New Models for Keeping Partisans out of Election Administration

Written by Kevin Johnson

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I. Introduction

In the aftermath of the 2020 presidential vote, election officials faced unprecedented opposition to the results in key states that contributed to the election of Joe Biden. Secretaries of state, state and county canvass boards, county commissioners, and even governors were pressured to denounce confirmed results, refuse to certify them, or change them outright. But these officials held firm, resisting the enormous pressure from outside.

Since then, many have raised the concern that in future elections, pressure to subvert elections could come from the inside as well.

In at least six swing states, elections in 2022 for the top election position of secretary of state will feature well-funded "stop the steal" candidates. Based on their campaign statements, these individuals appear ready to try to overturn unfavorable election results to help their side win.[1]

Similar threats are emerging at the local level, where most of the core election functions of registering voters, administering polling stations, and tabulating results take place. According to reporting from ProPublica, thousands of "election deniers" have mobilized to take over GOP precinct-level positions, which in some states affect the selection of poll workers and members of boards that oversee elections.[2]

These scenarios underscore the need to address a unique vulnerability of U.S. election administration: the lack of safeguards against party or candidate loyalists' holding important election administration positions.[3]

Most senior U.S. election officials come to their posts through explicitly partisan processes, such as partisan elections or political appointments. The vast majority of these officials rise above party politics and render impartial service, helping to create the relatively high level of trust in election administration found by many opinion surveys.[4] But high-profile exceptions, such as former Florida Secretary of State Katherine Harris' biased handling of her state's 2000 presidential recount, illustrate the risk partisan election officials pose to voter trust and to election results.

Biased insiders have certainly enabled questionable election victories in the past. Historians have documented that ballot-box stuffing gave Lyndon Johnson his 1948 Texas Senate victory, and election theft likely occurred under single-party "machine" control of some states and cities in the late 19th and early 20th centuries.[5]

In Canada, fraud scandals led to the establishment of independent election leadership in 1920, when both major parties granted control to a national chief electoral officer, prohibited from voting and given consensus approval in Parliament.[6] Constitutionally independent bodies run elections in 73 countries, and many others rely on technocratic government agencies distanced in some manner from political influence.[7] The U.S. is the only country in the world that elects its election officials, and one of very few to allow high-ranking party members to lead election administration. [8]

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International election standards specify that citizens are entitled to public servants who are "politically neutral" and "detached from the political fray," including in the field of election administration.[9]

Although the U.S. lags its democratic peers in this area, the country's history of reform movements and innovations can help bridge the gap. The question of how to appoint independent, impartial individuals to politically significant positions is not unique to elections. In two important areas — the appointment of judges and the drawing of district boundaries — the U.S. has successful, relevant models to consider. Judicial nominating commissions, which assist in the appointment process for state judges, and independent redistricting commissions, which determine state legislative and congressional district boundaries, can help guide the development of impartial approaches to how election officials are selected and operate.

This report summarizes the origins and important features of judicial nominating commissions and independent redistricting commissions. Applying these models to the election administration context, the report identifies important options for reform, which are summarized below and discussed in detail in Section V.

Summary of Recommendations

1. **States should make the state chief election official position nonpartisan.**

2. **States should consider establishing broadly representative election official nominating commissions to select nonpartisan chief election officials and other positions.**

3. **As an alternative to nominating commissions, nonpartisan elections for chief election officials should be established carefully.**

4. **State election boards should be redesigned to reduce control by party-affiliated members, leveraging lessons from independent redistricting commissions.**

5. **Reforms should strengthen the authority of state election officials and establish their roles in state constitutions.**

6. **At the local level, states should consider a nominating commission role for some local election positions and should carefully increase the use of nonpartisan elections.**

II. Background: Summary of Election Administration Structures and Areas of Vulnerability to Partisan Influence

State Level

Forty states give election leadership responsibility to an individual constitutional officer who serves as chief election official (usually the secretary of state, and referred to here generally as such).[10] Eighteen states have a state election board or commission, and eight of those states combine both systems, with a secretary of state and a board sharing authority.[11]

In none of the 50 states is the method of selection for these offices designed to create separation between the official and the political parties that compete in the elections they oversee.

The table below summarizes how secretary of state positions are filled.

Figure 1: Secretary of State Selection Methods

Partisan statewide election	**33 states**
Appointment by the governor with legislative approval	**4 states**
Appointment by the legislature	**3 states**

States did not design the secretary of state position primarily for an election administration role. All secretaries of state have other important roles in state government, in some cases functions that are highly political in nature, such as serving as the successor to the governor. This combining of the state senior election position with unrelated, and potentially conflicting, state functions occurred early in U.S. history, when elections were less complicated and required less state centralization.[12]

A study of individuals holding these offices from 2000 to 2020 found that 29% of secretaries of state publicly endorsed a candidate running in a race under their supervision, and 12 served as co-chair of a presidential election campaign in their state.[13] The study also estimated that 20% of secretaries of state lost in lawsuits arising from circumstances where the secretaries' actions appeared to favor their political party.[14]

While these data do not indicate a grave pattern of partisanship in the office of secretary of state, they do illustrate lack of constraint on holders of the office, which "stop-the-steal" candidates and other partisan loyalists could exploit if elected. In addition, only 26% of secretaries of state serving since 2000 came to the office with a background in election administration or another source of election expertise, illustrating the limits of elections as a means for selecting the most qualified administrators.[15]

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The best argument for the existing system of partisan, politically connected secretaries of state is that those attributes are needed for negotiations with legislatures over election policy. In Kentucky, for example, the political connections of GOP Secretary of State Michael Adams probably helped widely praised bipartisan election reform legislation pass the GOP-controlled legislature.

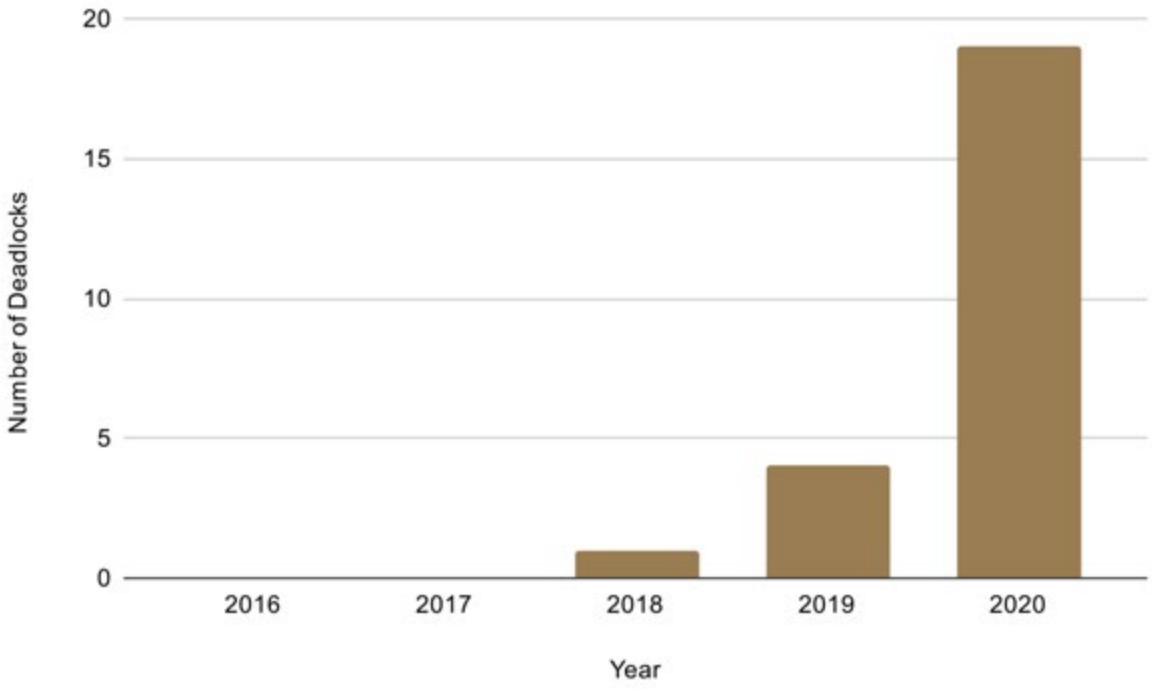
Turning to the 18 state election boards, all board members are named by legislatures or governors. No member of any state board is named by any other institution; there is no equivalent in election boards to the role of state bar associations in judicial nominating commissions discussed in Section III. Most boards are structured in a manner that gives one party majority control of the board, as Figure 2 illustrates.[16]

Figure 2: Party Control of State Election Boards

Only two states (Georgia and Hawaii) reserve a board seat for an individual required to be nonpartisan. In Georgia this position is of limited significance, since the majority party in the legislature can name three of the five members of the state's board. Aside from these two seats, no state board seats are reserved for any category of stakeholder in elections that would be analogous to judicial nominating commission seats for judges (discussed in Section III) or independent redistricting commission positions for third party or unaffiliated citizens (discussed in Section IV).

Growing partisan polarization may be threatening the viability of boards with equal numbers of Democrats and Republicans. A sharp rise in tied decisions by Wisconsin's Election Commission (see Figure 3) illustrates the risk of deadlock for these bipartisan boards. Likewise, at the federal level, the equal partisan makeup of the Federal Election Commission has prevented action on important campaign finance enforcement.

Figure 3: Wisconsin Election Commission Deadlocked Votes, 2016 – 2020[17]



As discussed in Section V, independent redistricting commissions, in which commissioners are affiliated with, but not selected by, the political parties, could help in the redesign of state election boards to avoid both one-party dominance and bipartisan stalemate.

Since 2000, state legislators have introduced only a handful of bills to reform state election boards, compared with more than 75 bills focused on reforming secretary of state positions. This difference may be due in part to the high-profile repeal of Wisconsin's Government Accountability Board, the only nonpartisan state election administration body established in recent U.S. history.[18] But reformers should not neglect state boards. Their current structure essentially communicates that it is only the two leading political parties whose interests should be considered in state election administration, not election officials, not voters, and not independent or third-party candidates.

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Local Level

A range of entities lead elections at the local level, conducting the lion's share of election work in the U.S., but here, too, partisan affiliation is the norm, not the exception (see Figure 4).

Figure 4: Partisan Affiliation of Local Election Authorities[19]

CATEGORY	SHARE OF U.S. ELECTION JURISDICTIONS	SHARE OF U.S. VOTERS
Party-affiliated official, or board composed of party-affiliated members	60%	63%
Nonpartisan official or board	39%	37%

Leadership of elections at the local jurisdiction, whether county, town, or municipality, is the responsibility of a board or an individual official such as a clerk or a combination of the two. Most individual election authorities are elected, and these elections are primarily nonpartisan in New England and on the West Coast and partisan in other regions.[20] In 21 states, individual partisan-elected officials have the sole or primary responsibility for election administration in all or most jurisdictions.[21]

In most states, the process for naming local election boards (and related bodies such as county canvass boards) includes a primary role for the two leading parties. Local party branches name members to these boards directly, or county or municipal officials select representatives of the two parties. Local boards in several states follow the bipartisan model discussed above, with equal numbers of Republican and Democratic members. Other states have unequal boards, with a majority affiliated with one party.

In many states, local bipartisan boards arose from reform efforts to counter single-party control. Their party-dominated structure also likely reflected the assumption that only individuals associated with the parties would have the interest and knowledge to work on elections, an assumption that needs reassessment in light of the large number of applications for citizen redistricting commissions.

Party affiliation and involvement in the selection of local election officials do not necessarily mean officials behave in a partisan manner. Some researchers have documented differences between Democratic and Republican local election officials in how they cite polling stations or treat provisional ballots.[22] On the other hand, a recent study assessing partisan impact on election results concludes that "local election officials are not meaningfully biasing elections in their party's favor."[23]

Factors that can help explain this finding include redundancies built into election processes that limit influence by individuals, well-defined procedures for election processes, and the role of litigation by candidates, parties, and civil society organizations. Another explanation may be that party-affiliated election officials generally succeed in putting aside the party connection that helped them gain the job, even where selection structures do not require it.

But this ethos is under threat. U.S. elections face unprecedented challenges stemming from the widespread belief that the 2020 elections were stolen, combined with broad-based organizing to advance election officials and candidates committed to redressing that perceived wrong. This context argues for fundamental reform at the level of state leadership and incremental, targeted reform at the local level.

We turn now to two structures that can help.

III. Judicial Nominating Commissions

Only six states still rely on the method for selection of state judges that was employed in every state in the first decades of U.S. history — appointment by the state legislature or governor. Beginning in the early 19th century, these appointment methods came under criticism for lacking democratic accountability and for aligning courts with political elites. States began shifting to selection of judges through popular election, and by the time of the Civil War, the majority of states elected their supreme and lower court judges.[24]

But criticism of popular election of judges soon followed, as state courts were often "perceived as incompetent, corrupt and under the control of political machines."[25] Many states transitioned to elections without party labels, but researchers have found little evidence that such nonpartisan elections are less partisan in process or outcome than partisan elections.[26] Reformers began proposing ideas for a merit-based alternative in the early 20th century, and the first judicial nominating commission (JNC) was instituted in Missouri in 1940.

Today, 23 states and the District of Columbia appoint all supreme court justices and judges for most intermediate appellate and general jurisdiction courts with guidance from a judicial nominating commission. Another 10 states use nominating commissions in some manner. (See Figure 5 for more detail.)

Figure 5: States with Judicial Nominating Commissions[27]

For All Supreme Court Justices and Some Lower Courts	For Some Lower Courts Only	For Interim Vacancies Only
23 states + DC: AK, AZ, CO, CT, DC, DE, FL, HI, IN, IA, KS, ME, MD, MO, NE, NY, OK, RI, SC, SD, TN, UT, VT, WY	**3 states:** NM, NH, MA	**7 states:** GA, ID, KY, NV, ND, WV, WI

Reform campaigns in recent years have aimed for additional conversions to the JNC model, responding to a rapid increase in fundraising for judicial elections and to evidence that campaign funding in these races is concentrated among entities with a direct interest in decisions before the courts.[28] Research suggests the money has an effect on judges: In a 2001 survey, nearly half of state court judges agreed that campaign contributions had at least some impact on judicial decisions.[29] The fact that very few other democracies elect judges reinforces the case against the practice.[30]

Function

Judicial nominating commissions receive applications for open judge positions, interview candidates, and produce a short list of approved nominees, usually 2-4 names, from which the governor selects the appointee. (These processes are illustrated in Figure 6.) In most versions of this system, the governor can only appoint a judge from the list and must do so within a given period, otherwise the commission names the judge.

A majority of the 34 jurisdictions with JNCs require the names of those who apply for judicial vacancies be made public. Fifteen states also require applicant interviews be open to the public.[31]

In several states, the judicial nominating commission process includes a retention election some years following the appointment. At that election, citizens vote to approve or disapprove of the judge. In other states, judges appointed through a JNC process have to be reappointed by the commission at the end of each term.

Figure 6: Selection of Judges with Judicial Nominating Commissions

The role of the JNC is provided for in the state constitution in 22 states. In five states, JNCs were first established by executive order of a governor (starting with Gov. Jimmy Carter of Georgia), and then repeated by subsequent governors.

Composition

Most members of judicial nominating commissions are appointed by governors, state bar associations, and state legislatures. Judicial leaders such as the chief justice of the supreme court also name members of some commissions, as do deans of state university law schools in two states.[32]

The gold standard for JNCs, recommended by advocacy organizations such as the Brennan Center for Justice, is a structure that precludes control of a majority of commission positions by either one person, such as the governor, or by leaders from one political party. Fifteen of 34 jurisdictions that use JNCs meet that standard.[33]

The mechanism used most commonly to meet this standard is the Missouri Plan, named after the state that first used it, in which three members are appointed by the governor, three by the state bar association, with the supreme court chief justice serving as the seventh. Seven states follow this model. Other states balance appointments by some combination of the governor, the chief justice, the state bar association, and state legislative majority and minority leaders to arrive at membership not controllable by one source or party.

Figure 7: Judicial Nominating Commissions – Summary

	COMPOSITION	PROCESS	JUDICIAL RETENTION
KEY ELEMENTS	Members of the JNC are selected by some or all of the following: · The governor or legislature · The state bar association · Justices of state courts · Nonprofit or academic communities	The panel interviews candidates, creates a shortlist, and sends it to the appointing body (usually the governor for approval).	Appointed judges in some states face an up-or-down public election to continue serving. Other states replicate the nominating process at term's end.
BEST PRACTICES	· Members serve staggered terms. · The commission is not structured to give one political party of politician full control. · A nonpartisan tiebreaker, such as a state supreme court justice, serves as chair. · Members reflect the geographic makeup of the state. · JNC has a balance of lawyers and non-lawyers.	· The JNC should submit at least three nominees for consideration. · The appointing body must be required to select from the JNC's shortlist. · If the appointing body fails to make a decision, the JNC is empowered to make the appointment.	Reappointment by the JNC rather than retention election.

Critiques and Comment

Some scholars and advocacy organizations have raised concerns about judicial nominating commissions. One concern is the dominant position of lawyers, who fill a majority of commission seats in 25 of 34 states.[34] A 2019 Brennan Center report notes that "lawyers have a unique perspective highly relevant to judges' work, but they are not fully representative of the public whose rights those judges' decisions will affect."[35] The Brennan Center recommends that "non-lawyers … comprise a majority of commissioners."[36]

The leading role of state bar associations has also occasioned criticism. A 2003 report by the Federalist Society, while supporting merit selection of judges generally, urged "vigilan[ce] in ensuring that the organized bar associations … do not become captured by [special] interests, and that, in particular, such bar associations are not permitted to control the chokepoints in the judicial screening process."[37] Some states have added transparency requirements to state bar association selection processes and require diversification among the appointees from the bar, for example to represent both civil and criminal lawyers, and both

defense and prosecution. The American Bar Association has developed standards for preserving the independent, nonpartisan character of judicial nominating commissions.[38]

It should not be surprising that despite the best aspirations for independence in the design of these commissions, political influence can still play a role, as some research studies have illustrated. But political influence is greater in judicial elections, and with campaign fundraising increasing and partisanship intensifying, the advantage of a merit-based selection relative to judicial elections will likely increase.

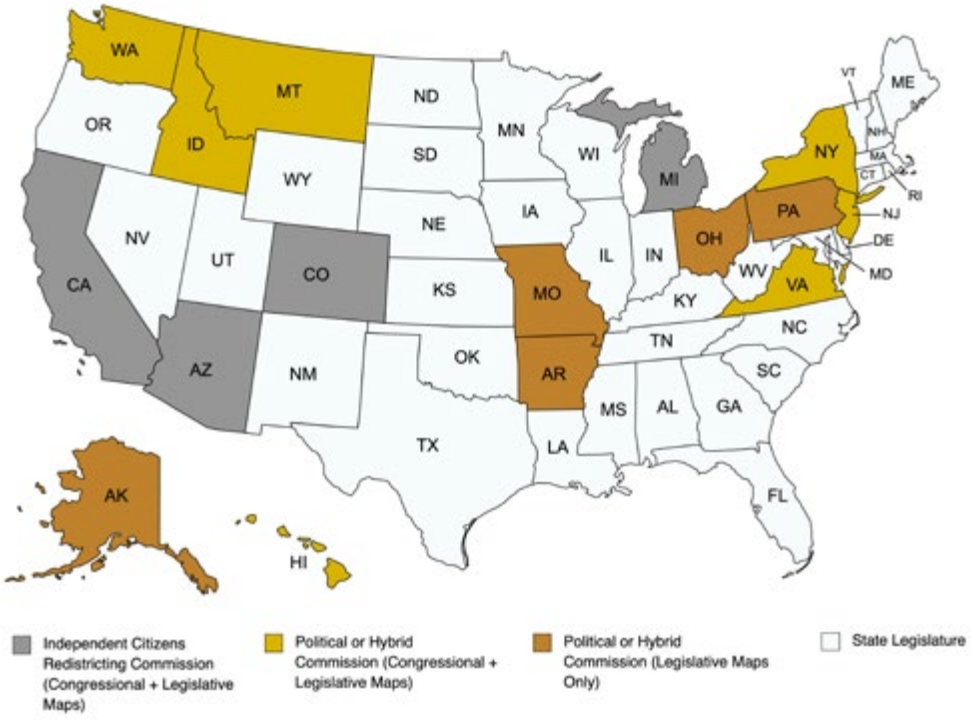
The principles of merit-based selection are very well suited to the context of selecting election officials, as we will explore in Section V.

IV. Redistricting Commissions

Concerns over partisan gerrymandering date back to the early history of the Republic, but commissions that take district-drawing out of the hands of the legislature are a more recent phenomenon than judicial nominating commissions. Arkansas established the first redistricting commission via a citizen-initiated constitutional referendum in 1966. Washington was the first state to establish a commission for congressional redistricting, in 1983.

At present, commissions outside of the legislature play a role in state legislative redistricting in 16 states and congressional redistricting in 11 (see Figure 8). Four of these bodies are independent citizen commissions, led by a diverse group of citizens who determine district boundaries independently from the state legislature. Others are hybrid or political commissions that are partially separated from the legislature and from influence by political parties. In all other states, redistricting is conducted by the legislature.

Figure 8: Who Controls Redistricting?[39]



Interest in these commissions has grown, triggered by the increasing intensity of partisan gerrymandering that has coincided with the development of sophisticated mapping technology and data gathering. In parallel, geographic self-sorting of like-minded populations has significantly reduced the number of competitive congressional districts in recent years, raising calls for more competitive districts.

Independent Citizen Commissions

In the citizen commission model, used in Arizona, California, Colorado, and Michigan, citizen applications are vetted by a state official or state panel (Arizona uses its judicial nominating commission to vet applicants), and pools of approved nominees are grouped by political affiliation. In three of the four states, a random drawing determines some or all members. In two states, a subset of members picks the remaining members.

The details of the four citizen commission states are summarized in Figure 9.

Figure 9: Selection of Citizen Redistricting Commissions

STATE	REDISTRICTING ENTITY	COMPOSITION	HOW SELECTED (Summary)
ARIZONA	5-member commission	2 Democrats 2 Republicans 1 independent or third party	Appellate court nominating commission selects 25 nominees from citizen applications (10 Ds, 10 Rs, 5 other). Legislative minority and majority leaders pick four, who select the fifth.
CALIFORNIA	14-member commission	5 Democrats 5 Republicans 4 independent or third party	Panel of state auditors selects three pools of 20 candidates from citizen applications. Legislative leaders may remove two from each pool. Eight members are drawn at random, who select the remaining six.
COLORADO	Two 12-member commissions, (one for congressional maps, one for legislative)	4 Democrats 4 Republicans 4 unaffiliated	All applicants are reviewed by a bipartisan panel of retired judges. Six are selected at random, six are selected by judges, including four from shortlists complied by legislative leaders.
MICHIGAN	13-member commission	4 Democrats 4 Republicans 5 independent or third party	Applications are sent to the secretary of state. Legislative leaders may strike some of an initial random pool of 200, then commissioners are selected at random.

California, Colorado, and Michigan require the maps prepared by the commission receive approval from some members of all three categories: Democrats, Republicans, and independent or third party members.

State legislative bodies are not without influence in the citizens commission model. Michigan and California allow legislators to strike a set number of applicants from the pool being considered. Arizona and Colorado task majority and minority legislative leaders with selecting some candidates from the pre-approved pools.

Commission membership is subject to conflict-of-interest provisions in several states. These provisions bar lobbyists and party officials from sitting on the commission and prohibit members and their relatives from running for office for a set time after maps are approved. The composition and selection method of the citizen commissions are detailed in their respective state constitutions and are thus protected from change by state legislation.

Roughly 10,000 citizens applied for positions on the citizen commissions in both Michigan and California for the 2021 redistricting cycle, rebutting concerns that the commissions would not generate sufficient citizen interest.[40]

Function

Key provisions related to how the redistricting commissions function are summarized below.

- ***Redistricting criteria:*** Redistricting commissions are guided by unusually detailed goals, which in most cases are enshrined in state constitutions. Some criteria are required by Supreme Court rulings and others by the Voting Rights Act, but most states specify additional criteria and the order in which they should be prioritized. Redistricting goals include compact districts, not dividing political jurisdictions, keeping together certain communities of common interests, not purposely drawing plans to favor or harm any political party or group, and encouraging electoral competitiveness.[41]

- ***Transparency and public input:*** Most states also have specific guidelines requiring that commissions receive extensive public input during the redistricting process and that their deliberations should be conducted transparently. In some states, nonpublic communication between commission members and state legislators is prohibited or regulated.

- ***Recourse and appeal:*** In most states, the maps prepared by redistricting commissions are either required to be reviewed by the state supreme court as part of the process or are appealable to the state supreme court.

Critiques and Comment

Media coverage of the citizen redistricting commissions has raised questions about their vulnerability to political manipulation, particularly through organizing efforts that take advantage of the inherently nebulous emphasis on communities of common interest. As with judicial nominating commissions, the standard should not be absolute political independence but instead performance relative to the alternative, redistricting conducted directly by the legislature.

From this perspective, citizen redistricting commissions are a long-overdue start toward addressing a major weakness of U.S. democracy. International standard-setting bodies such as the European Commission for Democracy through the Law (the Venice Commission) make clear that the drawing of constituency boundaries should be the responsibility of an independent and politically neutral body. [42]

The superiority of independent to legislative redistricting is well summarized in the passage below from Nicholas Stephanopoulos, a leading election law scholar: "[Independent redistricting] is far more popular worldwide than any other approach (and still growing in popularity). It enables the courts to exit a domain in which their presence is often controversial. It prevents district plans from being devised with the intent to harm a particular party. And the plans that it generates are in fact less biased, more responsive, and perhaps more competitive than those fashioned by political actors."

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V. Applying These Models to State Election Administration

We turn now to how these two categories of commissions can help reduce the risk of partisan loyalists undermining the integrity of U.S. elections in favor of their preferred candidate or party. To begin, seven key attributes of these commissions that can provide lessons for state election administration are summarized below. Three of these attributes derive from how commission members are appointed, three from how they function, and one from their protected status in state constitutions.

Key Commission Attributes

- Appointment processes prevent control by one or both political parties, while providing meaningful input from them.
- Appointment processes involve relevant stakeholders such as civil society organizations, professional associations, political independents, and third parties.
- Commission membership guidelines prevent or limit member conflict of interest.
- Explicit criteria help guide the work and output of the commissions.
- Commissions are required to work transparently.
- Commission processes include mechanisms for review by, or appeal to, branches of state government.
- Commissions have constitutional status, providing protection for their functions and composition.

These characteristics have guided the formulation of the six recommendations of this report, which are discussed below.

RECOMMENDATION 1:
States should make the state chief election official position nonpartisan.

For the 2020 elections, secretaries of state overcame enormous and unprecedented challenges and enabled record-setting voter participation and levels of transparency. Likewise, research on the longer-term track record of secretaries of state makes clear that most rise above the partisan elements of the positions they hold and render effective, impartial service.[45] Nevertheless, the risks of partisan loyalists' gaining these positions and undermining confidence in results, if not the results themselves, make clear that reform is needed.

The 40 states where the state chief election official role is held by a partisan elected or appointed secretary of state should restructure the position. States could do so by transferring election responsibility from the secretary of state to a new, separate chief election official position. Alternatively, states could redesign the secretary of state position to remove other roles of the position that conflict with political neutrality.

States should establish new qualifications for chief election officials, analogous to attorneys general needing law degrees and designed to draw election professionals to the office, as opposed to individuals focused primarily on political careers. These qualifications could include no recent history of candidacy, lobbying, or political party officeholding, and election administration experience or training.

To the extent possible in the context of the First Amendment, chief election officials should be barred from public support for parties, candidates, and ballot initiative positions. Currently, state laws include very few restrictions in this area, and, as noted in Section I, some secretaries of state have taken explicitly partisan positions in races under their supervision. Conflict-of-interest provisions should prohibit chief election officers from running for office while serving in their position, except in the case of reelection.

RECOMMENDATION 2:
States should consider establishing broadly representative election official nominating commissions to select nonpartisan chief election officials and other positions.

The judicial nominating commission model discussed in Section III offers a promising alternative to elections for state chief election officials. A commission approach could enable the professional, politically balanced input needed to select experienced individuals who are free from partisan ties and loyalties that could undermine neutral election processes and voter confidence. As discussed in Recommendation 6, a nominating commission could also play a role in selecting some local election officials.

See page 20 for a proposal of how such election official nominating commissions could be structured.

An election official nominating commission could replicate key features of the judicial selection process discussed in Section III, including calling for and reviewing applications, conducting interviews, providing application transparency, and establishing a list of nominees for submission to the governor. The governor would be required to choose from among the approved candidates, or, if they failed to act within a set time, the commission would make the appointment itself.

Approval by the legislature of the governor's appointment is not recommended, since the legislature would likely have a role in naming some commission members.[46] However, as a source of accountability for the nominating commission, this reform could establish a mechanism for the legislature to remove a chief election official with a supermajority vote.

RECOMMENDATION 3:
As an alternative to nominating commissions, nonpartisan elections should be established carefully.

Nonpartisan elections are more familiar to voters than nominating commissions and enjoy popular support. Transitioning the election of the state's leading election official to a nonpartisan status can demonstrate the state's commitment to impartial elections.[47]

But care is needed. Nonpartisan elections will not necessarily yield processes or outcomes that are less partisan, particularly in races with substantial amounts of campaign fundraising.[48] Also, under simple plurality rules, elections with many candidates and no party primaries could result in the election of extremist candidates with only minority support.

If states pursue nonpartisan elections for chief election official, the reform should include voting rules that prevent a low plurality winner, either through ranked choice voting or a runoff election. States should also consider public campaign financing systems to counterbalance the likely fundraising advantage of candidates closely connected with parties.

RECOMMENDATION 4:
State election boards should be redesigned to reduce control by party-affiliated members, leveraging lessons from independent redistricting commissions.

As currently designed, state election boards represent only the interests of the two leading parties, and most boards can be controlled by one of those parties. These boards should be restructured to be more representative and impartial.

The experience of independent redistricting commissions can provide guidance. Citizen participation, like that of citizen redistricting commissions, is not appropriate for administratively demanding election board positions, but structures such as the tiered selection process and the representation of third parties merit consideration. An initial proposal for the selection of a more balanced election board, incorporating these and other features, is discussed on page 20.

Board members should also be subject to the prohibitions against public support for parties, candidates, and ballot initiative positions discussed above for chief election officials, and should be barred from running for office while serving on such boards.

RECOMMENDATION 5:
Reforms should strengthen the authority of state election officials and establish their roles in state constitutions.

The role, authority, and composition of judicial nominating commissions and independent redistricting commissions are constitutionally protected in most states. By contrast, most state election boards are not

constitutionally provided for and instead are based in, and can be changed by, state law. In most states where secretaries of state have election responsibility, the state constitution says little about the secretary's election roles, including in key functions commonly performed by secretaries, such as certifying results.

A recent law in Arizona illustrates the resulting vulnerability: The Republican state legislature temporarily transferred the right to defend the state's election laws in court from the secretary of state (a Democrat) to the attorney general (a Republican).

In this context, the reforms proposed here to the core institutions of the chief election official and state election boards should prioritize constitutional protection of the design of these positions and the specific elements of the election process they control or oversee. These steps can help establish equilibrium between legislatures, as the source of broad election policy, and election officials responsible for implementation of that policy.

As the 2021 legislative cycle illustrated, state legislatures exercise a remarkable level of control over election processes, down to the level of whether water can be provided to voters waiting in line. Because state legislative majorities reflect the interest of a political party, excessive legislative control over election processes undermines the neutrality of election law.

Here, too, the U.S. is probably an outlier among democracies. A recent study of Canadian provincial election law finds that the country's nonpartisan provincial chief electoral officials have much broader discretion than their U.S. counterparts to interpret electoral laws, respond to emergencies, and make procedural adjustments they deem necessary.[49]

Changes in election law can increase or decrease turnout, which in turn can directly affect the likelihood of reelection of the legislators voting on such changes. A wholesale transfer of election responsibility away from state legislatures to remove this conflict of interest is not feasible — the U.S. Constitution prevents it — but shifting some responsibility from legislatures to election administrators could help depoliticize and build consensus behind election rules.

The laws and constitutional amendments establishing independent redistricting commissions provide unusual specific criteria to guide their work. Similarly, reform that improves the selection method and job description of state election officials should clarify the core priorities these officials should achieve. For example, these priorities could include commitments to maximizing both voter access and ballot integrity, or to combining widespread registration with minimally inaccurate voter files. Enshrining overarching election policy goals such as these could reduce election law micromanagement by legislatures.

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RECOMMENDATION 6:
At the local level, states should consider a nominating commission role for some local election positions and should carefully increase the use of nonpartisan elections.

Broad reform of the structure and selection methods of local election officials is neither possible nor necessary, at least at present. But the methods and models discussed here can be used in a targeted manner to alleviate emerging risks.

A significant risk at the local election level in 2020 arose in the context of some bipartisan bodies. In Michigan, some members of bipartisan four-member county canvassing boards refused to certify election results, raising the possibility of a deadlock if two members voted against certification. Michigan's county boards of commissioners appoint the Republican and Democratic members of the state's 83 county canvassing boards. At least in the larger counties, these processes could be modified to include a state or regional election nominating commission proposing a fifth member with a relevant neutral background, such as a retired election official or judge.

A nominating commission could also be used to address the potentially controversial situation of replacing officials removed for poor performance. Georgia's new election law gives the State Election Board (SEB) the authority to initiate such removals but is silent on how the board should select a replacement. The SEB could significantly reduce election-law-related acrimony in the state by committing to refer any such replacement to a balanced nominating commission.

Proposals to shift all county clerk elections to nonpartisan are emerging in some states. This development should help bolster the perception that elections are administered neutrally, but as noted under Recommendation 4, care should be taken, particularly in more populous counties, to reduce risks from nonpartisan elections under single-round simple plurality voting rules. In large counties, ranked choice voting or runoff elections should be considered.

Proposal for Structuring Election Official Nominating Commissions and Election Boards

Similar considerations inform how membership of an election official nominating commission should be structured and how state election boards could be redesigned to reduce the dominance of party-affiliated members. Therefore, although the ultimate structure of these bodies will certainly differ, an initial outline for both is put forward here to serve as a starting point for further exploration.

The composition of these bodies should take into consideration the most important categories of election stakeholders. These include:

- Voters
- Political parties
- Independent candidates
- Local election officials
- The state legislature
- The state judiciary
- Civil society organizations

A selection system should combine representation of these categories with a manageable size and emphasis on professional expertise. An outline of a possible composition of a seven-member, multi-stakeholder nominating commission or election board is summarized below:

- The majority and minority legislative leaders in the larger state legislative chamber, in consultation with the majority or minority leader of the same party in the other chamber, select one former state legislator each.
- An association representing local election officials of the state names two members with experience in local election administration, one from a rural jurisdiction the other from an urban jurisdiction.
- The chief justice of the state supreme court names one retired judge.
- The five members select two additional members, drawn from two pools of applicants in two categories:
    - Independent or third-party candidates or party leaders
    - Representatives of civil society organizations

These elements are summarized in Figure 10.

Figure 10: Proposal for Membership of a State Election Board or State Election Nominating Commission

Stakeholder Group	Representatives	Method of Selection	Qualifications
Majority and minority leaders in both houses	2 members	Appointed by stakeholder group	Former state legislator
Association of local election officials	2 members	Appointed by stakeholder group	Must have experience in elections, one from a rural area and one from an urban area
Judicial branch	1 member	Appointed by chief justice	Retired judge
Civil society organizations	1 member	Selected by first five members from applicants	Staff member of a civil society organization
Independents and third parties	1 member	Selected by first five members from applicants	Representative of a third party or independent voters organization, or a former third-party or independent candidate

This model achieves several goals. It prevents control of the body by one party or constituency, integrates leading institutions such as the legislature and the judiciary, and includes a range of stakeholders, while emphasizing relevant experience and expertise. This model also replicates in a more targeted manner the public application element of citizen redistricting commissions, which can increase public interest.

Concluding Comments

2020 was a banner year for U.S. election administrators, who successfully delivered safe and fair elections while managing under pandemic conditions and implementing a rapid increase in new voting methods. Unfortunately, 2020 was also a banner year of another sort. It was a year that launched some of the most extreme election-related polarization the country has ever seen, leading to a breakdown in the willingness of many political actors to operate within, and respect the results of, the election process. Although individual election officials performed admirably in 2020, their institutions are inherently vulnerable to political pressure and are at growing risk from increasing polarization.

Institutional reform is always challenging and often is only possible in response to a specific recent crisis or institutional failure. What is contemplated in this report is reform for the purpose of risk mitigation, change not in response to a crisis but in anticipation of one.

What can help reduce the challenge of such preemptive reform is to leverage known and recognized structures. Institutional change is easier to accomplish when that change is familiar, based on already known and tested models. For nearly a century, judicial nominating commissions have played a prominent role in the discussion of how best to select state judges. Today, more than half of the states use these commissions in some manner. Though redistricting commissions are not as widely used, they have generated considerable national attention, particularly with the growth of new citizen-led independent redistricting commission models.

The institutional elements of these commissions are increasingly familiar to state election policymakers, election advocates, and the voting public. This context creates a ripe opportunity to leverage these models in establishing safeguards that our election administration system has managed without but now sorely needs.

ABOUT THE AUTHOR

KEVIN JOHNSON is co-founder and executive director of Election Reformers Network. He leads ERN's research and advocacy programs focused on impartial election administration, independent redistricting, ranked-choice voting, and Electoral College reform. Johnson also serves on the Election Expert Study Team of The Carter Center, assisting the Center's U.S. Elections Project. Johnson is lead author of *Guardrails for the Guardians: Reducing Secretary of State Conflict of Interest and Building More Impartial U.S. Election Administration* and *Nonpartisanship Works: How Lessons from Canada Can Reestablish Trust in U.S. Election Administration.*

ELECTION REFORMERS NETWORK is a nonpartisan 501(c)(3) organization founded in January 2017 by experts in democracy promotion with extensive experience in the United States and overseas. ERN leverages this expertise to advance election reforms that reduce polarization and increase public confidence in U.S. democratic institutions.

THE CARTER CENTER was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn. The Center seeks to advance human rights and alleviate human suffering worldwide. For more than three decades, The Carter Center has been a pioneer of election observation, monitoring more than 100 elections and forging many of the techniques now common to the field. The Carter Center has worked to advance electoral integrity through independent, nonpartisan observation in accordance with democratic election standards.

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Endnotes

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10 Two states use the title "secretary of the commonwealth." In two states, the lieutenant governor serves as chief election officer.

11 For more information, see https://electionreformers.org/guide-to-state-election-boards-and-commissions/. This report uses the term "board" generically to refer to both boards and commissions.

12 Johnson et al. 2020, p.18

13 Johnson et al. 2020, p. 5

14 Ibid.

15 Ibid.

16 For more information: https://electionreformers.org/guide-to-state-election-boards-and-commissions/

17 Source: Wisconsin Elections Commission. Credit: Vanessa Swales, Clara Neupert, and Anna Hansen, *Wisconsin Watch*.

18 An important exception to this critique of state election boards was Wisconsin's Government Accountability Board (GAB), a short-lived but significant attempt to establish impartial, state-level election administration. Although praised for "meticulous, careful, balanced, and judicious" decision-making by election scholars, the GAB became embroiled in political controversy while investigating Gov. Scott Walker for alleged campaign violations during a highly polarizing 2012 recall election. The GAB was accused of partisanship and of criminally leaking investigation documents and in 2016 was replaced by the Republican-controlled legislature with a board composed of equal numbers of members selected by leaders of the two parties. For a summary account of the Wisconsin Government Accountability Board, and citations for additional information, see Johnson et al. 2020, p. 23.

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(a) Districts shall be of equal population as mandated by the United States Constitution, and shall comply with the voting rights act and other federal laws.
(b) Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.
(c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
(d) Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.
(e) Districts shall not favor or disfavor an incumbent elected official or a candidate.
(f) Districts shall reflect consideration of county, city, and township boundaries.
(g) Districts shall be reasonably compact.

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