

Six Principles for Federal Legislation to Combat Election Subversion

Across the country, state legislators have proposed and passed bills that would give partisan state legislators greater control over elections while hamstringing experienced state and local election administrators who have traditionally run our voting systems. Many of the bills would make elections more difficult to administer; make it more difficult to finalize election results; allow for election interference and manipulation by partisan actors; and, in the worst cases, potentially allow state legislatures to overturn the will of the voters and precipitate a democracy crisis. (Protect Democracy, Law Forward, and States United Democracy Center released a [report detailing 216+ such bills](#)).

Congress can respond to this growing risk of election subversion with a variety of common-sense reforms that protect against partisan interference, decrease the chances of future post-election turmoil, and strengthen the bedrock of American elections, regardless of which party controls any given political office or stands to win a given election. These measures include:

1. Paper ballot requirements

Future efforts to subvert election outcomes will likely involve creating doubt and uncertainty about the actual count of the popular vote in a jurisdiction. To prevent this, every voter should cast their vote on a paper ballot (marked by hand or by a ballot-marking device) that they have an opportunity to review before it is cast. In Georgia in 2020, the ability to conduct repeated recounts of physical ballots verified by voters was a critical backstop to disprove unfounded allegations of voter fraud. But as of 2020, [eight states](#) still used paperless voting machines in some jurisdictions. Widespread reports that these machines are insecure (and may have been targeted by Russian hackers in 2016) would make it easy to cast a cloud of suspicion over votes not supported by a paper record. **Congress should require that, in federal elections, all voters must cast their ballots in paper form.**

This principle is reflected in Sec. 1501-1507 of the [For the People Act](#) (S.1)

2. Chain of custody protections for ballots, other election records, and election equipment

Once voters cast a paper ballot, those ballots must be preserved throughout the tabulation and certification processes. Federal law already requires that ballots be retained for 22 months, but specifies no standards for how they should be stored and monitored throughout that period. The ongoing, highly-criticized partisan election review conducted by the Arizona State Senate illustrates how the integrity of ballot records can be jeopardized by a sloppy counting process — for instance, using pens to mark ballots during review risks permanently obscuring a voter's true intent. Furthermore, the fact that sensitive voting machines were handed over to third parties means that they cannot be used in future elections, which could cost taxpayers millions. **Congress should direct relevant agencies to promulgate**

more specific regulations governing how ballots, other election records, and election equipment should be handled, and should also prohibit reckless actions by election officials that endanger the preservation or security of records and equipment.

This principle is reflected in the [Protecting Election Administration from Interference Act](#) (S.2626)

3. Judicial review of the vote-counting process

Several states have passed laws that shift responsibility for counting ballots and certifying elections in the hands of highly partisan officials. This increases the likelihood that these officials may seek to use their control of the vote-counting process to improperly influence the outcome of an election, for instance by baselessly discarding certain ballots. **Congress should ensure that election administration decisions, as well as decisions about ballot-handling, are explicitly subject to federal judicial scrutiny**, for example by creating a statutory right to have one's vote properly counted.

This principle is reflected in the [Right to Vote Act](#) (S.2615)

4. Preventing partisan takeovers of election administration

In several states, laws have been proposed or enacted that would make it easier for state legislators and other partisan actors to take control over election administration from local election officials, which would then allow them to more easily manipulate or subvert the results. For example, a provision of Georgia's new omnibus voting law (SB 202) allows the State Board of Elections—which is controlled by the state legislature—to remove local election officials for little or no reason and replace them with their own handpicked substitutes. Georgia Senate Republicans have [already taken first steps](#) towards using this authority to replace election officials in heavily Democratic Fulton County. **Congress should prohibit the removal of local election officials absent good cause, such as substantial neglect or malfeasance.**

This principle is reflected in Sec. 4 of the [Preventing Election Subversion Act](#) (S.2155)

5. Protections for election workers

Election officials and poll workers play a crucial role in the infrastructure of our democracy, but they are currently under attack. In 2020, and continuing into 2021, election officials have faced [unprecedented threats](#), including death threats, because of the false allegations that the 2020 election was “rigged.” In addition, states are passing [harsh new laws](#) to penalize even inadvertent errors and mistakes by election officials and poll workers. **Congress should reaffirm that intimidation of election workers is unlawful and strengthen protections for them.**

This principle is reflected in the [Protecting Election Administration from Interference Act](#) (S.2626) & Sec. 2-3 of the [Preventing Election Subversion Act](#) (S.2155)

6. Heightened penalties for election manipulation or subversion

The 2020 election did not turn into a full-blown crisis in large part because local and state election officials refused to bow to pressure from President Trump and others to subvert the results. However, voters cannot necessarily rely on similar forbearance in future elections, as (1) the pressure is likely to be even greater, (2) many of the officials who refused to subvert the results may be out of office by 2022/2024 and may be replaced by more pliable individuals, and (3) proposed and/or enacted state legislation may make it easier for officials who are so inclined to manipulate or subvert an election. **Federal law already prohibits individuals, including election officials, from manipulating or subverting election results, but Congress should increase penalties for violations of those provisions to deter future attempts at subversion.**

This principle is reflected in the [Protecting Election Administration from Interference Act \(S.2626\)](#)