



**TESTIMONY OF
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**HEARING ON
SECURING DEMOCRACY: PROTECTING AGAINST THREATS TO ELECTION
INFRASTRUCTURE AND VOTER CONFIDENCE**

**THE COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE PROTECTION, &
INNOVATION
U.S. HOUSE OF REPRESENTATIVES**

JANUARY 20, 2022

Chairwoman Clarke, Ranking Member Garbarino, and members of the Committee:

Thank you for the opportunity to discuss the security of our nation’s election infrastructure. Despite a global pandemic, the November 2020 election saw historic turnout and was widely considered the most secure in American history.¹ But an anti-democracy movement, fueled by the Big Lie, poses serious threats to the security of elections. Taking these threats seriously means building upon recent improvements to election infrastructure security, such as the increased use of auditable paper ballots and increased information sharing between state and local election officials and the U.S. Cybersecurity and Infrastructure Security Agency (CISA).

The Brennan Center for Justice—a nonpartisan law and policy institute that focuses on democracy and justice—appreciates the opportunity to report on the security of our election infrastructure, threats to that infrastructure, and ways to secure against these dangers. At the Brennan Center, I focus on election security, and I frequently engage with state and local election officials to advocate for and assist with the implementation of election security and resiliency measures.²

In my testimony, I will cover three topics. First, I will describe what went right in 2020. This included the widespread use of auditable paper ballots, cooperation between state and local election officials and CISA, resiliency measures and money from Congress to ensure voters could exercise their rights safely in a pandemic, and the resiliency of voters themselves, who made thoughtful plans to vote safely and securely. This was all followed by routine, statutory tabulation audits in every swing state, finding no discrepancies sufficient to change the outcome of the Presidential election.

Second, I will describe the threats that the election sabotage movement is posing to election infrastructure. These threats include sham partisan reviews that undermine confidence

¹ U.S. Cybersecurity and Infrastructure Security Agency, “Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees,” November 12, 2020, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

² Reports that I have coauthored include Lawrence Norden, Gowri Ramachandran, and Christopher Deluzio, *A Framework for Election Vendor Oversight*, Brennan Center for Justice, November 12, 2019, <https://www.brennancenter.org/our-work/policy-solutions/framework-election-vendor-oversight>; Gowri Ramachandran and Tim Lau, “How to Keep the 2020 Election Secure,” Brennan Center for Justice, June 9, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/how-keep-2020-election-secure>; Edgardo Cortés et al., *Preparing for Cyberattacks and Technical Problems During the Pandemic: A Guide for Election Officials*, Brennan Center for Justice, June 5, 2020, <https://www.brennancenter.org/our-work/research-reports/preparing-cyberattacks-and-technical-problems-during-pandemic-guide>; Jonathan Bydlak et al., *Partisan Election Review Efforts in Five States*, Brennan Center for Justice, July 8, 2021, <https://www.brennancenter.org/our-work/research-reports/partisan-election-review-efforts-five-states>; and Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack*, June 16, 2021, <https://www.brennancenter.org/our-work/policy-solutions/election-officials-under-attack>.

and security,³ violent threats and intimidation of election officials and workers,⁴ and the potential infiltration of election offices, polling places, and election vendors by anti-democratic forces.⁵ Of particular concern: Candidates for election administration positions are raising unprecedented sums as they campaign on election denial.⁶

Third, I will address how election infrastructure can be bolstered against this threat. Online platforms and traditional media should work with civil society to ensure they are promoting accurate election information.⁷ Existing laws against intimidation, coercion, and threats should be enforced,⁸ and states should, with support from Congress, consistently adopt traditional guardrails against insider threats. These include restricting and logging access to critical systems, using transparent procedures such as nonpartisan and bipartisan election observation, monitoring for inappropriate activity, requiring vendors to follow cybersecurity, personnel, and supply chain standards, and removing any officials or workers who actively undermine election integrity.⁹ Congress should mandate and provide incentives for true election integrity measures, such as risk-limiting audits, rigorous election vendor standards, and independent security testing, as the Freedom to Vote: John R. Lewis Act does.¹⁰

I. WHAT WENT RIGHT IN 2020

The November 2020 election was the most secure election in American history, with the highest turnout since 1900.¹¹ This was accomplished through the heroic efforts of state and local

³ Gowri Ramachandran, “A Year Later, Sham Election Review Continue to Undermine Democracy,” Brennan Center for Justice, January 7, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/year-later-sham-election-reviews-continue-undermine-democracy>.

⁴ Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack*; and Linda So and Jason Szep, “Reuters Unmasks Trump Supporters Who Terrified U.S. Election Officials,” Reuters, November 9, 2021, <https://www.reuters.com/investigates/special-report/usa-election-threats/>.

⁵ Lawrence Norden and Derek Tisler, “Addressing Insider Threats in Elections,” Brennan Center for Justice, December 8, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/addressing-insider-threats-elections>.

⁶ Ian Vandewalker and Lawrence Norden, “Financing of Races for Offices that Oversee Elections: January 2022,” Brennan Center for Justice, January 12, 2022, <https://www.brennancenter.org/our-work/research-reports/financing-races-offices-oversee-elections-january-2022>.

⁷ Gowri Ramachandran, “Twitter is a Cauldron of Misinformation about the Arizona 2020 Vote Audit,” Slate, May 14, 2021, <https://slate.com/technology/2021/05/maricopa-county-arizona-2020-vote-recount-misinformation.html>; and Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack*, 11.

⁸ Linda So and Jason Szep, “Threats of Violence to U.S. Election Officials Highlight Legal Gray Area,” September 8, 2021, <https://www.reuters.com/legal/government/threats-violence-us-election-officials-highlight-legal-gray-area-2021-09-08/>.

⁹ Elections Project Staff, “Election Observers are Official Actors that Promote Legitimacy and Transparency. They are Typically Appointed, Trained, and are Barred from Voter Intimidation by State and Federal Laws,” Bipartisan Policy Center, October 23, 2020, <https://bipartisanpolicy.org/blog/election-observers-are-generally-appointed-and-are-held-to-strict-standards-of-behavior/>.

¹⁰ Freedom to Vote: John R. Lewis Act, H.R.5746 117th Cong. § 3908, 4001 (2021); Elizabeth Howard, Ronald L. Rivest, and Philip B. Stark, *A Review of Robust Post-Election Audits*, Brennan Center for Justice, November 7, 2019, <https://www.brennancenter.org/our-work/research-reports/review-robust-post-election-audits>; Norden, Ramachandran, and Deluzio, *A Framework for Election Vendor Oversight*; and Cortés et al., *Preparing for Cyberattacks and Technical Problems During the Pandemic: A Guide for Election Officials*, 6.

¹¹ Women, Asian Americans, and Native Americans were not able to vote in 1900. U.S. Const. amend. XIX (ratified Aug. 18, 1920); Terry Ao Minnis and Mee Moua, “50 Years of the Voting Rights Act: An Asian American

election officials, their staff, and pollworkers, with support from CISA, the Election Administration Commission (EAC), Congress, civil society, and voters themselves.

A. An Estimated 96 Percent of Voters Used Voter-Verifiable Paper Ballots

In order to demonstrate the trustworthiness of elections, election officials need auditable, voter-verifiable paper ballot systems.¹² These allow for routine, statutory post-election tabulation audits, in which a sample of paper ballots are compared to the machine-tabulated results. These types of audits are designed to catch tabulation errors, whether they might be the result of malicious activity or technical errors. When these types of audits are routinely performed by competent administrators in a transparent manner, they can and should boost confidence in the accuracy of electoral outcomes. The Brennan Center and others have long advocated for this type of audit.¹³

In 2016, one in five voters cast their vote using a paperless voting system that could not be subject to a tabulation audit.¹⁴ But thanks to election officials across the country transitioning to more secure systems that scan paper ballots, as well as the choice of more voters to vote by mail during the pandemic, an estimated 96 percent of voters used voter-verifiable paper ballots in the 2020 election. No swing state used paperless voting machines.¹⁵

B. CISA and State and Local Election Officials Cooperated To Prevent, Detect, and Recover from Cyberattacks

Perspective,” Asian Americans Advancing Justice, August 4, 2015, <https://advancingjustice-aaajc.org/report/50-years-voting-rights-act-asian-american-perspective>, (“[U]ntil 1952, federal policy barred immigrants of Asian descent from becoming U.S. citizens and having access to the vote,”); United States Library of Congress, “Voting Rights for Native Americans,” accessed July 25, 2021, <https://www.loc.gov/classroom-materials/elections/right-to-vote/voting-rights-for-native-americans/>, (“The Snyder Act of 1924 admitted Native Americans born in the U.S. to full U.S. citizenship. Though the Fifteenth Amendment, passed in 1870, granted all U.S. citizens the right to vote regardless of race, it wasn’t until the Snyder Act that Native Americans could enjoy the rights granted by this amendment,”); Kevin Schaul, Kate Rabinowitz, and Ted Mellnik, “2020 Turnout is the Highest in Over a Century,” *Washington Post*, last updated December 28, 2020, <https://www.washingtonpost.com/graphics/2020/elections/voter-turnout/>; and U.S. Cybersecurity and Infrastructure Security Agency, “Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees.”

¹² U.S. Election Assistance Commission, *Voluntary Voter System Guidelines 2.0*, February 10, 2021, 184, 186, https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf; and Kate Polit, “Former CISA Head Krebs Counters GOP Claims, Reassures that 2020 Election was Secure,” MeriTalk, December 16, 2020, <https://www.meritalk.com/articles/former-cisa-head-krebs-counters-gop-claims-reassures-that-2020-election-was-secure/>.

¹³ Bydlak et al., *Partisan Election Review Efforts in Five States*; U.S. Election Assistance Commission, *Best Practice: Chain of Custody*, July 13, 2021, 15, https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf; and Howard, Rivest, and Stark, *A Review of Robust Post-Election Audits*.

¹⁴ Andrea Córdova McCadney, Elizabeth Howard, and Lawrence Norden, “Voting Machine Security: Where We Stand Six Months Before the New Hampshire Primary,” Brennan Center for Justice, August 13, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/voting-machine-security-where-we-stand-six-months-new-hampshire-primary>.

¹⁵ Lawrence Norden and Derek Tisler, “Our System is Resilient – but Still has Room for Improvement,” Brennan Center for Justice, September 22, 2020, <https://www.brennancenter.org/our-work/research-reports/our-election-system-resilient-still-has-room-improvement>.

CISA established a partnership with and supported state and local election officials in the years and months leading up to the 2020 election by providing vulnerability testing,¹⁶ promoting best practices for resiliency,¹⁷ and providing trainings, such as tabletop exercises¹⁸ in which officials practiced responding to security breaches.

CISA also ramped up its information sharing with state and local election officials, and the public, and this information sharing paid off. For instance, in the fall of 2020, some Florida voters received threatening and intimidating emails in the guise of a far-right group that has promoted violence.¹⁹ The intelligence community detected the true source of the attack, and CISA, the FBI, and the Office of the DNI held a joint press conference to let the public know the truth: that the emails were coming from malicious actors associated with Iran.²⁰ By quickly informing the public, they were able to reduce any intimidating effect. As Director Ratcliffe stated on October 21, 2020, “These actions are desperate attempts by desperate adversaries. . . . We ask every American to do their part to defend against those who wish us harm. The way you do that is quite simple: Do not allow these efforts to have their intended effect. If you receive an intimidating or manipulative email in your inbox, don’t be alarmed, and don’t spread it.”²¹

A few days later, CISA and the FBI issued a public alert, notifying Americans that malicious actors, including some associated with the Iranian government, were scanning multiple states’ election webpages for vulnerabilities, and that one state’s voter registration data had successfully been accessed.²² Shortly thereafter, Florida closed down its statewide page with a voter information lookup tool and informed voter advocates who objected that the closure was

¹⁶ U.S. Cybersecurity and Infrastructure Security Agency, *Guide to Vulnerability Reporting for America’s Election Administrators*, last accessed January 13, 2022, 2, https://www.cisa.gov/sites/default/files/publications/guide-vulnerability-reporting-americas-election-admins_508.pdf; and U.S. Cybersecurity and Infrastructure Security Agency, “National Cybersecurity Assessments and Technical Services,” last accessed January 13, 2022, <https://www.cisa.gov/uscirt/resources/ncats>.

¹⁷ U.S. Cybersecurity and Infrastructure Security Agency, “Election Security – Physical Security of Voting Locations and Election Facilities,” last accessed January 13, 2022, https://www.cisa.gov/sites/default/files/publications/physical-security-of-voting-location-election-facilities_v2_508.pdf; and U.S. Cybersecurity and Infrastructure Security Agency, “We’re in This Together. Mis-, Dis-, and Malinformation Stops with You,” last accessed January 13, 2022, https://www.cisa.gov/sites/default/files/publications/election-disinformation-toolkit_508_0.pdf.

¹⁸ U.S. Cybersecurity and Infrastructure Security Agency, *Elections Cyber Tabletop Exercise Package: Situation Manual*, January 2020, <https://www.cisa.gov/sites/default/files/publications/Elections-Cyber-Tabletop-Exercise-Package-20200128-508.pdf>; and Benjamin Freed, “Annual Election Security Tabletop Drill Put Officials through ‘Armageddon-Like’ Test,” StateScoop, July 31, 2020, <https://statescoop.com/dhs-election-tabletop-exercise-2020/>.

¹⁹ Ellen Nakashima, Amy Gardner, Isaac Stanley-Becker, and Craig Timberg, “U.S. Government Concludes Iran was Behind Threatening Emails Sent to Democrats,” *Washington Post*, October 22, 2020, <https://www.washingtonpost.com/technology/2020/10/20/proud-boys-emails-florida/>.

²⁰ Office of the Director of National Intelligence, “DNI John Ratcliffe’s Remarks at Press Conference on Election Security,” press release, October 22, 2020, <https://www.dni.gov/index.php/newsroom/press-releases/item/2162-dni-john-ratcliffe-s-remarks-at-press-conference-on-election-security>.

²¹ Office of the Director of National Intelligence, “DNI John Ratcliffe’s Remarks at Press Conference on Election Security.”

²² U.S. Cybersecurity and Infrastructure Security Agency, “Alert (AA20-304A): Iranian Advanced Persistent Threat Actor Identified Obtaining Voter Registration Data,” last updated November 3, 2020, <https://www.cisa.gov/uscirt/ncas/alerts/aa20-304a>.

due to a security vulnerability. Advocates were able to secure modifications to the page that did not re-open the security vulnerability, but ensured voters with questions could still obtain the information they needed, such as their polling place location.²³

C. Resiliency Measures and Money from Congress Helped Americans Vote Safely Despite Pandemic

CISA, election security experts, and voting rights advocates all encouraged the adoption of resiliency measures to help election officials detect, prevent, and importantly, recover from an attack or technical failure.²⁴ Many election officials employed these measures, including the maintenance of emergency paper ballots, to be used in case ballot marking devices malfunctioned,²⁵ as well as keeping paper pollbook backups in polling places that use electronic pollbooks,²⁶ in case of a malicious attack or malfunction of the electronic books. Provisional ballots were also kept on hand in case an attack or malfunction prevented pollworkers from confirming a voter's eligibility to vote in real time.²⁷ Each of these resiliency measures came in handy in at least some locations, helping ensure that voting could continue and voters did not need to be turned away, even when occasional hiccups with equipment occurred.²⁸

In addition to these resiliency measures against electronic equipment failures, the provision by many states of multiple options for voting – in person Election Day, in person early, and mail voting – served as its own resiliency measure against the pandemic. These options

²³ Letter from the NAACP Legal Defense Fund et al. to Laurel Lee, Florida Secretary of State, November 1, 2020, <https://www.naacpldf.org/wp-content/uploads/2020.11.01-Letter-re-Voter-Information-Lookup-Tool.pdf>; and NAACP Legal Defense Fund Thurgood Marshall Institute, *Democracy Defended*, September 2, 2021, 74, https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf.

²⁴ U.S. Cybersecurity and Infrastructure Security Agency, “#Protect2020,” last accessed January 14, 2022, <https://www.cisa.gov/protect2020>; Cortés et al., *Preparing for Cyberattacks and Technical Problems During the Pandemic: A Guide for Election Officials*; and Common Cause, “Common Cause Georgia Urges Secretary Raffensperger to Ensure Georgians Are Not Denied the Right to Vote on November 3,” press release, October 1, 2020, <https://www.commoncause.org/press-release/common-cause-georgia-urges-secretary-raffensperger-to-ensure-georgians-are-not-denied-the-right-to-vote-on-november-3/>.

²⁵ J.D. Capelouto and Ben Brasch, “Voting Machines Finally Working at Fulton Polling Place; Paper Ballots Used,” *Atlanta-Journal Constitution*, November 3, 2020, <https://www.ajc.com/news/atlanta-news/voting-machines-down-at-one-fulton-polling-place-paper-ballots-in-use/OC3TGOUEGRDMVFPMZ6X7ONLMNA/>; and Michaelle Bond, Julia Terruso, and Justine McDaniel, “Philly Polling Locations Got the Wrong Voting Machines, Causing Confusion and Long Lines: 'It was a Mess,’” *Philadelphia Inquirer*, June 2, 2020, <https://www.inquirer.com/politics/election/live/pa-2020-primary-election-philadelphia-live-updates-results-20200602.html>.

²⁶ Rick Rouan, “Election Day: Some Voters See Delays at Polls as Franklin County Switches to Paper Pollbooks,” *Columbus Dispatch*, November 3, 2020, <https://www.dispatch.com/story/news/politics/elections/2020/11/03/franklin-county-shifts-paper-pollbooks-after-data-upload-problem/6135788002/>; see also Michigan Election Security Advisory Commission, *Report and Recommendations*, Michigan Secretary of State, October 2020, 14, https://www.michigan.gov/documents/sos/ESAC_Report_Recommendations_706522_7.pdf.

²⁷ Ben Finley, Alan Suderman, and Denise LaVoie, “Cut Cable Shuts Down Virginia Voter Portal; Lawsuit Filed,” Associated Press, October 13, 2020, <https://apnews.com/article/election-2020-us-news-ap-top-news-media-social-media-f6525ef6254a940c91b98d2668c43892/>.

²⁸ Andrea Córdova McCadney, Derek Tisler, and Lawrence Norden, “2020’s Lessons for Election Security,” December 16, 2020, <https://www.brennancenter.org/our-work/research-reports/2020s-lessons-election-security>.

allowed voters to spread themselves out among different voting methods and days, thereby reducing crowds at polling places for the increased safety of all. They also allowed voters to, if faced with a long line due to some technical issue during early voting, return on another day when the problem had been ameliorated.²⁹ They also meant election officials needed resources – from personal protective equipment for pollworkers and voters voting in person, to extra supplies given uncertainty about which voting methods voters would use and larger facilities for workers to socially distance in while processing and tabulating mail ballots.³⁰

The resiliency measures that election officials employed and the money that Congress provided to help pay for them was crucial in running a safe and secure election.³¹

D. Legitimate Post Election Audits and Recounts Confirmed that Outcomes Were Correct

Finally, after Election Day came and went, routine, statutory tabulation audits were performed in every swing state, with additional recounts in some. None found discrepancies that would have been sufficient to alter the outcome of the Presidential election, thereby providing added confidence in the integrity of the election.³²

Of course, there is room for improvement. Ideally, *all* states would conduct routine, statutory tabulation audits with the opportunity for nonpartisan and bipartisan observation. In these audits, a sample of ballots would be compared to machine counts, and ideally, they would include risk-limiting audits. In a risk-limiting audit, the number of ballots sampled varies based on how close the contest being audited is, in order to provide a pre-determined statistical level of confidence that any discrepancies were not sufficient to alter the outcome.³³

Currently, most states have some kind of routine post-election tabulation audit, and only a few states conduct risk-limiting audits.³⁴ Requiring risk-limiting audits is an example of the kind of measure that could truly improve upon election integrity, as opposed to sham partisan

²⁹ Córdova McCadney, Tisler, and Norden, “2020’s Lessons for Election Security.”

³⁰ Yelena Dzhanova, “The New Challenge for State Election Officials? How Much Hand Sanitizer is Enough,” CNBC, August 10, 2020, <https://www.cnn.com/2020/08/10/coronavirus-distributing-masks-and-sanitizer-a-challenge-for-2020-election.html>; Tim Harper, Rachel Orey, and Collier Fernekes, *Counting the Vote During the 2020 Election*, Bipartisan Policy Center, August 25, 2020, <https://bipartisanpolicy.org/report/counting-the-vote-during-the-2020-election/>; and Kendall Karson, “‘I Don’t Think You Really Can’ Make the Election Safe: Wisconsin Gears Up for Next Primary Amid Coronavirus,” ABC News, March 31, 2020, <https://abcnews.go.com/Politics/make-election-safe-wisconsin-gears-primary-amid-coronavirus/story?id=69879453>.

³¹ Córdova McCadney, Tisler, and Norden, “2020’s Lessons for Election Security.”

³² Bydlak et al., *Partisan Election Review Efforts in Five States*.

³³ Elizabeth Howard, Turquoise Baker, and Paul Rosenzweig, *Risk-Limiting Audits in Arizona*, Brennan Center for Justice, February 1, 2021, 3-4, <https://www.brennancenter.org/our-work/research-reports/risk-limiting-audits-arizona>.

³⁴ Derek Tisler, Elizabeth Howard, and Edgardo Cortés, “The Roadmap to the Official Count in an Unprecedented Election,” Brennan Center for Justice, October 26, 2020, <https://www.brennancenter.org/our-work/research-reports/roadmap-official-count-unprecedented-election>; National Conference of State Legislatures, “Post-Election Audits,” last updated October 25, 2019, <https://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx#state%20reqs>; and National Conference of State Legislatures, “Risk-Limiting Audits,” last updated September 16, 2021, <https://www.ncsl.org/research/elections-and-campaigns/risk-limiting-audits.aspx>.

reviews,³⁵ laws that make it easier for monitors to interfere with and disturb election administration,³⁶ or laws that make it impossible for election officials to assist and educate voters about their rights.³⁷

II. THREAT OF ELECTION SABOTAGE

It is imperative that all those who worked to secure our election infrastructure against the threat of foreign interference and attacks in 2020 continue those efforts. But the events of the past year have shown that there is a fast-growing threat of election sabotage from an anti-democratic movement within our own country, and that this threat also deserves focus. In fact, the two threats could compound each other, with homegrown election conspiracies making it easier for foreign governments and their agents to accelerate destabilization merely by seeding and amplifying doubts and confusion, rather than investing in developing sophisticated cyberattacks.

The domestic anti-democracy movement also threatens election infrastructure directly, through sham partisan reviews that undermine not only confidence but security, and through a variety of threats to the integrity of the people who make up our election infrastructure – election officials, election workers, and election vendor personnel.

A. Sham Partisan Reviews Undermine Security

Loyalists of former president Donald Trump invaded the U.S. Capitol one year ago, carrying weapons, waving the Confederate flag, and insisting that the 2020 election was fraudulent. There was no credible support for the claims of “Stop the Steal” advocates. Nevertheless, Pro-Trump politicians have spent the past year attempting to fabricate that support. They have dented public confidence in the voting process and made it harder for voters, in particular voters of color, to vote. Less recognized, but no less damaging, is the way they have coopted and undermined a critical tool of our democracy: the post-election audit.³⁸

Many states have rigorous protocols for post-election audits, including randomized selection of the electronic tallies to be checked against paper records, a commitment to objectivity throughout the process, and conducting the audit in full public view.³⁹ When these standards are upheld, post-election audits help check that the outcomes of elections are accurate, and they maintain or restore public confidence in our democracy. The sham reviews following

³⁵ Elizabeth Howard and Gowri Ramachandran, “Partisan Arizona Election ‘Audit’ Was Flawed from the Start,” Brennan Center for Justice, September 27, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/partisan-arizona-election-audit-was-flawed-start>.

³⁶ Eliza Sweren-Becker, “Who Watches the Poll Watchers?,” Brennan Center for Justice, April 29, 2021, <https://www.brennancenter.org/our-work/research-reports/who-watches-poll-watchers>.

³⁷ Tyler Buchanan, “Some Voter Education Programs May Be in Jeopardy Due to New Ohio Law,” Ohio Capital Journal, July 16, 2021, <https://ohiocapitaljournal.com/2021/07/16/some-voter-education-programs-may-be-in-jeopardy-due-to-new-ohio-law/>; and TX S.B. 1 § 4.02 (2021) (omnibus bill with several restrictive provisions).

³⁸ Brennan Center for Justice, “Post-Election Audits,” last accessed January 14, 2022, <https://www.brennancenter.org/issues/defend-our-elections/election-security/post-election-audits>.

³⁹ National Conference of State Legislatures, “Post-Election Audits”; and Howard, Rivest, and Stark, *A Review of Robust Post-Election Audits*.

the 2020 election are, essentially, the opposite of this. They were initiated for partisan reasons, as part of an attempt to overturn the will of the voters.

They can also undermine security by providing unmonitored access to systems to biased partisans,⁴⁰ leading to equipment no longer being safe to deploy in future elections. Ballot security breaches are another damaging effect, with inexperienced partisans permitting those handling the ballots to use pens that could change the vote records.⁴¹ They have also threatened potential voter intimidation with plans for biased partisans to knock on voters' doors asking questions.⁴² These security problems with partisan reviews are exemplified in the movement's most prominent effort to date: the partisan review⁴³ of Maricopa County's 2020 election, conducted by the contractor Cyber Ninjas. Cyber Ninjas finally issued a report in September 2021, replacing the outright lies that have triggered defamation lawsuits against other Big Lie proponents with copious and misleading innuendo.⁴⁴ The Maricopa County Recorder, Stephen Richer (R), recently issued a lengthy point-by-point rebuttal, in which the county identified 75 claims made by the audit team and debunked them all. The county's analysis determined 38 were inaccurate, 25 were misleading, and 11 were false.⁴⁵

The contractors' most attention-grabbing findings fit the pattern⁴⁶ that purveyors of voter fraud myths have long followed: willful ignorance⁴⁷ of basic probability, common election laws, and routine election administration procedures in order to raise baseless suspicions about

⁴⁰ Katie Hobbs to Maricopa County Board of Supervisors, May 20, 2021, <https://s3.documentcloud.org/documents/20784519/hobbs-letter-to-maricopa-supervisors-5-20-21.pdf>; and Jeremy Duda, "Wake Technology Services Audited a Pennsylvania Election as part of the #StopTheSteal Movement," Arizona Mirror, May 21, 2021, <https://www.azmirror.com/2021/05/21/wake-technology-services-audited-a-pennsylvania-election-as-part-of-the-stopthesteal-movement/>.

⁴¹ Felicia Sonmez and Rosalind S. Helderman, "Observers of Arizona's GOP-Led Election Audit Document Security Breaches, Prohibited Items on Counting Floor," *Washington Post*, June 2, 2021, https://www.washingtonpost.com/politics/trump-election-arizona-audit/2021/06/02/56de9282-c3af-11eb-9a8d-f95d7724967c_story.html.

⁴² Pamela S. Karlan to Karen Fann, May 5, 2021, <https://www.justice.gov/crt/case-document/file/1424586/download>; and Fredreka Schouten, "Trump Loyalists are Knocking on Voters' Doors in the Latest Quest to Find Fraud in the 2020 Election," CNN, December 18, 2021, <https://www.cnn.com/2021/12/18/politics/trump-supporters-knock-on-doors-in-search-for-2020-fraud/index.html>.

⁴³ Bydlak et al., *Partisan Election Review Efforts in Five States*.

⁴⁴ Howard and Ramachandran, "Partisan Arizona Election 'Audit' Was Flawed from the Start."

⁴⁵ Jeremy Duda, "Maricopa County Rebutts 'Audit' Findings, GOP's Bogus Election Claims," Arizona Mirror, January 5, 2022, <https://www.azmirror.com/2022/01/05/maricopa-county-rebutts-audit-findings-bogus-election-claims>.

⁴⁶ Brennan Center for Justice, *Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General*, December 2005, 1, <https://www.brennancenter.org/sites/default/files/analysis/Analysis%20of%20the%209-15-05%20Voter%20Fraud%20Report.pdf>.

⁴⁷ Gowri Ramachandran, "The Arizona's Senate's Contractors Fail to Understand Basic Probability and Voter Data," Brennan Center for Justice, October 1, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/arizona-senates-contractors-fail-understand-basic-probability-and-voter>.

fellow voters⁴⁸ and the dedicated public servants⁴⁹ who count their votes and certify the results. The report claims it is suspicious that some voters share the same full name and birth year — it isn't.⁵⁰ It uses a commercial move tracking service to raise suspicions about voters who, according to the commercial service, moved before the election. But even leaving aside the accuracy of the commercial service's data, temporary moves do not alter eligibility to vote in Arizona.⁵¹ Unsurprisingly, the Cyber Ninjas audit was promptly used in the continuing disinformation campaign against our elections, with Trump citing its "critical" — and false — "finding" that 23,344 ballots were somehow impacted by the voters purportedly moving.⁵²

The push to conduct partisan reviews continues to spread.⁵³ State legislators in Pennsylvania have proposed conducting their own partisan review that would use the Arizona Senate's actions as a model. Assembly members in Wisconsin have launched a partisan effort there, targeting⁵⁴ officials in its largest cities: Milwaukee, Madison, Racine, Kenosha, and Green Bay. Despite the dismissal of a lawsuit seeking to gain access to ballots in Fulton County, GA, for a partisan review,⁵⁵ gubernatorial candidate David Perdue has sued Fulton County officials seeking a review.⁵⁶ Now, even in states that President Trump won, such as Texas, Florida and Idaho, local party activists have demanded these reviews over the objections of local election supervisors of both major parties.⁵⁷

⁴⁸ Brennan Center for Justice to Cobb County Board of Elections and Registration, December 18, 2020, <https://www.brennancenter.org/sites/default/files/2020-12/2020.12.18%20Brennan%20Center%20Letter%20to%20Cobb%20County%20Board%20of%20Elections.pdf>.

⁴⁹ Reuters Staff, "Fact Check: Massachusetts Election Officials Have Not Destroyed Ballots or Committed Election Fraud," Reuters, October 2, 2020, <https://www.reuters.com/article/uk-factcheck-election-ballot-massachuset/fact-check-massachusetts-election-officials-have-not-destroyed-ballots-or-committed-election-fraud-idUSKBN26N2AF>.

⁵⁰ Ramachandran, "The Arizona's Senate's Contractors Fail to Understand Basic Probability and Voter Data."

⁵¹ Howard and Ramachandran, "Partisan Arizona Election 'Audit' Was Flawed from the Start."

⁵² Daniel Funke, "Fact Check: Arizona Audit Affirmed Biden's Win, Didn't Prove Voter Fraud, Contrary to Trump Claim," *USA Today*, September 28, 2021, <https://www.usatoday.com/story/news/factcheck/2021/09/28/fact-check-arizona-audit-affirms-biden-win-doesnt-prove-voter-fraud/5846640001/>; and Maricopa County (@MaricopaCounty), "CLAIM: 23,344 mail-in ballots voted from a prior address. BOTTOM LINE: Cyber Ninjas still don't understand this is legal under federal election law. To label it a "critical" concern is either intentionally misleading or staggeringly ignorant. AZ senators should know this too," Twitter, September 24, 2021, 2:32 p.m., <https://twitter.com/maricopacounty/status/1441470631787200514>.

⁵³ Allan Smith, "Not Just Arizona: Republicans Push More Partisan Election 'Audits,'" NBC News, June 4, 2021, <https://www.nbcnews.com/politics/donald-trump/not-just-arizona-republicans-push-more-partisan-election-audits-n1268644>.

⁵⁴ Christine Hatfield, "Election Officials Across Wisconsin Receive Subpoenas in GOP 2020 Election Probe," Wisconsin Public Radio, October 1, 2021, <https://www.wpr.org/election-officials-across-wisconsin-receive-subpoenas-gop-2020-election-probe>.

⁵⁵ Nicholas Reimann, "Georgia Judge Dismisses Lawsuit Seeking Election Audit," *Forbes*, October 13, 2021, <https://www.forbes.com/sites/nicholasreimann/2021/10/13/georgia-judge-dismisses-lawsuit-seeking-election-audit/?sh=3e4f2df3107f>.

⁵⁶ Mark Niese, "Perdue Sues to Inspect Absentee Ballots From 2020 Georgia Election," *Atlanta Journal-Constitution*, December 10, 2021, <https://www.ajc.com/politics/perdue-sues-to-inspect-absentee-ballots-from-2020-georgia-election/ERS26VWUQ5AZRAFRCLBPMFINUY/>.

⁵⁷ Alexa Ura and Allyson Waller, "First Part of Texas' 2020 Election Audit Reveals Few Issues, Echoes Findings From Review Processes Already in Place," *Texas Tribune*, December 31, 2021, <https://www.texastribune.org/2021/12/31/secretary-state-texas-election-audit/>; Mitch Perry, "DeSantis Appointee Dismisses Election 'Forensic Audit' For Hillsborough, Orange, 3 Other Counties," *Spectrum News: Bay News 9*,

B. Violent Threats and Intimidation, Along with Partisan Attacks, Are Pushing Out Personnel Committed to Free and Fair Elections

The Brennan Center for Justice commissioned a national survey of election officials this spring, which found that roughly one in three election officials feel unsafe because of their job, and approximately one in six listed threats to their lives as a job-related concern.⁵⁸ This is unacceptable in a functioning democracy. The people who risked their lives during a pandemic to ensure that all eligible voters could vote, that they could vote safely, and that their votes would be counted accurately, cannot be subject to attacks and intimidation. Not only do they deserve better, but our democracy cannot survive when dedicated, honest people who provided the most secure election in American history, with the highest turnout since 1900 are subjected to death threats, simply for doing their jobs well.⁵⁹

The Department of Justice has created a task force to address the situation, but the overall lack of accountability for these bad actors continues to be dispiriting for the public servants who make our democracy function,⁶⁰ and the impetus to step down is strong.⁶¹ In one recent example, despite having the support of at least one Republican Board of Elections member, Jeannetta

July 28, 2021, <https://www.baynews9.com/fl/tampa/news/2021/07/28/there-will-be-no-audits-of-florida-s-election--says-sec--of-state?web=1&wdLOR=cAFEC4A74-114C-47B8-9D94-A1FC306B6BED>; Idaho Secretary of State, “Idaho Declares ‘Big Lie’ Allegations ‘Without Merit,’ Confirms Idaho Election Integrity,” October 6, 2021, <https://sos.idaho.gov/2021/10/06/idaho-declares-big-lie-allegations-without-merit-confirms-idaho-election-integrity>; and Lawrence Mower, “‘Tone Down the Rhetoric’: Florida Election Officials Tell Politicians to Chill Out,” *Tampa Bay Times*, October 21, 2021, <https://www.tampabay.com/news/florida-politics/2021/10/21/tone-down-the-rhetoric-florida-elections-officials-tell-politicians-to-chill-out/>.

⁵⁸ Thirty-two percent of election officials surveyed said that they felt unsafe because of their job. Seventeen percent of local election officials surveyed said that they had been threatened because of their job. Benenson Strategy Group, “The Brennan Center for Justice: Local Election Officials Survey,” April 7, 2021, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey>.

⁵⁹ Women, Asian Americans, and Native Americans were not able to vote in 1900. U.S. Const. amend. XIX (ratified Aug. 18, 1920); Minnis and Moua, “50 Years of the Voting Rights Act: An Asian American Perspective”; United States Library of Congress, “Voting Rights for Native Americans”; Schaul, Rabinowitz, and Mellnik, “2020 Turnout is the Highest in Over a Century”; and U.S. Cybersecurity and Infrastructure Security Agency, “Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees.”

⁶⁰ So and Szep, “Reuters Unmasks Trump Supporters Who Terrified U.S. Election Officials”; and U.S. Department of Justice, “Justice Department Launches Task Force to Combat Threats Against Election Workers,” July 29, 2021, <https://www.justice.gov/opa/blog/justice-department-launches-task-force-combat-threats-against-election-workers-0>.

⁶¹ Tom Barton, “Scott County Auditor Cites Lack of Supervisor Support in Announcing Early Retirement,” *Quad-City Times*, March 10, 2021, https://qctimes.com/news/local/scott-county-auditor-cites-lack-of-supervisor-support-in-announcing-early-retirement/article_1d6e9afb-9f10-5e97-9037-7cc4a42516e6.html; Andy Kroll, “They Helped Save Democracy – and Are Being Tormented for It,” *Rolling Stone*, January 6, 2022, <https://www.rollingstone.com/politics/politics-features/jan6-election-workers-trump-biden-2020-democracy-1279027/>; John Myers, “California’s Elections Official Exodus,” *Los Angeles Times*, April 12, 2021, <https://www.latimes.com/politics/newsletter/2021-04-12/california-elections-officials-exodus-essential-politics>; Fredreka Schouten and Kelly Mena, “High-Profile Elections Officials Leave Posts After a Tumultuous 2020,” *CNN*, February 19, 2021, <https://www.cnn.com/2021/02/19/politics/election-officials-lose-and-leave-jobs/index.html>; Marie Albiges and Tom Lisi, “Pa. Election Officials are Burnt Out and Leaving Their Jobs After 2020 ‘Nightmare,’” *Spotlight PA*, December 21, 2020, <https://www.spotlightpa.org/news/2020/12/pennsylvania-election-2020-officials-retiring-nightmare/>; and Michael Wines, “After a Nightmare Year, Election Officials Are Quitting,” *New York Times*, July 2, 2021, <https://www.nytimes.com/2021/07/02/us/politics/2020-election-voting-officials.html>.

Watson, the first Black elections director in Macon-Bibb County, Georgia, stepped down last week.⁶² Board of Elections member Mike Kaplan said it was “a sad day for our country and especially Macon-Bibb,” as he “traced Watson’s troubles back to allegations of improper vote counting during the presidential election. Kaplan said workers were ‘followed home every night’ and under round-the-clock surveillance. ‘The stress and fear is too much,’ Kaplan said, adding that he believes Watson went through ‘a very contentious election where she was in fear of her life.’”⁶³

As one might expect, partisan attacks compound the many other pressures that election officials committed to nonpartisan election administration face, and many are being pushed out or resigning in the face of this pressure.⁶⁴ Others are being stripped of their powers by partisan actors, in retaliation for certifying election results, or simply for being the face of nonpartisan election administration.⁶⁵

These attacks on election officials are a threat to the security of our election infrastructure, as officials who are committed to conducting free elections and respecting the will of the voters are themselves a crucial element of that infrastructure.

C. Elections Personnel Who Buy Into Conspiracies May Pose an Insider Threat

Unfortunately, almost one-third of Americans still believe the false narrative that the 2020 election was stolen, “a number that has not budged across five polls in which Monmouth [University Polling Institute] asked this question during the past year.”⁶⁶ Given this fact, we shouldn’t be shocked that among the more than 8,000 local election officials⁶⁷ — and tens of thousands of additional public and private sector employees that support their work — there are some who will also buy into these conspiracy theories. In fact, there has been an active effort to

⁶² Liz Fabian, “Macon-Bibb Elections Supervisor Resigns, Cites Stress, Workload, New Election Laws,” Georgia Public Broadcasting, January 10, 2022, <https://www.gpb.org/news/2022/01/10/macon-bibb-elections-supervisor-resigns-cites-stress-workload-new-election-laws>.

⁶³ Fabian, “Macon-Bibb Elections Supervisor Resigns, Cites Stress, Workload, New Election Laws.”

⁶⁴ Wines, “After a Nightmare Year, Election Officials Are Quitting.”

⁶⁵ Michael Wines, “In Arizona, GOP Lawmakers Strip Power from a Democrat,” *New York Times*, June 25, 2021, <https://www.nytimes.com/2021/06/25/us/Arizona-Republicans-voting.html>; Jeremy Schwartz, “Trump Won the County in a Landslide. His Supporters Still Hounded the Elections Administrator Until She Resigned,” ProPublica, October 12, 2021, <https://www.propublica.org/article/trump-won-the-county-in-a-landslide-his-supporters-still-hounded-the-elections-administrator-until-she-resigned>; Laurel White, “‘Partisan Politics at Its Worst’: Wisconsin Elections Head Meagan Wolfe Refuses to Step Down,” Wisconsin Public Radio, November 1, 2021, <https://www.wpr.org/partisan-politics-its-worst-wisconsin-elections-head-meagan-wolfe-refuses-step-down>; and Stephen Fowler, “State Election Board Meets for First Time Since Raffensperger Stripped as Chair,” Georgia Public Radio, April 29, 2021, <https://www.gpb.org/news/2021/04/29/state-election-board-meets-for-first-time-raffensperger-stripped-chair>.

⁶⁶ Monmouth University Polling Institute, “Doubt in American System Increases,” November 15, 2021, https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_111521/; and Chris Cillizza, “1 in 3 Americans Believe the ‘Big Lie,’” CNN, June 21, 2021, <https://www.cnn.com/2021/06/21/politics/biden-voter-fraud-big-lie-monmouth-poll/index.html>.

⁶⁷ Paul Gronke, et al., “Amplifying the Perspectives of Officials at the Front Lines of Elections,” Democracy Fund, April 19, 2021, <https://democracyfund.org/idea/amplifying-the-perspectives-of-officials-at-the-front-lines-of-elections/>.

recruit and convince⁶⁸ election officials to facilitate these conspiracy theories and push the goals of election deniers. There is reason to worry these efforts could gain traction and followers in the election official community, posing yet another threat to the integrity of the human component of our election infrastructure. Those who work for election vendors may also be at risk.⁶⁹

Officials who have promoted election denialism may be especially susceptible to entreaties that they give unauthorized access. We are witnessing the first glimpses now. In Colorado, a county clerk with connections to election conspiracy theorists gave unauthorized access to the county's Dominion voting systems—a vendor targeted by many proponents of the Big Lie.⁷⁰ This access allowed the unauthorized person to take photos of passwords for the voting machine software, which then ended up online. The secretary of state decertified the county's voting equipment and ordered the county to replace the machines before the next election.⁷¹

In Michigan, a town clerk who shared election conspiracies on social media and who took office in 2021 refused to allow a vendor to perform routine maintenance on a voting machine because the clerk falsely believed the maintenance would erase old data that could prove the machines were rigged.⁷² When a central component of that machine went missing, the state police opened a criminal investigation into the clerk to locate the since-found equipment and determine whether the equipment had been tampered with.⁷³

⁶⁸ Amy Gardner, Emma Brown, and Devlin Barrett, “Attempted Breach of Ohio County Election Network Draws FBI and State Scrutiny,” *Washington Post*, November 19, 2021, https://www.washingtonpost.com/politics/attempted-breach-ohio-election/2021/11/19/12417a4c-488c-11ec-b8d9-232f4afe4d9b_story.html.

⁶⁹ Norden, Ramachandran, and Deluzio, *A Framework for Election Vendor Oversight*.

⁷⁰ Bente Birkeland, “After Data is Posted on Conspiracy Site, Colorado County's Voting Machines are Banned,” National Public Radio, August 12, 2021, <https://www.npr.org/2021/08/12/1027225157/after-data-is-posted-on-conspiracy-website-colo-countys-voting-machines-are-bann>; Elise Viebeck, “Trump Campaign Debunked Dominion Conspiracy Theories, Internal Memo Shows, Days Before Backers Kept Spreading Them,” *Washington Post*, September 22, 2021, <https://www.washingtonpost.com/politics/2021/09/22/trump-dominion-giuliani-powell-memo/>.

⁷¹ Justin Wingerter, “Mesa County Must Replace Election Equipment Due to Security Breach, Secretary of State Says,” *Denver Post*, August 21, 2021, <https://www.denverpost.com/2021/08/12/election-security-colorado-mesa-county-jena-griswold/>; and Faith Miller, “Mesa County Commissioners Vote to Replace Dominion Voting Equipment,” Colorado Newline, August 24, 2021, <https://coloradonewline.com/briefs/mesa-county-commissioners-vote-to-replace-dominion-voting-equipment/>.

⁷² Jonathan Oosting, “Clerk Decries ‘Tyranny’ After Michigan Strips Her of Running Election,” Bridge Michigan, October 27, 2021, <https://www.bridgemi.com/michigan-government/clerk-decries-tyranny-after-michigan-strips-her-running-election>; Jonathan Oosting, “Voting Machine Missing after Michigan Clerk Stripped of Election Power,” Bridge Michigan, October 28, 2021, <https://www.bridgemi.com/michigan-government/voting-machine-missing-after-michigan-clerk-stripped-election-power>; and Secretary of State Jocelyn Benson to Adams Township Clerk Stephanie Scott, October 25, 2021, https://content.govdelivery.com/attachments/MISOS/2021/10/25/file_attachments/1976229/Letters%20to%20Adams%20Township%20Clerk.pdf.

⁷³ Oosting, “Voting Machine Missing After Michigan Clerk Stripped of Election Power”; and John Tunison, “Missing Hillsdale County Voting Equipment Found, State Checking Whether Tampering Occurred,” Michigan Live, October 29, 2021, <https://www.mlive.com/news/ann-arbor/2021/10/missing-hillsdale-county-voting-equipment-found-state-checking-whether-tampering-occurred.html>.

In Ohio, an individual inside a county commissioner’s office connected a private laptop to the county network in an attempted breach that state officials believe a government employee may have facilitated.⁷⁴ While the connection did not allow access to voting systems, and no sensitive data appears to have been obtained, network traffic captured by the laptop was nonetheless shared at a conference hosted by election conspiracist Mike Lindell — the same conference where information from the Colorado breach was released. Officials in both counties had previously discussed baseless claims about the 2020 election with associates of Lindell.⁷⁵

D. Candidates Are Running for Election Administration Positions with Big Lie Messaging

The magnitude of the insider threat that anti-democracy forces could pose is clarified by examining races for governor, secretary of state, and local election administrator positions. There are thousands of local election jurisdictions in the United States, and in the vast majority of them, an elected individual is in charge.⁷⁶ In past years, the question of who ran and certified our elections has traditionally been of little interest to most. But now, there is an alarming trend of candidates running on (and against) “election denialism.”⁷⁷

A preliminary Brennan Center analysis of campaign finance disclosures and messaging by candidates in swing states has found that much of the political discussion this year, 2022, is shaping up to be about 2020 and 2024: specifically, the Big Lie that the election was “stolen” from former President Trump in 2020, and that if he runs again and loses in 2024, those election results should be overturned.

So far, across three states with data available, fundraising in secretary of state races is two and a half times higher than it was by the same point in either of the last two election cycles. And campaigns are making election denial—and opposition to it—a key campaign issue in all

⁷⁴ Lauren Aratani, “FBI Investigates Attempted Breach of Local Election Network in Ohio,” *Guardian*, November 20, 2021, <https://www.theguardian.com/us-news/2021/nov/20/fbi-investigates-attempted-breach-local-election-network-ohio>; and Gardner, Brown, and Barrett, “Attempted Breach of Ohio County Election Network Draws FBI and State Scrutiny.”

⁷⁵ Gardner, Brown, and Barrett, “Attempted Breach of Ohio County Election Network Draws FBI and State Scrutiny.”

⁷⁶ Gronke, et al., “Amplifying the Perspectives of Officials at the Front Lines of Elections”; and David C. Kimball and Martha Kropf, “The Street-Level Bureaucrats of Elections: Selection Methods for Local Election Officials,” *Review of Policy Research* 23 (2006): 1257-1268, https://editions.lib.umn.edu/wp-content/uploads/sites/3/2016/02/Kimball.Kropf_.Street.Level_.Bureaucrats.of_.Elections.pdf.

⁷⁷ Vandewalker and Norden, “Financing of Races for Offices that Oversee Elections: January 2022.”

six of the battleground states with elections for secretary of state in 2022 — Arizona,⁷⁸ Georgia,⁷⁹ Michigan,⁸⁰ Minnesota,⁸¹ Nevada,⁸² and Wisconsin.⁸³

In the contest for Georgia secretary of state, four candidates have each raised more than the 2018 winner had at this point, and the candidate raising the most money has refused to acknowledge that Joe Biden won the 2020 election. The Georgia election also features an early indication that these contests are being nationalized. The portion of funding in the race from out-of-state donors so far, 22 percent, is a marked increase over 2018, when it was 13 percent, and more than four times the amount from 2014, which was only 5 percent.⁸⁴

In Michigan, the incumbent has raised \$1.2 million — six times what the last incumbent had raised at this point in 2014. This candidate is running *against* election denialism, against an opponent who has said voting machines in the state could have flipped 200,000 votes to Joe Biden.⁸⁵

Regardless of who enjoys a fundraising advantage in any particular state, voters are likely to be exposed to unprecedented amounts of political spending on the issue of election denialism, with it no longer being taken as a given that elections will be administered in a nonpartisan manner, regardless of the identity of the administrator.

III. WHAT CAN BE DONE

Lawmakers should support the excellent work that CISA, the EAC, and state and local election officials have done to further election integrity. But they should also act now to further mitigate these growing security risks posed by domestic anti-democracy forces. There are a variety of broadly accepted methods for mitigating insider threats, which state and local jurisdictions should adopt, and on which Congress can lead by providing the needed financial support. Congress can also provide support for the physical safety and security of elections personnel and elections offices, as well as for risk-limiting audits—a true election integrity

⁷⁸ Mary Jo Pitzl, “Mark Finchem, Election Conspiracy Promoter, Gets Trump’s Endorsement for Secretary of State,” *Arizona Republic*, September 13, 2021, <https://www.azcentral.com/story/news/politics/elections/2021/09/13/trump-endorses-mark-finchem-arizona-secretary-state-election/8322839002/>.

⁷⁹ Jeremy Herb and Fredreka Schouten, “‘We Won’: Trump and His Allies Barrel Ahead with Election Lies Despite Arizona Review Confirming His Loss,” CNN, September 27, 2021, <https://www.cnn.com/2021/09/27/politics/arizona-trump-election-lies/index.html>.

⁸⁰ Jeremy Herb and Sara Murra, “Trump-Backed Michigan Secretary of State Candidate Spread False Election Claims and January 6 Conspiracy Theories,” CNN, November 16, 2021, <https://www.cnn.com/2021/11/16/politics/kristina-karamo-michigan-secretary-of-state-candidate/index.html>.

⁸¹ Miles Parks, “Here’s Where Election-Denying Candidates are Running to Control Voting,” National Public Radio, January 4, 2022, <https://www.npr.org/2022/01/04/1069232219/heres-where-election-deniers-and-doubters-are-running-to-control-voting>.

⁸² Tim Reid, Nathan Layne, and Jason Lange, “Special Report: Backers of Trump’s False Fraud Claims Seek to Control Next Elections,” Reuters, September 22, 2021, <https://www.reuters.com/world/us/backers-trumps-false-fraud-claims-seek-control-next-us-elections-2021-09-22/>.

⁸³ Vandewalker and Norden, “Financing of Races for Offices that Oversee Elections: January 2022.”

⁸⁴ Vandewalker and Norden, “Financing of Races for Offices that Oversee Elections: January 2022.”

⁸⁵ Vandewalker and Norden, “Financing of Races for Offices that Oversee Elections: January 2022.”

measure. Others can do their part as well: Online media platforms and traditional media can work with civil society to ensure they are promoting the most accurate information, and law enforcement at all levels of government can take threats against election administration seriously, enforcing the laws that exist to deter these crimes.

A. Congress Should Provide Support for Mitigating Insider Threats, Including Against Vendors

Insider threat risks have been a central focus of security efforts in other sectors, and best practices, such as those from the Cybersecurity and Infrastructure Security Agency, exist to prevent and respond to this activity.⁸⁶

Among other things that can be done to both secure election systems from insider threats and build public confidence that those systems can be trusted, states and counties should take the following actions, and Congress should provide resources to support these mandates, many of which require financial resources to implement consistently.

1. Restrict access to election systems.

Election officials should ensure that an individual only have access to critical systems — both physical and digital — if access is necessary for that individual to perform their official responsibilities, and only to the extent that those responsibilities require it (this is known as the “principle of least privilege”⁸⁷). In addition, election officials should require all individuals that access critical systems to first complete a background check. A recent regulation in Colorado⁸⁸, for example, restricts voting system access to individuals who have passed a background check and are employees of the county clerk, voting system provider, or secretary of state’s office.

Where possible, official procedures should require two people and/or bipartisan teams to be present when accessing election systems, ballots, and election records. Election staff should also be on site with private vendors at all times.⁸⁹

2. Establish transparent procedures and monitor for inappropriate activity.

Transparency protocols helped officials in Colorado identify the source of leaked voting system information.⁹⁰ A state investigation found that the county clerk gave an

⁸⁶ U.S. Cybersecurity and Infrastructure Security Agency, “Insider Threat Mitigation,” last updated January 6, 2022, <https://www.cisa.gov/insider-threat-mitigation>.

⁸⁷ Center for Internet Security, “Election Security Spotlight – Principle of Least Privilege,” last accessed January 13, 2022, <https://www.cisecurity.org/spotlight/ei-isac-cybersecurity-spotlight-principle-of-least-privilege/>.

⁸⁸ Office of the Colorado Secretary of State, “Notice of Temporary Adoption,” June 17, 2021, https://www.sos.state.co.us/pubs/rule_making/files/2021/20210617ElectionsNoticeTempAdoption.pdf.

⁸⁹ Norden and Tisler, “Addressing Insider Threats in Elections.”

⁹⁰ Emma Brown, “An Elections Supervisor Embraced Conspiracy Theories. Officials Say She Has Become an Insider Threat,” September 26, 2021, https://www.washingtonpost.com/investigations/an-elections-supervisor-embraced-conspiracy-theories-officials-say-she-has-become-an-insider-threat/2021/09/26/ee60812e-1a17-11ec-a99a-5fea2b2da34b_story.html.

unauthorized person a key card, and this card was logged when the individual entered the election facility. The clerk had also blatantly flouted another transparency measure by turning off video surveillance of the voting machines before the breach. But if the information obtained from the breach had not been discussed so publicly, it's possible the state would have missed this activity.

Election officials must adopt and actively review transparency protocols to ensure that every person who accesses election systems is authorized to do so. Funding should be provided for election officials to install key card access to facilities that hold voting systems, so that a log of every entry can be created. All election offices should be equipped with and require 24-hour surveillance of voting systems and ballots, that can be reviewed and compared with access logs in the event of unauthorized activity. Where possible, that footage should be stored for at least two years. Both the access logs and surveillance data should be made available to the state, and state officials should ensure that local offices have sufficient procedures in place to detect unauthorized access.

3. Remove and prosecute officials and workers who actively undermine election integrity.

When officials do discover wrongdoing, these individuals must be held accountable. States have different processes for removing election officials. In some cases, the entity that appointed an election official may simply fire that individual. In others, state officials may hold power to remove election administrators or strip them of election responsibilities.⁹¹ Officials may also seek permission from courts to do so.⁹² State and local officials, as well as their attorneys, should be familiar with the removal options available and be prepared to take the steps necessary to protect our election infrastructure from insider threats.

Where appropriate, law enforcement officials should also pursue prosecution against election workers who tamper with or allow unauthorized access to voting systems and election materials. State laws may require updating to address this conduct.

4. Increase resiliency against insider threats to vendors.

Private vendors are involved at every stage of an election, from registering voters to counting ballots to reporting results. States can act now to establish standards on cybersecurity, personnel security, and supply chain integrity for their election vendors.⁹³ Congress should, as the Freedom to Vote: John R. Lewis Act does, directly incentivize vendors to adopt these standards by limiting expenditures of federal funds to those vendors that conform to best practices, which can be promulgated by CISA.⁹⁴

⁹¹ Oosting, "Clerk Decries 'Tyranny' After Michigan Strips Her of Running Election."

⁹² Colorado Secretary of State, "Mesa County Court Judge Rules in Favor of Removing Peters as Designated Election Official," press release, October 13, 2021, <https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2021/PR20211013Mesa.html>.

⁹³ Norden, Ramachandran, and Deluzio, *A Framework for Election Vendor Oversight*.

⁹⁴ Freedom to Vote: John R. Lewis Act § 3908.

5. Build in contractual safeguards.

Local election offices can also build in safeguards through contracts when purchasing equipment and services.⁹⁵ As a rule, vendors should be held to the same or higher level of standards for access and transparency as county or state employees. This can include background checks and the requirement to always have a state or county employee present when vendors access critical systems. This can also mean restricting or eliminating remote access by vendors.

Some of these solutions require statutory or regulatory changes at the state level, but Congress can take a leading role in providing additional resources for election offices that implementing these changes will necessitate. Congress can also lead on building resiliency of election vendors, at a minimum by limiting the expenditure of federal funds to those vendors that agree to comply with best practices in security, including resiliency to insider attacks.

B. Congress Should Provide Support for the Security of Election Officials and Workers

Congress should provide resources to states, via the Election Assistance Commission, that can be used for safety training, including prevention and de-escalation training for election workers. Funds could also be provided for education and training for officials on how to protect one's personal information, as well as for states to expand their address protection services to cover election officials and workers. The Freedom To Vote: John R. Lewis Act additionally makes it a crime to reveal the personally identifying information of election officials and pollworkers with the intent to threaten or intimidate them.⁹⁶ Resources could also be used to improve the physical security of election offices.⁹⁷

C. Online Platforms and Traditional Media Should Work with Civil Society

The Brennan Center, along with many others, encourages social media and other online speech platforms, along with traditional media, to amplify and promote trusted, accurate information about elections.⁹⁸ Typically, election officials are and will be trustworthy sources of information about elections. But given the threats to the integrity of election officials posed by candidates who actively promote election disinformation, online platforms and traditional media must prepare for the possibility of a high-level election official promoting disinformation. Nonpartisan and bipartisan civil society groups can serve as an additional trusted resource, to help social and traditional media be sure they are promoting the most accurate information.

D. Existing Laws Should Be Enforced

⁹⁵ Christopher Deluzio, "A Procurement Guide for Better Election Cybersecurity," Brennan Center for Justice, March 22, 2019, <https://www.brennancenter.org/our-work/policy-solutions/procurement-guide-better-election-cybersecurity>.

⁹⁶ Freedom to Vote: John R. Lewis Act § 3102.

⁹⁷ Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack*, 4, 6.

⁹⁸ Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack*, 10-15.

The Department of Justice, and local and state law enforcement and prosecutors, should enforce existing laws against intimidation, coercion, and threats. There must be consequences for attempting to interfere with free and fair elections. The Department of Justice has launched a task force to combat threats against election workers.⁹⁹ State and local prosecutors should take these threats seriously as well.

For a recent example of law enforcement bringing charges against someone making threats against an election official, in Genesee County, MI, the chair of the County GOP has recently pled guilty to harassing the Houghton County clerk during her bid for re-election. The clerk initially reported that he called her at 1am, threatening to kill her dogs. The call was traced, a warrant was obtained for his phone records, and eventually he was charged and sentenced to a year of probation, 240 hours of community service, and a \$650 fine.¹⁰⁰

For an example of charges against someone threatening others over their defense of the integrity of the 2020 election, a man in California was recently sentenced to three years in prison after sending threatening messages to approximately 50 victims, “targeting those individuals because of their statements expressing that then-President Trump had lost the 2020 presidential election.”¹⁰¹

E. Congress Should Promote Legitimate, Risk-Limiting Audits

Another important security measure that guards against a variety of threats, including insider threats, is routine, statutory tabulation audits that include the opportunity for nonpartisan and bipartisan observation. Such audits can provide added confidence that a cyberattack, insider manipulation, or innocent programming error did not corrupt ballot scanners in such a way that the outcome of an election was altered. In particular, risk-limiting audits can provide a consistently high level of statistical confidence in the machine-tabulated outcome of an election contest.

Although at least 24 states as of 2020 had laws requiring routine post-election tabulation audits, only a few states conduct risk-limiting audits.¹⁰² Congress should require – and provide

⁹⁹ U.S. Department of Justice, “Justice Department Launches Task Force to Combat Threats Against Election Workers.”

¹⁰⁰ Stephen Borowy, James Felton, and Gray News Staff, “Michigan School Board Member Sentenced to Probation for ‘Malicious’ Phone Call,” WWNY/WNYF, <https://www.wwny.com/2022/01/12/michigan-school-board-member-sentenced-probation-malicious-phone-call/>.

¹⁰¹ U.S. Department of Justice, “California Man Sentenced To 3 Years In Prison For Making Threats Against Political Officials And Journalists Relating To The Outcome Of The 2020 Presidential Election,” press release, December 20, 2021, <https://www.justice.gov/usao-sdny/pr/california-man-sentenced-3-years-prison-making-threats-against-political-officials-and>.

¹⁰² Córdova McCadney, Howard, and Norden, “Voting Machine Security: Where We Stand Six Months Before the New Hampshire Primary”; and National Conference of State Legislatures, “Risk-Limiting Audits.”

funding for – risk-limiting audits of federal elections.¹⁰³ This would be a positive improvement in election integrity, and it has received bipartisan support in the past.¹⁰⁴

IV. CONCLUSION

The heroic efforts of many, and in particular state and local election officials committed to free and fair elections, gave us a safe and secure election in November 2020 with historic turnout. Some crucial improvements in security and resiliency had been in the works for a number of years, such as states that transitioned to voting systems that scan paper ballots, or that took advantage of vulnerability assessments provided by CISA. Other resiliency measures had to be implemented in response to the pandemic and benefited from funding provided by Congress. This included increased mail ballot printing to accommodate increased demand from voters, as well as the purchase of secure dropboxes to permit those voters to safely drop off ballots outside. Longstanding best practices, such as the provision of emergency paper ballots, paper pollbook backups, and pollworkers on standby, took long hours and plenty of financial resources to implement during an extremely high-turnout election with added pandemic-related costs. Carrying out these practices demonstrated a commitment by election officials to ensure eligible voters would not be turned away, even in the case of malfunctioning equipment or a potential cyberattack.

Now, the disinformation campaign that has sowed distrust in that election has seeded an anti-democracy movement that poses significant threats to our election infrastructure. The threats include sham partisan reviews that undermine ballot and election equipment security, while further fueling the disinformation campaign. They also include attacks on election officials and workers that push out and disempower the very people who administered a historically secure election in 2020. And there may be insider threats from those who seek to replace them. Some who are running for election official positions are themselves promoting election conspiracies in their campaigns, highlighting how election officials themselves, election workers, or election vendor personnel can fall victim to and push conspiracies about the 2020 election. These insiders could be susceptible to requests for unauthorized access and other security breaches, as we've seen occur in a few jurisdictions already.

Maintaining a secure election infrastructure will require effort from many parts of society in the weeks and months to come. Congress can lead the way in this effort, by providing resources for states and local jurisdictions to implement measures that protect against insider threats, such as video surveillance of election equipment and background checks for personnel. Congress should also, as the Freedom to Vote: John R. Lewis Act does, incentivize election vendors' adoption of best practices for personnel and supply chain security, by requiring that federal funds spent on election vendors go to those who agree to abide by these security measures, and by requiring risk-limiting audits in federal elections. Unlike sham partisan reviews, these would be true election integrity improvements.

¹⁰³ Freedom to Vote: John R. Lewis Act, § 4001.

¹⁰⁴ SAFE Act, H.R.2722, § 121 - 123, 116th Cong. (2019); and Clerk of the U.S. House of Representatives, "Roll Call 428 | Bill Number H.R. 2722," June 27, 2019, <https://clerk.house.gov/Votes/2019428>.

Congress should further provide resources for the physical and personal security of election officials, workers, and their offices, while state, local, and federal law enforcement should treat those who threaten and interfere with fair election administration as the serious threat to democracy that they are. Existing laws must be enforced against these bad actors.

Our election infrastructure is strong, as shown by the 2020 election, but it is facing a growing anti-democracy threat from within. Congress should protect democracy from that threat by investing in true election integrity measures.