaigns; political parties; candidates for U.S. House, Senate, or Governor; and major news outlets and political journalists).

Furthermore, Twitter expanded [its civic integrity policy](#) to clarify how the site would address misleading information about elections or other civic processes, and it selectively turned on a labeling tool. To confirm the results of a U.S. election, Twitter [required](#) an announcement from state election officials or public projections from at least two national news outlets that made independent calls (ABC News, Associated Press, CBS News, CNN, Decision Desk HQ, Fox News, and NBC News). Tweets that falsely claimed a win for any candidate [were labeled](#) as false to provide context but were not removed from the platform; when other users attempted to retweet these messages, they would see a prompt directing them to what Twitter determined was credible information about the topic. Such false messages were also demoted in the platform's recommendations systems. Tweets encouraging violence or calling for interference with election results or the operation of polling places [were supposed to be removed](#), although the success of those efforts remains unknown.

Twitter implemented several other notable product changes. To encourage users to add their own thoughts and perspectives to a conversation, rather than just retweet an article they had not yet read, Twitter [urged](#) users to use “quote tweets”—retweets with a comment. Twitter said this change [did successfully slow](#) the spread of misleading information through a 20 percent reduction in the amount of sharing on the service. Nevertheless, by mid-December, Twitter [decided](#) it would no longer promote quote tweets, because the feature did not appear to increase context (nearly 50% of additional quote tweets included just a single word, and 70% contained fewer than 25 characters). Twitter re-enabled standard retweet behavior.

Next, to slow the spread of tweets from certain accounts and election topics, the company [stopped](#) the appearance of “Liked by” and “Followed by” recommendations from accounts whom users did not follow. However, Twitter did not see a statistically significant difference in the spread of misinformation, nor any meaningful reduction in abuse reports as a result of the paused recommendations, and it [reversed](#) the change in mid-November. Finally, Twitter added more human oversight and altered the trending topics in the “For You” tab to [surface](#) only with the inclusion of additional context. Consequently, there was a significant reduction in reports but also a limitation on the number and breadth of trends available to be shown to users. Twitter, therefore, [decided](#) to continue reviewing and adding context but not make it a requirement.

To support early voting efforts in late October, Twitter [announced](#) that all accounts located within the United States would begin to see: 1) a home timeline prompt designed to encourage early voting; 2) interactive features on all tweets with the hashtags #VoteEarly, #IVoted, #IVotedEarly, and #YoVoté; and 3) a push alert towards a public service announcement with additional early voting resources. In partnership with the National Association of Secretaries of State (NASS) and the National Association of State Election Directors (NASSED), Twitter [hosted](#) over one dozen Twitter Q&A events with chief election officials in order [to answer questions](#) about the election process. [A series of pre-bunk prompts](#), designed to pre-emptively debunk false information and remind individuals that election results were likely to be delayed and that voting by mail is safe and legitimate, was viewed 389 million times.

Ultimately, record levels of election-related conversation took place on Twitter in 2020. Between October 27 and November 11:

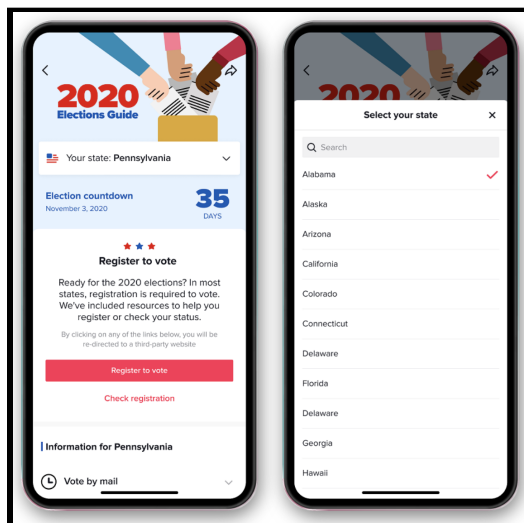
- Approximately 300,000 Tweets were labeled as disputed or potentially misleading content, representing 0.2% of all US election-related Tweets sent during this period;

- 456 of those Tweets were also covered by a warning message and had limited engagement features (i.e., tweets could be quote tweeted but not retweeted, replied to, or liked);
- Approximately 74% of the users who viewed those tweets saw them after the label or warning message was applied;
- Due to a warning prompt, there was a nearly 30% decrease in quote tweets of these labeled tweets.

Twitter affirmed that it would “continue to apply labels to add context and limit the risk of harmful election misinformation spreading without important context.” In [an update](#), the platform noted that it would share a comprehensive report on the election in early 2021; the platform had not published the report as of March 2021.

E. TikTok

As part of [its larger efforts](#) to support the integrity of U.S. elections, TikTok launched [an in-app guide](#) to the 2020 U.S. elections. This tool was accessible to platform users through the Discover page, election-related search results, and videos from verified political accounts. Through the guide, information was provided for 100 million Americans: on voting in every state, from the National Association of Secretaries of State; on misinformation and media literacy, from MediaWise; on voting as a student, from Campus Vote Project; on voting as an overseas citizen or service member, from the Federal Voting Assistance Program; on voting as a person with disabilities, from SignVote; on voting as a person with past convictions, from Restore your Vote; and on federal, state, and local candidates, from BallotReady.



TikTok [announced](#) additions to its in-app guide on October 28, 2020, including several policy updates to limit the distribution of misleading content, unverifiable claims, premature declarations of victory, and attempts to dissuade voters by exploiting the coronavirus pandemic as a suppression tactic. Banners were also added to direct users to the elections guide, which featured new resources from the [U.S. Election Assistance Commission](#). In addition, TikTok [provided](#) the Election Protection Hotline number in multiple languages, including an option for American Sign Language.

Because the majority of users interact with content on their 'For You' feed, TikTok [collaborated](#) with the Associated Press to provide access to an interactive map displaying live election results for various candidates and ballot initiatives at the federal and state levels. Moreover, individuals could more easily [reference](#) frequently asked questions and answers from the National Association of Secretaries of State regarding the voting process and election results. In early October, TikTok also created [an elections integrity page](#) within its [Safety Center](#) in order to provide transparency about the platform's policies regarding misinformation, disinformation, and foreign interference. TikTok does not allow [paid political advertisements](#).

III. Conclusion

For the 2020 U.S. presidential election, Facebook/Instagram, Google/YouTube, Snapchat, Twitter, and TikTok launched numerous election-related initiatives and tools related to voter registration and civic education. Facebook/Instagram's tools aimed to promote voter registration, poll worker recruitment, and other forms of civic participation through the Voting Information Center. Similarly, Twitter introduced an election hub that brought together its engagement tools, educational resources, and related policies. Google updated its search feature to drive voter registration and improve elections-related information, while Snapchat created several applications that featured voter registration, a voter guide, user-specific sample ballots, and a reminder checklist. TikTok also launched an in-app guide that provided information for millions of Americans.

Across the various platforms, these policy, enforcement, and product changes collectively offered numerous avenues for U.S. users to engage in the electoral process, including checking voter registration status, registering to vote, requesting and returning an absentee ballot, reviewing state-specific deadlines, safely casting an in-person ballot during the coronavirus pandemic, serving as a poll worker, viewing a sample ballot or voter guide, watching live-streamed events and candidate debates, and more generally, accessing elections-related information and media.

Social Media Misinformation and Administration in the 2020 General Election

March 10, 2021

Authors: Alex Zaheer, Toni Friedman, Adriana Stephan, Chase Small, Jack Cable, and Pierce Lowary

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I. Introduction

Nine days after Election Day 2020, a coalition of organizations representing election officials, election technology vendors, and cybersecurity experts released a joint [statement](#) declaring that “[t]he November 3rd election was the most secure in American history.” Far from the disaster [many experts predicted](#), the 2020 general election saw relatively [few problems](#), despite incredible headwinds in the form of a global pandemic, funding shortfalls, and unprecedented shifts in how people cast their votes.

In spite of the overall success, trust in the fairness of American elections [became increasingly partisan](#) after November 3. A [Morning Consult poll](#) released November 1 found that 66% of Republicans polled had “some” or “a lot” of trust in the U.S. election system; but that number plummeted to 34% in a poll released November 9. By contrast, 63% of Democrats responding to the November 1 poll expressed trust in the U.S. election system, which climbed to 78% by November 9.

Many factors may have contributed to this crisis of confidence, but among them are the viral falsehoods that circulated after the election. [Experts predicted](#) in advance of the election that such falsehoods would be prevalent. This report traces the narratives that formed on and after Election Day 2020 in key states and the interaction between misinformation and election procedures nationwide. While isolated problems occurred during the November 2020 election throughout much of the country, the states covered in this report were under particular scrutiny for any mistakes because of the importance of their results in the outcome of the presidential race.

The Cybersecurity and Infrastructure Security Agency (CISA) [distinguishes](#) three kinds of viral malicious information, based on conventions set in a 2017 Council of Europe [paper](#): “disinformation,” “misinformation,” and “malinformation.” “Disinformation” applies when the distributor of bad information knows the information is false and intentionally spreads it. “Misinformation” is a more general term for misleading or incorrect information. “Malinformation” refers to true information framed in misleading ways. The United Kingdom Government Civil Service further [distinguishes](#) disinformation as falsehoods that are intentionally weaponized for certain financial, political, or other self-interested goals.

There are increasing [efforts](#) to distinguish between specific pieces of misinformation and the malicious narratives based on such misinformation. These narratives are built on foundations of untrue claims, but the narratives themselves can be presented without mentioning any specific false claims. This report addresses the larger narratives of misinformation as they

relate to parts of the 2020 [election process](#) that were either already considered contentious or more vulnerable to misinterpretation. Thus, this report is not a comprehensive overview of every specific piece of false information that arose online about the 2020 election. While recognizing the possibility that some of these narratives might have been weaponized purposefully and thus fall under the classification of “disinformation,” this report does not attribute intent.

II. Misinformation Narratives By State

A. Pennsylvania

Pennsylvania’s election administration received considerable attention and scrutiny during the 2020 election. In addition to Pennsylvania’s importance as a battleground state, [significant changes](#) in its election procedures made in recent years by the legislature, and [many subsequent](#) legal actions filed prior to the election added to this heightened level of attention. Misinformation surrounding Pennsylvania often touched on issues that were already the subject of fierce legal battles prior to Election Day: complaints about [election observer](#) access, concerns around [safeguards](#) for preventing mail-ballot fraud, and disputes over counting mail-ballots received up to [three days](#) after November 3. Pennsylvania was also one of the few states whose rules prohibited the counting of mail ballots until Election Day (and in some counties, not until [after](#) Election Day). As a result, news outlets were not able to report the apparent winner of the presidential election in the state until [days after](#) the election. [During that time](#), as the presidential vote count was updated incrementally, misinformation surrounding the election was at times used as fuel for legal battles in Pennsylvania, adding an air of legitimacy to the original false narratives.

In-Person Voting

Much of the misinformation about in-person [Election Day](#) voting in Pennsylvania used something innocuous to support a false narrative—a picture or video taken out-of-context, polling place rules misread, or exaggerations of isolated errors or mechanical problems amplified to an extreme level. In one [case](#), for instance, a video was taken of a polling place where non-functioning voting machines were causing a delay. But the video was posted two and a half hours *after* the machines had already been fixed, and the post made no mention of that detail. Another viral video, which received “over 300 million impressions” on [Twitter](#), showed a poll worker denying a certified poll watcher entry to a polling place.. But the post omitted important context: that the poll worker explained to the certified poll watcher that his

“poll watcher certification” was to a different precinct than the one he was attempting to enter. A city official later explained that the poll worker was probably unaware of a recent rule change that allowed certified poll watchers to be allowed to enter *any* polling location, and the poll watcher was [later allowed to enter](#) a different location. The [incident](#) and video were later used to challenge the results of the election. The Trump campaign [argued](#) in a post-election lawsuit that, because poll watchers lacked “[meaningful access to observe](#)” the processing of ballots, [600,000](#) ballots from Allegheny and Philadelphia counties should be designated ineligible for certification. Other examples of misinformation that cast doubt on the integrity of the in-person voting process included “claims that voters in Philadelphia [were] being split into lines based on their support for specific parties... electioneering in the form of Democrat signage outside polling centers... [and] claims voters in Trump gear [were] being expelled from polling stations as a consequence of their attire” ([EIP](#)). These pieces of misinformation were used together to form a narrative that polling places were being compromised by Democrats.

Processing Mail Ballots

Pennsylvania also experienced misinformation concerning mail ballots. Many of the individual instances of misinformation included tropes seen nationwide: claims that ballots were thrown [out](#), that only Democratic candidate Joe Biden’s name appeared on some [ballots](#), that [dead voters’](#) ballots were being counted on a large-scale, that voters voting only in the presidential election and not down ballot races was unusual and evidence of fraud, and others. Additionally, Pennsylvania saw some misinformation spread about [provisional ballots](#). Provisional ballots were used at a [record high](#) level in 2020, often by voters who had requested a mail ballot but later opted to vote in-person without returning their mail ballot. They were also used by voters who requested an absentee ballot but never received it, as happened to some voters in [Butler County](#). Out of these, one stand-out narrative unique to Pennsylvania focused on the new rule that mail ballots received up to three days after Election Day could be counted, so long as they were mailed by Election Day. Mail-ballots [without a postmark](#) received within three days of Election Day would be assumed to have been sent on time. The [reason](#) cited by the Pennsylvania Supreme Court was that individual voters should not be disenfranchised by the “USPS processing system, which is undeniably outside the control of the individual voter.”

There were multiple instances of viral misinformation circulating that focused on the new ballot receipt deadline. One viral [tweet](#) claimed the new deadline was meant to help Democrats manufacture votes after Election Day. Another [viral video](#), tweeted by Trump’s director of Election Day operations, claimed to show ballots sent after Election Day being counted, though the video was filmed outdoors in almost complete darkness. (The Republican Party filed a motion for an [injunction](#) to require that mail-ballots received after the three-day deadline be kept separate—something that was already required per a [state-wide guidance](#) and for which

there was no evidence of violations.) The three-day rule became the subject of prominent pieces of misinformation when a U.S. Postal Service worker [claimed](#) to have seen postal workers changing the postmarks on ballot return envelopes after Election Day to November 3. The worker later [recanted](#) his statement, saying that much of his original claim was attributable to the influence of a right-wing group promoting a video about the claim. (The postal worker's [original affidavit](#) was [cited](#) by U.S. Senator Lindsey Graham in a letter to the U.S. Department of Justice. A DOJ [probe](#) into the alleged fraud uncovered [no evidence](#) of widespread election fraud.)

Tabulating the Vote

Between November 3 (Election Day) and November 7 (when the Associated Press and other national media organizations called Pennsylvania for Biden), misinformation surrounding vote tabulation emerged, specifically promoting the message that an uptick in votes for Biden was mathematical proof of voter fraud. In Pennsylvania, Trump's vote count had been higher than Biden's on election night, when results reflected mostly in-person Election Day voting. But [three out of four](#) mail ballots in the state were cast for Biden, and most of those were counted after in-person votes. Thus, the leader in the state swung from Trump to Biden in a relatively short period of time. For [instance](#), from November 4 to the morning of November 5, Trump's lead shrank from 8% to 2.5%. It was a dynamic [many had anticipated](#) but, as Biden's [vote count increased](#), pseudo-scientific "math" narratives emerged. One false allegation claimed that, between November 3 and 4, a million ballots had been "dumped" into vote counts for Biden. ([In fact](#), both Trump and Biden's vote counts increased by around one million votes that night.) Another misinformation narrative claimed that it was mathematically [impossible](#) for Biden to have closed Trump's initial lead and that his victory could be attributed only to illegal means, such as votes [manufactured in Philadelphia](#) or [fraudulent](#) overnight vote counting. A viral [tweet](#) compared mail ballot figures from the primary to the number of mail ballots cast in the general election and made a [false](#) claim of a discrepancy, demonstrating that screen grabs and figures can give misinformation an appearance of legitimacy.

Reporting the Vote

Many threads of misinformation appeared to be the product of misunderstanding the processes used by various media outlets for "calling" a state for a candidate. One [viral Facebook post](#) falsely claimed that counting any ballots after Election Night constituted fraud; a right-wing website known for promoting false news, the Gateway Pundit, insinuated that the failure of some states to call the election on Election Night was itself evidence of a "[steal](#)." Still others [misconstrued](#) the *pause* on reporting overnight to mean that the count itself had stopped and viewed its resumption as evidence of a steal. Days after Associated Press and other major news

organizations called Pennsylvania for Biden, a false narrative emerged that Pennsylvania had been “[uncalled](#)” by RealClearPolitics. In reality, the political news website had simply not yet called Pennsylvania for either candidate. While some of these specific pieces of misinformation contradicted one another, they supported a unified false narrative that there was something inherently untrustworthy with how media organizations called elections.

Counter-messaging by state actors

Some state officials in Pennsylvania directly countered misinformation claims as they emerged. The Philadelphia District Attorney’s Office [refuted](#) a claim on Twitter about out-of-order voting machines. Kathy Boockvar, Pennsylvania Secretary of the Commonwealth, used [Twitter](#) and other [media](#) to urge voters to “ignore hype & disinformation.” On Election Day and for a few days after, various officials, including Boockvar and Governor Tom Wolf, addressed the state of the election and counting process on [PACast](#), a state website. Pennsylvania voters could also consult a “Frequently Asked Questions and Myths About Pennsylvania Elections” [page](#) and a [Voter Education Toolkit](#) on the Pennsylvania Department of State website.

B. Georgia

Georgia was the focal point of a significant amount of misinformation aimed at discrediting its election processes. Misinformation in the state was driven in part by the close margin of votes between the top two presidential contenders and Georgia’s shift from a solidly Republican state in statewide elections to a battleground state. Georgia began processing, but not counting, its absentee ballots [15 days before Election Day](#), which helped prevent long delays in releasing results. Yet Georgia’s margin of victory was so narrow that it was the [last state called](#) by the Associated Press, which contributed to an extended period during which misinformation could spread. Georgia also conducted a hand audit (mandated by state law) and a candidate-requested recount, which heightened the national scrutiny before the state certified its results. And Americans had an additional reason to focus attention on Georgia *after* the general election: In both U.S. Senate races in Georgia, no candidate garnered more than 50 percent of the vote; thus requiring that both races—and partisan control of the U.S. Senate—to be decided by runoff elections on January 5, 2021.

In-Person Voting

A pervasive false narrative that emerged in Georgia concerned electronic voting machines and poll books used to sign-in voters. On Election Day, voting had been delayed in two counties—Morgan and Spalding—because of [outages with electronic poll books](#). The issue prompted

election officials to extend voting hours in those two counties (closing polls at 9 p.m. instead of 7 p.m.). The electronic pollbook issue was benign and quickly resolved, but conspiracy theories surfaced alleging that the Dominion Voting Systems software (which was used for voting machines but not electronic poll books in the counties) had intentionally caused the “glitch” to aid Biden by altering the vote total. While these poll book errors had no connection to vote tallying, articles in partisan media outlets, such as [the Gateway Pundit](#) and [Breitbart](#), claimed the glitches in Georgia were tied to an allegedly similar incident in Antrim County, Michigan, noting that both involved Dominion software. Candidate Trump shared the Breitbart article on [Twitter](#), saying the election was a “total mess.”

Processing Mail Ballots

Several false claims challenging the integrity of how mail ballots were processed gained significant attention in Georgia. One viral tweet that is no longer available on the platform claimed that military ballots for Trump had been found in a dumpster, a claim that was amplified by [Donald Trump](#) on Twitter. These claims were false; the Spalding County sheriff’s office released [a statement](#) detailing how the contents of the dumpster had been secured, culled through, and documented, and confirmed that only administrative documents—not ballots—had been found in the dumpster.

Another viral piece of misinformation claimed that Georgia’s absentee ballot rejection rate had “plummeted” from 3.5% in 2018 to 0.3% in 2020. The [Georgia Republican Party and the Trump Campaign](#) used these figures in a letter to Brad Raffensperger, Georgia’s secretary of state. Similar claims appeared in [a tweet by Donald Trump](#), alleging unusual rejection rates. These claims were also false; a [Reuters fact check](#) showed that the comparisons in the tweet were inaccurate.

Reporting the Vote

Narratives attempting to discredit the vote tabulation process in Georgia persisted well past the election, fueled by misinformation about the statewide audit and a litany of unsubstantiated lawsuits. As Georgia conducted a full audit of its presidential vote count, false claims arose that the audit had revealed a [9,000-vote error](#) in favor of Biden. As [explained](#) by the Georgia secretary of state’s office, the discrepancy in the original unofficial tally was due to human error and was caught before the result was entered into the state’s official tally. Additionally, in a string of lawsuits that followed the election, conservative outlets [covered](#) claims made by Sidney Powell (an attorney who sometimes worked with the Trump legal team) that over 136,000 ballots were illegally counted because of Dominion software.

Counter-messaging

The secretary of state's office provided counter-messaging and fact-checking through several channels. Secretary of State Brad Raffensperger frequently posted fact checks on [his Facebook page](#) throughout the election and for several weeks after. He also issued numerous press releases on the secretary of state's [website](#) and reached out to the public through a [widely-shared op-ed in USA Today](#), reaffirming the integrity of Georgia's election results. Gabriel Sterling, the voting systems implementation manager for Georgia, held frequent press conferences directly to debunk false claims being made about the election. Those press conferences were covered on national news channels and helped to push back against emerging false narratives.

C. Wisconsin

Misinformation surrounding Wisconsin's election administration included narratives similar to those in other swing states. Because of extended mail ballot processing times, major media outlets did not call the election in Wisconsin until November 5, two days after the close of polls. In that time, several false and misleading claims went viral, and a few were picked up by mainstream accounts and news sources.

Processing Mail Ballots

A variety of misleading and false claims in Wisconsin were based on content taken out of context. These pieces of misinformation discredited the mail-ballot process by casting doubt on the security of ballot collection and gained thousands of shares on social media. Many of these narratives arose before the election and laid the ground for skepticism.

An [early](#) misleading claim emerged when a Twitter user retweeted a picture in August of hundreds of decommissioned mailboxes piled up at an unidentified lot, writing, "Corruption on the part of the postmaster. A lazy postman. Or just an anomaly." The photograph first appeared on Reddit with the caption, "Whole thing looks terrible." A repost of the photo citing the location of the photo as Hartford, Wisconsin, was quickly shared among left-leaning social media circles. One user posted the photo on Twitter with the following comment: "They are sabotaging USPS to sabotage vote by mail. This is massive voter suppression and part of their plan to steal the election." The post was retweeted [81,500 times](#), including by accounts with millions of followers, such as left-leaning actor and political activist John Cusack, and it was shared widely on both Facebook and Instagram. In actuality, the mailboxes were stacked outside a powder-painting

company based in Hartford, Wisconsin, that contracts with the United States Postal Service to refinish or destroy old mailboxes. This misinformation incident fed into widespread concern surrounding potential ballot delivery delays and USPS's cost-cutting measures.

Other false narratives around mail ballot-processing, primarily that mail ballots were being disposed of, were picked up by partisan media outlets, thus reaching a wider audience. One claim [alleged](#) that trays of mail ballots had been discovered in a ditch in Greenville, Wisconsin. President Trump repeated the narrative during the [campaign](#), while discrediting the vote-by-mail system. Later [news reports](#) indicated the trays [did not](#) contain any Wisconsin ballots.

Other narratives sought to discredit city and county clerks as untrustworthy partisan actors. During the primary election, a Milwaukee-based radio host [referred](#) to election officials as "hardcore partisans." A WISN radio host tweeted an allegation of "[ballot harvesting](#)" during a "Democracy in the Park" event in Madison, where voters could turn-in completed absentee ballots directly to election workers. The radio host implied the poll workers were illegitimate and the ballots "unsecured," but the event was [sponsored](#) by the office of Madison City Clerk Maribeth Witzel-Behlls and adhered to state election law.

Tabulating the Vote

After the election, much of the scrutiny and misinformation in Wisconsin centered on the ongoing vote count. Misinformation around vote tabulation in Wisconsin formed a narrative similar to that in Pennsylvania and claimed the increase in Biden votes was fraudulent. Like in Pennsylvania, Biden's vote total increased in Wisconsin as mail ballots were counted and, on November 4, Biden took an [early morning lead](#) over President Trump. That same morning, a pro-Trump Twitter account falsely [claimed](#) that Trump had lost Wisconsin after "they dumped a trove of mails from Milwaukee." A fringe news source attempted to corroborate the supposed "ballot dump" by posting graphs of a dramatic increase in Democratic votes. Both the original post, as well as the fringe news source's post, were liked thousands of times. Biden's vote count increased as more mail ballots, which appeared to be the [favored option](#) of Democratic voters, were counted.

Later on November 4, Michael Coudrey, a conservative commentator, incorrectly claimed on Twitter to have "direct evidence of fraud," stating that Wisconsin's vote total exceeded the number of registered voters in the state. Coudrey claimed there were 3,129,000 registered voters and 3,239,920 votes cast in Wisconsin. Despite offering no supporting evidence for his claim, Coudrey's post was retweeted over [16,000 times](#) in less than 45 minutes and migrated to other social media platforms like Facebook, where it was posted in the Wisconsinites Against

Excessive Quarantine Facebook group, which had over 100,000 members. But according to the [Wisconsin Election Commission](#), there were 3,684,726 active registered voters on November 1.

Reporting the Vote

One right-wing media website, Gateway Pundit, spread several false narratives around the vote-tabulation process in Wisconsin. In the days following the election, a Gateway Pundit [article](#) claimed it had “identified approximately 10,000 votes that were moved from President Trump to Biden in just one Wisconsin county.” The article included two screenshots from Fox News’ election results. The first, at 11:43 p.m. CST on November 3, showed Trump with 46,649 votes in Rock County and Biden with 37,133. The second screenshot, 14 minutes later, showed the numbers had switched, with Biden having 46,649 and Trump having 37,133. The discrepancy was due to a media reporting error: The vote tallies had been [correctly](#) reported by the Rock County Clerk’s Office website, reflecting the 46,649 votes for Biden and 37,133 for Trump, but the Associated Press had accidentally transposed the numbers when sending out its update at 11:45 p.m. The mistake was corrected minutes later, but the Gateway Pundit article was nevertheless [tweeted](#) by the president’s son, Eric Trump, which was subsequently retweeted 31,000 times and liked nearly 83,000 times.

Eric Trump also [cited](#) a false figure that listed voter turnout at 89 percent in Wisconsin, a significant increase from previous years. He [captioned](#) the figure with “Looks like fraud!” The Wisconsin Elections Commission reported that turnout was [72 percent](#).

Counter-messaging

Under state law, Wisconsin election officials could not begin processing mail ballots until Election Day and could not begin counting those votes until the polls closed at 8 p.m. CST. Election officials worked diligently throughout the night to process ballots and count votes to ensure swift reporting of the results. However, overnight counting prompted some people to make [false claims](#) that thousands of ballots were secretly dumped into ballot counting machines in the early morning hours. Election officials in Milwaukee opted to [livestream](#) their vote-counting process to mitigate allegations of voter fraud. The Wisconsin Elections Commission also released a post-election [memo](#) debunking misinformation that questioned the integrity of Wisconsin’s election results.

D. Michigan

Like other swing states, Michigan received considerable scrutiny throughout 2020 for all matters related to election administration. Michigan also saw a high volume of misinformation centered around its election administration, particularly around false claims of “ballot dumping” and other impropriety during vote tabulation in Detroit.

In-Person Voting

In-person Election Day voting saw its fair share of misinformation, though this aspect of the state’s election administration was not the main target of viral falsehoods. On November 4, unsubstantiated allegations of pay-for-vote [schemes](#) surfaced in Macomb County and Pontiac, Michigan. Additionally, [a video purporting](#) to show “ballot stuffing” in Flint, Michigan, went viral around Election Day. On Election Day itself, Flint City Council member Maurice Davis posted a [video](#) in which he claimed he was told that split-ticket voting would result in a spoiled ballot. Finally, a viral video was released after the election, alleging that poll workers were trained by local officials to intentionally disenfranchise Michigan voters. [According to](#) the Detroit City Clerk, the video misconstrued snippets of audio to support an unsubstantiated conclusion.

Tabulating the Vote

Following the close of polls, misinformation arose surrounding the tabulation process in Michigan, particularly in Detroit at its convention center, the TCF Center. On November 4, confrontations between poll observers and election administrators devolved into a [chaotic scene](#) at TCF Center. Election workers inside reported [feeling intimidated](#); officials later blocked windows at the center, spurring conspiracy theories that election workers were hiding nefarious activity. However, both Republican and Democratic observers were inside the counting rooms for the entire process; other observers were turned away because the counting facility was at capacity.

Additionally, false claims alleged “ballot dumps”—instances of election workers fraudulently adding votes to the totals—in the days following November 3. [Example narratives](#) included poll workers allegedly double-counting some votes and ballots being “found” after the close of polls. Each of these false claims pushed a narrative that the vote tabulation process in Michigan cities was inherently suspect and part of a broader widespread fraud scheme. But under state law, mail ballot processing could not begin until [the day before](#) Election Day. Thus, large counties were processing tens of thousands of mail votes throughout election night and in the days

following, leading to large changes in vote tallies overnight. [Fact checkers noted](#) that ballots reported in these alleged “dump” periods contained votes for Trump as well as Biden.

Reporting the Vote

During the vote count, false narratives targeted the unofficial results uploaded by Michigan counties. Most notably, a conspiracy theory about Dominion Voting Systems emerged from a reporting error in Antrim County. The clerk there [did not properly configure](#) the voting software, which resulted in an erroneous vote count on the county website. The error was quickly noted and corrected, and it would have been caught during the [canvassing process](#), according to county officials. Nevertheless, the incident was used as part of a [now-debunked](#) “forensics report” claiming the election equipment in Antrim County was designed to propagate “systemic fraud and influence election results.” A [similar clerical error](#) in Oakland County did not receive the same level of attention.

Additionally, Decision Desk HQ, an election data reporting service, explained in a [Twitter thread](#) that a zero had been appended to an update on Biden’s vote count in Shiawassee County, an error that was quickly corrected but led to a perception of a sudden “jump” in Biden votes in Michigan. The graph showing this jump quickly [became a meme](#) that spread misinformation well after the correction was issued.

Counter-messaging

Michigan election officials took steps at the local and state level to combat misinformation. The secretary of state office conducted a [full hand recount](#) of the Antrim County ballots to affirm the previous machine count and show the results were accurate despite a previous county reporting error. Additionally, the secretary of state office maintained a [fact check page](#) on its website to quickly debunk some of the viral claims circulating on the internet. This page featured prominent authoritative voices to back up counter-messages. For example, a section of the page was devoted to providing a detailed explanation of the Antrim County error and subsequent hand recount and linked to statements by election officials and Dominion Voting Systems. Finally, the Michigan Department of State used social media as a method of rapidly publishing statements to debunk viral falsehoods. For example, the official account [tweeted](#) a statement explaining the measures Michigan employed to prevent the casting of ballots in the name of deceased voters. A few counties also live streamed the vote count process for transparency, [including](#) at Detroit’s TCF Center.

E. Arizona

Arizona faced national scrutiny during its tabulation and reporting process. Online misinformation created public confusion about the tabulation and reporting processes, which fueled in-person protests outside vote-counting facilities

In-Person Voting

Arizona was the origin of #Sharpiegate, a misinformation claim that said election officials were handing out Sharpie brand markers to deliberately void ballots. The narrative claimed the markers could not be read by voting machines. Just hours after polls closed in Arizona, [posts circulated](#) showing videos of voters discussing that they used Sharpies and struggled to scan their ballots. Election officials quickly clarified that voting machines could read Sharpies, but [these local claims spread nationally](#) to fuel the narrative that officials were manipulating election results. Unverifiable [“friend of a friend”](#) posts targeted conservative voters, claiming that Republican voters were the ones receiving Sharpies and suggesting that their votes had not been counted.

Tabulating the Vote

Concerns that Sharpies were handed out only to Republicans and that Sharpie-marked ballots could not be counted, along with claims that Republicans were not included among workers who were counting the votes sparked [protests outside](#) vote counting centers. Pro-Trump groups pushed claims and fueled a false narrative that the tabulation process was conducted by Biden supporters. These claims, along with the #Sharpiegate narrative, led to hundreds of protestors gathering in Maricopa County for “Count the Legal Vote Rallies,” with protestors chanting “Let us in” and “Count the votes,” implying that [Democrats were stealing the election](#).

Election Night Reporting

Arizona’s unofficial tallies faced scrutiny in the days after the election, as the state’s presidential race had not yet been called by many national media organizations. During the reporting process, domestic actors used small errors in the election night reporting (ENR) system as alleged “evidence” of wrongdoing on the part of election officials and Democrats. In one instance, [a viral tweet](#) claimed that 6,000 “fake” Biden ballots had been counted. The tweet was based on an error in which unofficial results had been displayed “incorrectly” after an ENR uploading error mistakenly uploaded one county’s results several times, according to the secretary of state.

Counter-messaging

In an effort to increase transparency, Maricopa County officials [live streamed](#) their tabulation process. The county also directly addressed “Count the Legal Vote” rallies—the protests outside vote counting centers. The county placed large QR codes at the rallies with links to the official live stream of counting in the hopes of dispelling misinformation. These steps were aimed at allaying concerns that election administration was partisan and dispelling claims of vote tampering by showing as much transparency as possible in the tabulation process.

F. Florida

Surprisingly little misinformation emerged around Florida’s election results. The race was called on election night, in large part because of laws allowing election officials to process ballots ahead of Election Day. While Florida’s [election code](#) allows election officials to begin canvassing mail ballots 15 days prior to polls closing, the governor issued an [executive order](#) extending this to 22 days, giving officials adequate time to adapt to an increase in mail ballots. The state also had used mail voting for the previous 20 years, with [30% of ballots](#) in the 2016 election cycle cast by mail. Nevertheless, some misinformation emerged from Florida about how slowly the U.S. Postal Service processed mail ballots and unclear numbers about voter turnout.

Ballot Processing

In the days immediately following the election, misinformation circulated that the [USPS did not process 27% of the ballots](#) in South Florida. The number originated from a table of data about national USPS ballot delivery that a journalist [tweeted](#) on November 4. A larger narrative—that USPS intentionally did not process some ballot mail—served to delegitimize Florida’s results, in which Trump prevailed, by attacking the credibility of the mail ballot processing system. Social media posts aimed at liberal users used this “27%” claim as evidence that President Trump had intentionally shut down the post office to disenfranchise mail voters. The USPS quickly clarified that, in an effort to speed up Election Day efforts, it had not scanned ballots out from the mail processing center before delivering them. [County election supervisors confirmed](#) that all of the ballots had actually been delivered.

Election Night Reporting

Misinformation also spread concerning the county turnout rate. A few counties appeared to have above a 100% turnout rate in the 2020 election. These [discrepancies appeared to involve](#) already registered voters who changed their address, and thus their voting precinct, after voter registration for the new precinct had closed. But posts on social media claimed that these

statistics indicated fraud. The turnout discrepancy narrative played into a larger misinformation story that Democrats were manufacturing fake ballots to steal the election. Florida was not the only state to experience misinformation around claimed discrepancies in voter turnout rates, and this content was often grouped with figures questioning the results nationally rather than in Florida specifically.

Counter-messaging

Overall, Florida, which Trump won, saw relatively little online activity questioning the integrity of its results, and its [reporting was mostly finished on election night](#). Election officials had over a month to process mail ballots, allowing counties to post results soon after the polls closed, giving misinformation narratives little time to go viral before the state was called.

G. North Carolina

North Carolina was the subject of little post-election misinformation, despite the fact that news outlets were not able to declare a winner there until [days](#) after the election. North Carolina, like Pennsylvania, had recently extended the date by which mail-ballots had to be received and counted, and it saw that extension (from three days to nine in North Carolina's case) [affirmed](#) by the U.S. Supreme Court. Nevertheless, the state was targeted by robocalls spreading misinformation on Election Day, as well as other small instances of misinformation during the 2020 election cycle.

In-Person Voting

On Election Day, robocalls, currently of [unknown origin](#), targeted North Carolinians, urging people to "[stay safe and stay home](#)" on Election Day, potentially dissuading them from voting in-person. The North Carolina Department of State sent out a [public service announcement](#) that same day, warning voters to disregard the calls. The Attorney General of North Carolina tweeted a warning about the calls from his [personal account](#) and [official account](#), saying, "Someone is making illegal robocalls into NC spreading misinformation about Election Day. DO NOT LISTEN to these robocall voicemails! They want to steal your vote. Don't let them. Today is your last chance to vote. We have 3 hours left – let's #vote NC!" The [message](#) was retweeted over 1,300 times by [November 15, 2020](#).

Tabulating the Vote

While North Carolina's results were being tabulated, some absentee voters raised concerns that their votes had not shown up in [BallotTrax](#), a [vote-tracking system](#) newly implemented in North

Carolina. The “[voter history](#)” tab in the tool, which is meant to let voters look up [details about when their ballot was counted](#), did not update for “a few weeks,” leading some absentee voters to worry that their 2020 ballots had not been counted. The North Carolina State Board of Elections Twitter account [replied directly](#) to individual voters who raised this concern on Twitter. Additionally, one candidate who ran for the U.S. House of Representatives in North Carolina and lost falsely [tweeted](#) in December that North Carolina used Dominion voting machines, which were under heavy criticism in other states. The North Carolina State Board of Elections directly [refuted](#) this claim, noting that no county in the state used machines operated by Dominion.

Counter-messaging

Two official North Carolina Twitter accounts—the North Carolina State Board of Elections [account](#) and the Attorney General [account](#)—directly refuted specific pieces of misinformation or confusion as they arose. In addition, North Carolina State Board of Elections [press releases](#) regularly addressed issues of misinformation and issues of voter trust through easy-to-read list-based articles. (Examples: “How to Know Your Vote Counted in North Carolina,” published [November 5](#); “4 Facts About the Vote-Counting Process in NC,” published [November 11](#); and “5 Facts About the Recount Process in North Carolina” published [November 19](#).) North Carolina also introduced [BallotTrax](#) in 2020, a [vote-tracking system](#) that allowed individuals to look up the status of their ballots to provide additional transparency on USPS delivery.

H. Nevada

Misinformation in Nevada mirrored a variety of narratives common to other swing states, including generic claims of mail voting fraud and allegations of Dominion machines interfering with results. Nevada’s relatively long tabulation process, which counted mail ballots [received](#) up to seven days after the election if postmarked by Election Day, allowed time for misinformation claims to spread before the results were available.

Processing Mail Ballots

The Nevada Republican Party [decried](#) the state’s expanded mail voting system on the basis of claims of multiple “[instances of potential fraud](#).” These included claims of “[irresponsibly low](#)” standards for signature verification, finding a [ballot in a dumpster](#) that anyone could retrieve and mail in, and [out-of-date voter rolls](#).

The signature verification narrative related to an October 23 [lawsuit](#) in which the Trump campaign claimed that Clark County had intentionally set the sensitivity thresholds on its

signature verification machines “below manufacturer standards.” A spokesperson for Clark County’s elections office [confirmed](#) that the county’s threshold was chosen after determining it “would accept all the signatures that are obvious matches” and forward failing signatures for manual verification. As PolitiFact [stated](#), the lawsuit did not provide evidence that this threshold was lower than any manufacturer standard, nor did it provide evidence that the chosen threshold was flawed. It compared Clark County’s rejection rate to that of Churchill County, which had the highest signature-based rejection rate in Nevada.

Officials also debunked the claim that a ballot found in a dumpster indicated fraud. According to the Nevada Secretary of State’s office, every ballot is subject to signature verification, and it is extremely unlikely for the signature of a fraudster to match the signature of the legitimate voter. This signature mismatch would then prevent such an illicit ballot from being counted.

Voter rolls are also [updated](#) at varying intervals, and Nevada law [provides](#) for the removal of voters upon a number of conditions. It is possible that, in the time between voter-roll updates, some ballots may have been inadvertently mailed to deceased or otherwise ineligible voters. However, mail voting [safeguards](#), like signature verification, are designed to prevent individuals from voting ballots that are not theirs.

Another claim of fraud centered around voters violating Nevada residency requirements. For example, Richard Grenell, a Trump appointee and campaign operative, [reported](#) finding over 3,000 “people who violated residency requirements in Nevada.” However, “hundreds” of the addresses in question were [actually](#) from out-of-state military voters, and the Nevada secretary of state’s office [reported](#) that, as of December 2020, it had “not been presented with evidence of non-citizens voting.”

Even so, in a [letter](#) from the Trump campaign to the Clark County District Attorney, these allegations were repeated to “call into question the legitimacy and integrity of the entire Nevada... election.” Likewise, political activist James O’Keefe [shared](#) a viral video claiming that a Nevada postal carrier was willing to provide a Project Veritas volunteer with a “handful” of ballots. But neither the volunteer nor the individual who appears to be a mail carrier ever say what the “handful” actually contained. (The video inserts the word “ballots” in its captioning, but the word is never spoken.) Despite this, the video garnered 2.3 million views as of January 27, illustrating the salience of election integrity fears.

Tabulating and Reporting the Vote

Similar claims affected the vote tabulation and reporting processes. For example, the right-wing media website Breitbart reported that a purported whistleblower with the Clark County

Elections Department, in a sworn affidavit, listed various [claims](#) of malfeasance, from potential Democratic electioneering to ballot stuffing. A poster on the pro-Trump website TheDonald.win (later changed to America.win) also [alleged](#) that an unusually high number of provisional ballots was evidence of poll workers suppressing Trump votes by forcing pro-Trump voters to cast provisional ballots. It was later reported that the overwhelming majority of these ballots were [accepted](#), countering such narratives of voter suppression. Trump, meanwhile, [blamed](#) his loss in Nevada on Dominion Voting Systems; the Tweet received over 300,000 likes.

Finally, a Nevada GOP [Twitter post](#) claimed that “the usb drives used in the election” could provide evidence of vote tampering. Trump took a [Tweet chain](#) out of context, [alleging](#) a “large scale voter discrepancy” that affected one county race was evidence that the presidential election was compromised. The Twitter post he was referring to, however, reported only [139 discrepancies](#), which affected a Clark County Commission (not presidential) race that was won by a [10-vote margin of victory](#). According to Clark County Registrar Joe Gloria, this was the only Clark County race that presented concerns regarding its outcome. The Nevada Supreme Court unanimously [decided](#) to strike down a Trump campaign lawsuit that repeated many of the above claims, from signature verification issues to votes cast twice. A district court found “no credible or reliable evidence that the... Election in Nevada was affected by fraud,” and the Nevada Supreme Court affirmed this determination.

Counter-messaging

Nevada officials consistently addressed [pre-](#) and [post-election](#) points of concern. They prepared a “Facts vs. Myths” [page](#) on the secretary of state’s website and [FAQ](#), to address post-election questions. There were also Twitter posts from [Clark County](#) and Nevada’s [Election Integrity Task Force](#) to provide direct responses to common concerns and misinformation.

III. Nationwide Misinformation Patterns

Many states saw similar types of election misinformation in 2020, especially in high-stakes states with the potential to swing the presidential races. Counting delays and litigation provided space and opportunity for certain forms of misinformation to gain traction during the 2020 election; however, election administrators also created new efforts to provide counter-messaging, transparency, and voter education.

A. Counting Delays

In many states, large quantities of mail ballots significantly increased ballot processing times and delayed the announcement of presidential race results. Misinformation and conspiracy theories ran rampant in battleground states during the intervening days before the race was called, [fueled](#) in part by those delayed results. These theories took strong hold in states where mail-ballots turned the tide of the state results from Trump to Biden.

Delays in major swing states, such as Pennsylvania and Wisconsin, were largely due to legislation that prevented election officials from processing mail ballots before Election Day. State legislatures in both states refused to pass legislation that would have enabled election officials to process ballots before November 3, despite [pleas](#) from election officials to start the process earlier. Media outlets did not call Pennsylvania until four days after polls closed. The delay in election results may have provided the opportunity for misinformation to erode trust in the electoral process. Some political observers [expect](#) that, in the future, more voters will cast ballots by mail, which could lengthen future ballot processing times if not addressed by state legislatures.

B. Litigation

In some states, litigation provided fodder for misinformation or gave a veneer of credibility to existing misinformation. In Pennsylvania, many common misinformation tropes had already appeared in previous lawsuits (for instance, objections to the rule that expanded by three days the deadline for receipt of a mail ballot, complaints about inadequate election observers, and challenges to the integrity of mail-ballots). Some pieces of misinformation later appeared in [lawsuits](#) challenging the legitimacy of the election (lawsuits that were ultimately [dismissed](#) due to [lack of evidence](#)).

C. Voter Education and Counter Messaging

Election officials in key states responded to misinformation in their states through counter messaging and proactive voter education. Counter messaging entailed a direct response to misinformation claims, while other education measures indirectly combated misinformation by proactively debunking common tropes. These measures bolstered voter confidence in election integrity and provided transparency into the electoral process.

Election officials in 2020 increased usage of counter-messaging to respond directly to misinformation spreading online. For example, election officials in Georgia, including the chief

operating officer for Georgia's secretary of state, directly debunked misconceptions online and in broadcast media. Additionally, official Twitter accounts for secretaries of state regularly fact-checked falsehoods in their states.

D. Resurfacing Past Misinformation

The majority of misinformation narratives that surfaced in the 2020 election were not new but rather variants of existing narratives that had appeared in previous election cycles. For example, allegations of double voting in 2020 also occurred in both the 2016 and 2018 elections: A 2016 study [alleged](#) finding over 8,000 "highly likely duplicate votes," while an [unsubstantiated](#) 2018 Facebook post by the conspiracy website Infowars alleged double voting by Democrats in Maryland. Allegations of "dead people voting" have also recurred since 2016 and [before](#), despite [safeguards](#) to prevent this form of fraud. In 2016, President Trump incorrectly insinuated dead people were voting en masse and predicted the election would be "rigged." In 2018, a popular narrative [falsely](#) claimed 53,000 dead people were on Florida's voter rolls, citing a Fox News [article](#) from 2012. This overarching narrative was resurrected in 2020.

Another narrative resurrected in 2020 alleged that voting machines were manipulated or 'backdoored.' News sources like the [New York Times](#) and [USA Today](#) had previously raised concerns about potential vulnerabilities and [glitches](#) in voting machines. In 2016, some conservative websites [accused](#) 16 states of using voting machines from Smartmatic and purportedly allowing billionaire philanthropist George Soros to rig the election in favor of Hillary Clinton. There were also reports of machines flipping votes in [2016](#) and [2018](#), inciting [claims](#) that the machines were deliberately compromised. In 2020, despite the presence of [safeguards](#) to ensure voting machine integrity, these narratives mutated to target Dominion Voting Systems and [Smartmatic](#).

Robust voter education on common narratives, voting processes, and associated safeguards before elections may be needed to reduce the public's susceptibility to misinformation. Potential pre-election education components could include, for instance, primers on the [certification process of voting machines](#)—a process which ensures that machines meet usability, security, and functionality requirements. Other education topics could include explanations of safeguards in voting processes, such as [mail voting](#) processes and signature verification. Additionally, post-election processes can serve to bolster voter confidence. [Experts](#) have found that audits conducted on paper ballots with paper trails—including risk-limiting audits—may increase voter confidence in election results. Many states in 2020 also initiated or improved their mail ballot tracking software, which can be a useful tool to increase voter confidence in their ballot being counted.

IV. Conclusion

Despite a widely successful election administration effort for the 2020 general election, misinformation targeted the integrity of elections in states across the country. Misinformation was most prevalent in high-stakes states whose results were key to the presidential race outcome, and most misinformation fit the overarching narrative that a widespread conspiracy had swung the election for Biden, though there were notable left-wing misinformation campaigns as well. Predictably, mail ballot integrity was a large focus of these misinformation campaigns, most often targeting batches of mail ballots that favored Biden and tabulation centers in counties with a high number of Democrats. Misinformation about in-person voting mainly focused on logistical hiccups or errors in routine voting procedures to characterize as evidence that election processes were intentionally defrauding one political side. In general, almost every piece of election misinformation widely circulated during the 2020 election cycle was demonstrably false.



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