



# Understanding the Role of Local Election Officials: How Local Autonomy Shapes U.S. Election Administration

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Hannah Furstenberg-Beckman  
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SEPTEMBER 2021



HARVARD Kennedy School

**ASH CENTER**  
for Democratic Governance  
and Innovation

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## Executive Summary

This policy brief will examine the independence and discretionary powers of local election officials and offer a framework to better understand local autonomy in our electoral system. It will also describe the larger system within which the local election official operates and demonstrate how local power and voter-focused decision-making varies across the country. The brief will use illustrative examples of the exercise of autonomy by local election officials from past elections as well as examples of shifts in local discretionary powers from the recent wave of state legislative efforts that seek to restrict autonomy.

It will also address the implications of local autonomy for those with an interest in increasing voter access and promoting voter participation. This brief can be a resource for those seeking a better understanding of the possible levers of change in their own state or locality's electoral system.

## Introduction

On September 29, 2020, the headline of the Philadelphia Inquirer read “The start of early voting in Philly was riddled with technical issues: The much anticipated debut of early voting got off to a rocky start, leaving voters frustrated and confused while they waited in line unable to cast their ballots.” Local elections officials in Philadelphia scrambled to provide voters with accurate information on the locations of new early voting sites and worked to continue to process applications when the state's voter database system went down that first day.<sup>1</sup> Meanwhile, across the state to the west, county officials in Armstrong County were still working to operationalize this new voting method and were not yet offering voters the option to come in person to request and return their ballot before Election Day. And to the north of Philadelphia, voters were hearing from election officials in Schuylkill County that they would not be offering the option to vote early in person in the county at all.

As voter protection staffers in Pennsylvania, charged with ensuring that all voters had accurate and reliable information, we were part of a broader community of advocates, officials, and campaigns rushing to provide this new information to voters. Throughout the fall of 2020, voters in Pennsylvania were left to decode a patchwork of options to access the ballot, which varied depending on which county that voter lived in. At the same time, local election officials were working around the clock to interpret, implement, and communicate the logistical details of new voting options for their constituents. “The volume of calls we have been getting has been overwhelming,” said Marybeth Kuznik, elections director in Armstrong County, northeast of Pittsburgh. It was preventing her office from working on anything else: “It has been almost like a denial of service attack at times because it seemed that sometimes all I could get done was answer the phone!”<sup>2</sup>

On September 28, 2020, the Pennsylvania Department of State had issued official guidance to the local election officials in 67 counties concerning absentee and mail-in ballot procedures.<sup>3</sup> This official guidance from the secretary of the commonwealth was one of many issued in the months leading up to the 2020 general election in an attempt to clarify how local election officials should implement features of the new voting law in Pennsylvania. Passed in 2019, Act 77 allowed all Pennsylvania voters to vote by mail for the first time. It also allowed any voter to “vote early” before Election Day by going in person to an elections office to instantly request, receive, and return their ballot.

In the days and weeks after Election Day, local election officials continued to work around the clock to count thousands of mail ballots. They also exercised their autonomy to interpret voting laws and determine which ballots should be counted. One state Senate race that was too close to call in the days following the election came down to decisions on whether or not a small number of mail ballots should be counted. The Senate district straddled two counties; in one, local election officials

in Allegheny County decided to count mail ballots that arrived in time but lacked a handwritten date on the envelope. In the other part of the state Senate district, local election officials in Westmoreland County determined they would *not* count mail ballots that lacked dates, classifying them as incomplete. Nicole Zicarelli, one of the candidates for the state Senate, wrote in a court complaint that “mail-in ballots will be counted or not counted based solely on the happenstance of which county election board reviews the ballot.”<sup>4</sup> These county election officials exercised their local authority to make consequential decisions about which voter’s ballots would count and thus which candidate would prevail. This autonomy and local discretion is the cornerstone of election administration in the United States.

During the 2020 election, we worked in Pennsylvania to ensure every eligible voter could access the ballot and that their vote would be counted. In the process, we observed firsthand the significance of local election administration and, in particular, the ways that local election officials regularly exercise their autonomy and their discretion to make consequential decisions that directly impact voter access and participation. Before our work in Pennsylvania, we, like many, thought that a state writes the rules for the election and the local officials simply implement the rules. The reality is much more complicated. Local election officials often make independent, localized decisions that have a direct impact on the voting experience, from voter registration to early vote to Election Day and through the postelection process. Sometimes these decisions have the effect of reducing barriers to participation for voters, but other times the decisions of local officials have the effect of suppressing or obstructing access to the ballot or even rejecting votes that would have counted in a neighboring county. Sometimes this autonomy is explicitly part of the process; at other times it *de facto* exists due to the state’s lack of enforcement authority or simply a lack of capacity to oversee what happens in all of its local jurisdictions.

Since our work in 2020 protecting access to the ballot for voters in Pennsylvania, we have sought to understand how the autonomy and influence of local election officials may vary across the country and have learned that no state is the same. This policy brief seeks to offer a framework for understanding eight key arenas of flexibility, discretion, and independence held by local election officials in a particular state, how this autonomy can impact voters’ access to the ballot, and whose vote is counted.

### **Promoting Voter Participation**

In this brief we seek to explore the different ways local-level actors make autonomous, independent decisions and how this impacts the voting experience. We approach the topic from the perspective that, generally speaking, local discretion can be used in beneficial ways if it is done for the purpose of helping eligible voters to register, vote, and have their vote counted. Our view is that most election officials adhere to the highest principles of their jobs, and that includes acting in the interest of the voter. So we operate from the view that when it comes to actions that promote voter participation, state policy should normally be considered a floor not a ceiling, absent any countervailing *evidence-based* reason that those actions would be detrimental to the democratic process.<sup>5</sup>

There is a debate underway about whether there should be uniform standards for elections nationally, or at least at the state level. In the debate about uniform standards, we operate from the view that local autonomy in election administration can be exercised to meet the localized needs of voters in different communities to reduce barriers to participation and increase equitable access to the ballot. The nature of our decentralized system will undoubtedly result in variations in the voting experience; however, local discretion can and should be used to ensure that all eligible voters—regardless of the community they live in—can participate in the democratic process and have their vote counted. As is demonstrated in this brief, it makes little sense for voters in one county to have to overcome numerous hurdles to cast a ballot and have their vote count, while voters in another county in the same state do not encounter such barriers. For example, how is it that some voters have easy access to a drop box as



an option to return their mail ballot and voters in the next county over do not? Why should some voters be provided with more information on how to vote than others in the same state? Why should a voter's provisional ballot be counted in one county and a ballot completed in the same manner not be counted in another county? This has led to vast inequities in the voting system, in ways that often disproportionately negatively impact historically disenfranchised communities of color.

In places where state policy and law work to make registration and voting harder, with no legitimate justification, it has been a benefit that local elections officials can do what is within their discretion, like expand early voting or open additional polling sites, to meet the needs of voters in their communities. In other words, some state policies that appear to “equalize” voting options across a state could actually perpetuate inequities in voting access for different communities. To the extent that rules could be more standardized in ways that promote greater voter participation, that might be the ideal scenario, but uniformity should not mean a race to the bottom.

## What Is a Local Election Official?

For purposes of this brief, we are defining “local election officials” to be the key decision makers at the local unit of administration. In some states, these are county officials, while in others these are city or town officials. Many jurisdictions, particularly large ones, have multiple local election officials who work together to make these decisions as part of a board, and others may have one key decision maker. Some are elected to their positions, and some are appointed by state or local authorities. Their official titles vary by state, but some common titles include county clerk, county commissioner, registrar, director of elections, or probate judge.

The size of the election jurisdiction often shapes the role and responsibilities of the local election official. Some local election officials administer elections in counties with fewer than 500 voters, while others are responsible for ensuring that millions of people can vote.<sup>6</sup> For officials in smaller jurisdictions, they may have other duties outside of election administration, and election-related matters may only constitute a portion of their job.<sup>7</sup> Local election officials in large jurisdictions can play an outsized role—as of 2004, the local election officials responsible for administering elections in just 4% of jurisdictions covered almost 64% of American voters in the election.<sup>8</sup> Scholars of election administration often note that this system is unique to the United States and has advantages and disadvantages. The National Council of State Legislatures (NCSL) notes that a disadvantage could be ineffective or inefficient administration, whereas a strength could be a system immune to being “rigged” at a national level.<sup>9</sup>

The stress and strain that our electoral system faced during the coronavirus pandemic resulted in local election officials receiving an unprecedented spotlight in 2020, from celebrities championing their work to outside organizations recruiting poll workers or marshaling funding. In this brief, we focus on how local election officials also are key decision makers, playing a substantive role in deciding how our elections are run.

## Framework to Understand Local Autonomy

In this brief, we examine eight arenas of autonomy for local election officials. This is not meant to be exhaustive but is instead a framework to understand the components that shape local autonomy and how a local election official's decision-making powers may vary based on these arenas of autonomy and context of state in which they are operating in.

To begin, it may not be useful to think of a local election official as “autonomous” or “not autonomous.” Instead, a local election official might have different opportunities to exercise their autonomy

based on their state’s legal framework, their local resources, their method of appointment, among other factors. Our eight arenas of autonomy that we explore in this brief can help one assess the types of decision-making powers held by local election officials in their own state. We believe this framework of autonomy helps fill a gap in public understanding of the role and influence of local election officials. While it is already well documented that our elections are administered locally, we instead explore the range of independent decisions of these local officials, which can result in different voting experiences from county to county or town to town. This dynamic has important consequences for efforts to increase voter participation and decrease the racial inequities already present in our electoral system.

Our eight arenas of autonomy for local election officials generally fall under three broad categories: local discretion in voting options and voter outreach, state-local relationship, and local resources and capacity. They are as follows:

*Local Discretion in Voting Options and Voter Outreach*

1. Ability to expand or restrict voting options
2. Discretion over voter eligibility and control over voter registration
3. Responsibility for voter education and outreach

*State-Local Relationship*

4. State oversight of local officials and investigatory powers
5. Power to select and remove local election officials
6. Partisan affiliation and influence

*Local Resources and Capacity*

7. Local power to address financial resource needs
8. Training for election workers and local officials

## **Local Discretion in Voting Options and Voter Outreach**

One of the most consequential ways that the autonomy of local election officials impacts the voting experience is in the discretion that officials have in their offering of voting options, voter information, and voter registration services. The autonomy of local election officials was clearly visible during the 2020 election cycle, when the coronavirus pandemic forced many states to adopt new voting procedures. According to Persily and Stewart, “29 states and the District of Columbia enacted 79 different bills to expand voting access in 2020.”<sup>10</sup> But the passage of new laws was only the beginning of the process: once new voting laws were passed by state legislatures, it was up to local elections officials to interpret and implement new rules and procedures in communities across the country.

A local election official’s autonomy in making decisions that expand or restrict voting options varies widely across states, even among states that would appear to have similar structures of local governance. For example, while Pennsylvania and Ohio both have county boards of elections, Ohio’s board members are selected by Ohio’s secretary of state and operate under fairly uniform early vote guidelines,<sup>11</sup> whereas Pennsylvania’s county board members are local election officials and have more flexibility in deciding to offer drop boxes, offer satellite voting centers, or adjust voting hours.<sup>12</sup> We explore in detail examples like these later in this brief.

Local election officials also play a key role in interpreting state law and guidance to resolve disputes of which ballots should count. This can happen when the voter’s intent is not clear, when their eligibility is disputed, or when the voter made a mistake. This part of the local election official’s role came into sharpest focus during the 2000 election, as county officials in Florida were making determinations

around which ballots should count during a recount,<sup>13</sup> but, in fact, local election officials make these decisions in every election cycle, sometimes playing a pivotal role in the outcome of an election.<sup>14</sup>

Finally, local election officials often have wide discretion in terms of the types of voter education or outreach they pursue to inform voters about their voting options, changes to voting rules, or information about the ballot. A particularly proactive election official might pursue innovative social media campaigns or have specific outreach programs to underserved communities, while an underresourced or less proactive local election official may only offer the bare minimum. This section explores each of these areas.

## 1. ABILITY TO EXPAND OR RESTRICT VOTING OPTIONS

Local election officials use their discretion to interpret state guidance and can have explicit authority to decide how early voting and vote-by-mail options are offered. This autonomy has the benefit of enabling officials to use their local expertise to tailor voting options to meet the needs of the communities they serve. This local independence in deciding how to offer voting options can sometimes impact voters' ability to access the ballot, by erecting additional barriers for some voters depending on income, geography, or other factors. This section explores how local election officials' authority and interpretation of guidance can impact voter access and the voting experience.

### Explicit Authorities for Early Voting

The NCSL's 2020 state-by-state review of the laws governing early vote shows how state law defines the role of local election officials in the implementation of early voting. Their role varies widely across states. Depending on the state, a local election official may have the discretion to determine when early vote can begin, the days and hours of the early vote period, or the number and location of early vote centers.<sup>15</sup> For example, several states grant authority to local election officials in determining whether "satellite" early voting locations are needed. Other states limit early voting to only the main office of the local election official (often the registrar or county elections office).

In states where local election officials do have this discretionary power, their decisions can have a direct impact on how much time voters have to cast their ballot. For example, while local election supervisors in Florida were required to begin the early vote period 10 days before the 2020 election, they also had the discretion to offer early vote as early as 15 days before the election in their county. Fifty-two out of 67 counties ultimately opted to allow early voting on this earlier timetable.<sup>16</sup> In Michigan, where voters can vote early by absentee ballot, state law allows local officials to make in-person absentee voting available for "additional times and places beyond what is required." Clerks in some jurisdictions ultimately offered weekend and evening hours and also opened satellite voting locations.<sup>17</sup> Clerks likely recognized that in their jurisdictions, traditional in-person voting hours could be restrictive for those with inflexible job schedules or caretaking responsibilities, and thus they sought to increase access for these voters. In these states, voters in neighboring counties or towns may have significantly different windows of time to cast their ballot.

Some states, like New York and New Mexico, set standards for the number of early vote locations based on the population of the election jurisdiction. In other states, the chief election official may have the ability to limit the discretion of local officials when it comes to early vote options. For example, in Ohio, there is a "uniform statewide schedule" for early voting, set by the secretary of state, who also has the ability to limit the number of drop boxes per county.<sup>18</sup> In 2020, the secretary of state limited each county to one drop box regardless of the geographic size or population of the county, a decision that resulted in a number of legal challenges as well as a lawsuit from several civil rights organizations that said the decision "severely diminishes" access to the ballot.<sup>19,20</sup> In other words, in some places the state

election official may be the key decision maker, which can end up minimizing a local election official's ability to use their expert knowledge of their communities to meet voters' needs.

### **Implicit Authorities for Early Voting**

Local election officials are generally the ultimate link between a state's voting rules and the voter, which means they occasionally make judgment calls in their implementation of state law or state guidance. Beyond the explicit authorities granted by state law, local election officials also may have to make judgment calls in their offering of early vote options through interpreting ambiguities in the law.

For example, in Pennsylvania in 2020, counties were permitted, but not required, to offer drop boxes for voters to drop off their mail ballots.<sup>21</sup> This resulted in a patchwork of different decisions by local election officials across the commonwealth, with some officials opting not to use drop boxes at all in their county and others installing 35 drop boxes across their county for voters to use.<sup>22</sup> Local election officials also had to come up with their own plans to monitor and secure the drop boxes.

In Texas, Harris County local election officials offered drive-through voting and 24-hour voting at certain locations during the early voting period for the 2020 general election to accommodate voters who were vulnerable to COVID-19 as well as voters who were shift workers or otherwise found it difficult to vote during daytime hours. This decision was made following the March primary, where many Democratic primary voters, in neighborhoods that were predominantly voters of color, waited as long as six hours to cast their vote. While all counties did offer the option for voters to vote early, few offered as many options as Harris County. As a response to the barriers that voters experienced in the primary, the new county clerk used his understanding of the voting barriers local to Harris County and his decision-making powers to triple the number of early vote locations for the general election and allowed for 24-hour voting at some of those locations.<sup>23</sup> As of July 2021, the Texas State Legislature is considering new voting bills that would ban 24-hour voting and other measures used in Harris County to expand voting access, particularly for communities of color.<sup>24</sup>

### **Local Autonomy for Voting by Mail**

Voting by mail has gradually increased in popularity over time and dramatically increased in 2020 due to the COVID-19 pandemic.<sup>25</sup> Just like in-person voting, voting by mail is implemented by local election officials. Some local election officials may also have the ability to make certain steps of the vote by mail process easier for voters, such as providing a prepaid postage for an absentee ballot application.<sup>26</sup> In Michigan<sup>27</sup> and in Pennsylvania, for example, each state offered to reimburse local jurisdictions the cost of prepaid postage for absentee ballots. However, this funding was simply offered to jurisdictions, not required to be used. Clerks in Michigan and county election directors in Pennsylvania made the final decision<sup>28</sup> on whether to use this funding for prepaid postage for voters. While most local officials did take advantage of this funding, some chose not to. This resulted in some voters having to take extra steps to acquire a stamp and pay for the cost of postage to return their ballot during the pandemic.

The authority of local election officials is not always clear-cut, including on vote by mail. This can result in legal challenges and the involvement of the courts. For example, in 2020, auditors in three Iowa counties decided to mail voters absentee ballot applications that were prefilled with their personal information. However, Iowa's secretary of state issued a directive to invalidate these applications, leading to a lengthy court battle that was ultimately not resolved until weeks before Election Day.<sup>29</sup>

In 2021, state legislatures across the country have taken various steps making it harder for some voters to cast their ballot, including by focusing on this particular type of local election autonomy. Georgia, for example, has made it illegal for counties to send out absentee ballot applications to all eligible voters in their jurisdiction,<sup>30</sup> and a new law passed in Iowa also bans local officials from using their discretion to mail absentee ballot applications to voters who have not requested them.<sup>31</sup>

### **Impact of Local Election Officials' Ability to Expand or Restrict Voting Options**

Local election officials can exercise their autonomy to expand voting options to meet the needs of voters in their community. One county may be 45 times the size of another county in the same state when it comes to geography or population, as is the case in Ohio,<sup>32</sup> thus suggesting a need for more drop box options. Some counties may include a significant number of voters who work hourly jobs in which it is difficult, if not prohibitive, to take off up to six hours to vote, as was the case in Harris County, Texas. To reduce barriers to participation and increase equitable access to the ballot, local election officials exercise their autonomy to expand voting options, and within this arena of autonomy they may also use their discretion to make decisions that restrict voting options.

## **2. DISCRETION OVER VOTER ELIGIBILITY AND CONTROL OVER VOTER REGISTRATION**

The autonomy of local election officials is also relevant to questions of a voter's eligibility. Local election officials play a role in resolving when voters need to fix a mistake in their ballot, when their identity needs to be verified after a voter casts a provisional ballot, or when the voter rolls are being "purged" or updated.

### **Review of Provisional Ballots and the "Canvass" of Mail Ballots**

Provisional ballots are used when a voter's eligibility cannot be determined at their polling place on Election Day, for example, when the voter's name does not appear on the voter rolls. These ballots are reviewed in the days after Election Day by the local election officials. In 2018, nearly one million provisional ballots were ultimately counted, and about 600,000 were rejected.<sup>33</sup> While states vary in the level of guidance they offer to local election officials, local election officials generally make the final decision regarding which of these ballots were cast by an eligible voter and thus should be counted.

Similarly, mail ballots may be "canvassed," or opened and tabulated, before, during, and after Election Day. For example in Pennsylvania, the law prohibits election workers from beginning to canvass mail ballots before Election Day, delaying the timeline in which the results can be tabulated. The law also does not require that the tabulation begins on Election Day, granting local election officials the authority to decide when to begin counting what could be tens of thousands of votes. In Pennsylvania in the 2020 election, the secretary of the commonwealth urged local election officials to begin canvassing the historic numbers of mail ballots as soon as the law allowed; however, local election officials in several counties exercised their decision-making powers by refusing to begin counting these votes on Election Day, maintaining that they did not have enough personnel to do it while also running an in-person election.<sup>34</sup>

In the process of canvassing ballots, states and courts often provide guidance on which types of errors should result in a vote being rejected. In many cases, it is ultimately the local election officials who use their discretion to determine which errors are disqualifying. For example, a ballot missing a handwritten date on the outer envelope but marked as received by Election Day may be counted in one county and not counted in another based on the discretion of the local election officials.

### Notice and Cure

“Notice and cure” refers to a local election official alerting a voter that their ballot is in some way deficient (“notice”) and the voter’s opportunity to correct the problem with their mail ballot (“cure”), ensuring that their vote will be counted. Deficiencies can result when a voter’s signature does not match the state database, if the voter forgets to fill out a portion of their ballot (such as adding the date), or if the secrecy of their ballot is compromised (by failing to include an inner envelope when returning a mail ballot). Local election officials exercise significant discretion and independence in this process. The rules or availability for this process vary widely from state to state, but the role of the local election official is critical since they make the determination about a ballot’s validity, make the voter aware of the problem, and provide a process for the voter to resolve the problem. In some cases the state election authority does not prescribe each step of this process, meaning the local election official may have discretion on how to handle the issue.<sup>35</sup>

As of September 2020, notice and cure was required by law in only 18 states.<sup>36</sup> In other states, the practice may be permitted but not required. For example, in Wisconsin, clerks are merely “encouraged” to contact voters whose mail ballot has a mistake.<sup>37</sup> The method of contacting the voter can also vary, as Wisconsin clerks can elect to either email, call, or contact the voter through the mail to alert them about their deficient ballot. In some cases, the local election official may make the list of deficient ballots publicly available or available on request and allow outside groups to contact voters.<sup>38</sup> Similarly, the method by which a voter is allowed to “cure” their ballot could vary from jurisdiction to jurisdiction.<sup>39</sup>

The practice of notice and cure may also be neither explicitly authorized nor specifically forbidden in the state’s election code, resulting in confusion or litigation. In Pennsylvania, the state issued guidance indicating that counties could allow voters with deficient ballots to use provisional ballots on Election Day, but local election officials in at least seven counties ignored the guidance, citing the fact that this type of “curing” is not mentioned in the state’s election code.<sup>40</sup>

### Purges

While the local election official’s role in administering “purges,” or updates to the voter rolls, is beyond the scope of this brief, local and state officials have varying responsibilities regarding the maintenance of voter lists. For example, in Ohio in 2019, voting rights groups across the state identified that more than 40,000 of the voters on the state’s purge list had been wrongly included by county election officials or in error by election software.<sup>41</sup> Further research is needed to fully understand the role of local election officials in these types of purges.

### Impact of Local Election Officials’ Discretion Over Voter Eligibility and Control Over Voter Registration

As demonstrated in the examples of local implementation of canvassing and notice and cure, state policy can, and should normally be, considered a floor, not a ceiling, to administering elections. In some states, notice and cure was allowed but only implemented by officials in some counties and not others. Local election officials who take action to operationalize notice and cure for their voters would seem to operate under principles that promote voter participation. Other local officials who exercise their autonomy in choosing not to offer voters the opportunity to correct minor ballot errors ultimately suppress the vote by disqualifying those ballots. While our decentralized election system empowers election officials to use their knowledge of local conditions to make decisions about voter eligibility and registration, in some cases those decisions can have the effect of suppressing the vote for certain communities.

### 3. RESPONSIBILITY FOR VOTER EDUCATION AND OUTREACH

Local election officials have various ways of communicating with the public, from mailers to their website to notices in local papers to social media. Local election officials serve communities that may have specific needs when it comes to sharing information about elections, like language translation. While political parties and advocacy organizations do much of this work, it is often narrowly targeted to their own supporters as opposed to tailored to all voters.<sup>42</sup> The local election official's capacity to engage the public, as well as their willingness to do so, can result in variations from jurisdiction to jurisdiction in the amount of critical information available to voters. In some states, the state election code explicitly assigns responsibility to the local election official for voter education, but the local election official still has the ability to go above and beyond legally required responsibilities if it would better serve voters.<sup>43</sup> For example, King County in Washington state offers a grant program to organizations that provide information to underserved voters.<sup>44</sup> This can result in varying amounts of information being available to voters regarding their voting options or their eligibility.

While local election officials may vary in how proactive their outreach programs are, they also may be constrained by available resources. In a Democracy Fund report, local election officials told researchers that “resource constraints are a major limitation” in their efforts to educate voters.<sup>45</sup> We will discuss the impact of resource constraints on local election official autonomy later in this brief.

Local election officials are also often responsible for providing translation services to voters. While some jurisdictions are required to offer translation services under the Federal Voting Rights Act, many voters who are not proficient in English live in jurisdictions where translation services are not required. In these cases, their ability to cast their ballot may be greatly impacted by how proactive their local election official is in providing materials in the language they understand best.<sup>46</sup> For example, election officials in Arizona have used resources to have Navajo translators at some polling locations; however, the translation needs of smaller tribes are often overlooked, presenting additional barriers to those voters.<sup>47</sup>

This issue is also intertwined with other arenas of autonomy discussed in this brief. For example, if a local election official is deciding to change their satellite center's voting hours, it is important for them to be able to communicate this update to their voters. If voters in a certain election jurisdiction made a common type of mistake when completing their ballot due to unclear instructions, a local election official may need to tell the voters in that election jurisdiction about their options for “curing” their ballot. This type of outreach played a significant role in the 2020 election, as the coronavirus pandemic caused significant changes to voting procedures and a shift to vote by mail. An analysis by the Associated Press demonstrated that voter outreach campaigns—including but not limited to those led by election officials—resulted in a significant drop in the number of rejected mail ballots.<sup>48</sup>

As with other aspects of election administration, there is no particular consistency from state to state with respect to voter education and outreach. While the Help America Vote Act of 2002 (HAVA) includes a requirement that states submit voter education plans, it does not include any requirements for what this plan should entail.<sup>49</sup> There is also significant variation within states regarding whether the state or local election officials are primarily responsible for voter engagement or if the responsibility is shared.

For advocacy organizations and other groups supporting voters, it can be difficult to inform voters of their options, especially if details of the election vary from county to county. A particularly proactive or innovative election official can have a significant impact on voters' ability to access the ballot and advocacy groups' ability to spread reliable information. For example, in 2020, local election officials in California implemented a voting reform law that permitted “voting centers,” allowing voters to cast their ballot early and in person. In Los Angeles County, to help communicate this new option to voters, local election officials developed a “Vote Center Locator” app, which provided voters with a resource where they could easily look up information about their nearest Vote Center on their mobile phone.

The resource contained information about a Vote Center’s hours, location, and even wait time so voters could go to the Vote Center with the shortest wait.<sup>50</sup>

### **Impact of Local Election Officials’ Responsibility for Voter Education and Outreach**

Local election officials are the experts on how elections are administered in their jurisdiction, and their ability to educate voters is critical to increasing voter participation. Many election officials use their local knowledge and discretion to tailor voter education materials and outreach efforts to serve voters with different language needs or disabilities or to reach across digital divides. Proactive local election officials can also partner with advocacy groups to provide accurate and up-to-date information that organizations can amplify in their own voter education efforts. While some local officials go above and beyond the minimum federal or state requirements, others are hampered in doing so by resource constraints. As states change their voting rules or increase the number of ways a voter can cast their ballot, voter education becomes increasingly important. The role of local election officials in promoting voter education is critical considering the number of states proposing significant overhauls to voting laws in 2021.

## **State-Local Relationship**

The dynamic between state and local election officials is not well understood. State guidance and oversight of local election authorities varies widely across the country and meaningfully shapes to the autonomy of local election officials as they make key decisions, from how voters access the ballot in their jurisdiction to which ballots might be eligible to be counted. These local decisions can have a profound and disparate impact on voters, and the degree to which the state election authority is involved plays a key role. Even in 2020, where our election infrastructure faced unprecedented scrutiny in states like Georgia and Pennsylvania, much of the public was still left with the impression that secretaries of state run elections, when the reality is a much more complex relationship between state and local officials.

This section on the state-local relationship will examine the ways in which the dynamics between local and state election authorities shape how local election officials exercise their autonomy and decision-making powers. First, we explain the state’s oversight of local election administration and how it contributes to the decision-making powers of local officials. Next we examine the ways in which local election officials are selected for and removed from their positions, which shape accountability mechanisms for local officials and inform the role that state authorities may play in their hiring and firing. Finally, this section will explore how partisanship can influence local decision-making and local election officials’ relationship to state authorities and national political parties. In light of the wave of new voting laws being proposed and passed in state legislatures in 2021, it is critical to understand how state authorities influence local autonomy and can shift the powers of election administration away from local decision makers.

### **4. STATE OVERSIGHT OF LOCAL OFFICIALS AND INVESTIGATORY POWERS**

Although a state’s chief election official, often a secretary of state, is seen as “running” a state’s election, the reality is more complicated. As a general matter, legislatures pass laws constituting the election code, the state’s chief election official is responsible for promulgating guidance and directives to local election officials, and the local election officials implement these laws and guidance.

State and local officials, both elected and appointed, have a range of overlapping and complementary responsibilities and authorities.<sup>51</sup> This relationship differs widely from state to state, but at the state level, the relevant actors generally are the chief election official, which may be a secretary of state or an election commission. In some states, other state authorities such as the lieutenant governor or other state agencies may also play a role. At the local level, while there may be a primary local election official,



there are often multiple “election officials” in a jurisdiction, from county commissioners to town clerks to election directors.

In the lead up to the election, during Election Day, and after Election Day, the state’s tools, capacity, and authority to oversee the local election officials varies widely across the country. The summation of these tools, capacities, and authorities can generally be thought of as a way of understanding how “top down” the state’s control over election administration is and how autonomous local officials may be in administering our elections.

### **State Guidance and Directives**

The legal structure and authority of the office of the state election official looks different across the country, and the tools they have available to influence or direct local election officials vary as well. While some chief election officials have regulatory and enforcement authority, many only provide “guidance” to local election officials. In some cases, local election officials may also be consulting their “in-house” legal authority, such as a county solicitor, to make decisions when election code may either be ambiguous or intentionally provide local jurisdictions with flexibility.<sup>52</sup> State guidance may not necessarily be public or broadly available, meaning advocates and voters may be unaware of whether their local election authority is complying with guidance from the state election authority.

This relates to local election officials’ autonomy in a few key ways. First, state guidance may not be legally binding for a local election official. For example, as cited earlier in this brief, in 2020 several Pennsylvania counties opted to not follow guidance on ballot “curing” from the secretary of the commonwealth, offering their own interpretation of the election code that “curing” was not accounted for under the election code. In Pennsylvania the secretary of the commonwealth does not have direct hiring and firing power of local election officials, and control through other methods is weak.<sup>53</sup>

Second, a state may not have the capacity or willingness to issue guidance with respect to every matter pertaining to the local election official’s administration of the election. For example, in October 2020, the Harris County Clerk in Texas repeatedly requested definitive guidance from the secretary of state’s office regarding the legality of their drive-through voting system, which resulted in significant media coverage about whether the service would continue, potentially confusing some voters in the process.<sup>54</sup> Judges in both federal courts and Texas’s Supreme Court threw out legal challenges to this voting option.<sup>55</sup>

Third, state guidance may only be the first step of a process involving legal challenges and the court system, leaving local election officials unsure of whether state guidance is the final word on an election-related matter. For example, a county clerk in Michigan sued the secretary of state’s office in October 2020 over guidance related to signature matching, and the matter was ultimately resolved in the court system after the election was over.<sup>56</sup>

Fourth, guidance from the state may come late, could be unclear, or could be difficult to implement, and a locality’s level of autonomy could determine whether or how it will follow the state’s directive. For example, in 2020, about two weeks before the election, Florida’s secretary of state issued guidance requiring most drop boxes to be staffed, just as counties were about to implement their drop box plans. Some counties altered their plans, while others indicated that their plans were already in place and complying with the guidance at a late stage would not be practical.<sup>57</sup>

### **Impact of State Oversight of Local Officials and Investigatory Powers**

The structure and powers of the state election administration office can have a profound effect on the ways in which local election officials can exercise their autonomy in different states. The state election official is often in a position to offer guidance that can help local officials interpret and equitably implement election procedures. The state official may also have the power to exert uniform standards in an

attempt to “equalize” voting options across a state, which can sometimes constrict the decision-making powers of local officials as they work to administer elections in a manner that meets the needs of voters in their jurisdiction. In some cases, there may be gray areas in which it is unclear whether the state or local election official has the authority to decide how to administer aspects of an election.

## 5. POWER TO SELECT AND REMOVE LOCAL ELECTION OFFICIALS

The manner in which local election officials are hired, fired, and ultimately held accountable varies across states and sometimes within states. Local election officials can be selected for the role through several methods and may hold the position as an individual administrator or as part of a multiperson board.<sup>58</sup> The selection mechanisms for local election officials can influence the level of autonomy that officials feel they can exercise and the ways that they may be held accountable for their decisions. If a local election official is directly elected by voters, as opposed to being appointed by a state authority, they may feel more locally accountable to the voters in their community than to a state election official. On the other hand, officials appointed by a state authority may be more insulated from public pressures and make decisions based on their expertise. It is important for advocacy organizations and civic groups to help make voters aware of their role in selecting their local election official and how that selection process may influence the ways in which local election officials use their discretion when administering elections.

### Methods for Hiring and Firing Local Election Officials across States

While the methods for selecting and removing local election officials vary widely across states and within states, generally there are three main authorities that could be responsible for hiring and firing them: the voters, a state authority, or a local government authority. Local election officials can be directly elected to hold their position, as in Utah where the county clerks are selected by voters through a popular vote.<sup>59</sup> By some estimates, approximately 60% of elections officials are an individual administrator elected by voters.<sup>60</sup> Local election officials elected by the voters in their election jurisdiction may view themselves as accountable to the voters who selected them for the role, as it is the voters who will decide whether or not to reelect those officials. The voters may also be empowered to recall local officials for reasons such as misconduct, incompetence, or failure to perform their duties.<sup>61</sup> While more often than not, state authorities have few options available to remove elected local election officials,<sup>62</sup> there are cases in which a local official can be subject to removal from office by state authorities who had no role in appointing them, as is the case in Alabama.<sup>63</sup>

There are many examples from the 2020 election of local election officials exercising their autonomy in ways that demonstrated who they ultimately felt accountable to.

In Pennsylvania, during the 2020 election, Al Schmidt was one of the three city commissioners, who are the elected officials responsible for running elections in Philadelphia. Despite being the only Republican commissioner and one of the few Republican-elected officials in the city, voters had elected him repeatedly to the office since 2011. In the days following the election, members of his political party, from President Trump to Republican state legislators, attempted to pressure Commissioner Schmidt to use his discretion to reject large swaths of mail ballots and not count certain votes. Members of the state legislature even attempted to create a Republican-led investigative body that could subpoena election officials and take control of the election administration. Despite calls from state authorities to not count certain votes, they had no direct hiring or firing power over Commissioner Schmidt. As the Philadelphia charter states, “the power is vested in the electorate to recall officials elected by them so

that such officials may be directly responsible for their behavior in office to the electorate.<sup>64</sup> Commissioner Schmidt exercised his autonomy to interpret and decide which mail ballots could be legally counted, and he was likely influenced by the preferences of the voters who elected him and had the power to remove him.<sup>65</sup>

Local election officials can also be appointed to their position by state officials, such as the governor, or by a state board. In Oklahoma, county election board secretaries are appointed by the State Elections Board on the recommendation of the Senate. Finally, in some states, local government authorities, such as a mayor or a county board of election, have the power to appoint local election officials to their positions. In Ohio, while the county boards are appointed by the secretary of state, those boards hold the power to appoint the county election director.<sup>66</sup> Local election officials who are appointed are usually removed by the state or local officials who appointed them.

An example of a case in which a local election official can be selected by one method but removed by another occurred when Florida Governor Ron DeSantis suspended Susan Bucher, the Palm Beach County supervisor of elections following the 2018 election, and hand-selected someone else to take the office after Bucher missed a recount deadline.<sup>67</sup> Bucher stated that her office did everything in its power to effectively administer the election and report the results, but the outdated equipment caused them to miss the deadline for the machine recount.<sup>68</sup> In Florida, local election officials, called election supervisors, are elected by the voters in the county. However, the Florida State Constitution authorizes the governor to suspend county officers on certain grounds, such as neglect of duty, incompetence, and commission of a felony. In cases where the governor suspends an elected local official, the Florida Senate becomes the responsible party for judging the merit of the suspension and either removing or reinstating the suspended official.<sup>69</sup>

Following the 2020 election, there has been a surge of new voting laws in state legislatures across the country, some of which aim to reform the accountability mechanisms for elected local officials. Georgia's Senate Bill 202, which was signed into law in March 2021 by Governor Brian Kemp, empowers the partisan state legislature to do what the Pennsylvania legislature was unable to with Commissioner Schmidt and suspend county election officials. The law grants the partisan state legislature more control over the Georgia State Election Board and provides the board the power to suspend county election officials and name a replacement of their choice. Advocates assert that the Republican-led legislature will use this new power to diminish the autonomy of local election officials in Democratic counties, such as Fulton County.<sup>70</sup>

### **Variations in Hiring and Firing Local Election Officials within States**

Not only is there significant variation across states in the manner in which local officials are selected to administer elections and who they are ultimately accountable to, but there is also variation in selection methods *within* some states. While many states use the same method of selecting local officials statewide, such as New York where all the local election boards are appointed by a county legislative body, other states use different methods in different jurisdictions.<sup>71</sup> These methods often vary based on the size of the election jurisdiction.<sup>72</sup> Kansas is an example of a state where the selection method for local election officials varies within the state. In Kansas, the four most populous counties have a sole election administrator who is appointed by the secretary of state, whereas in all other counties, the voters elect a partisan county clerk to be the election administrator.<sup>73</sup> Nebraska's local election officials are also hired and fired differently based on the size of the county. For counties with a population of under 20,000, an elected, partisan county clerk administers elections. For counties with populations between

20,000–100,000, the election commissioner is appointed by the county board; for counties with more than 100,000 residents, the election commissioner is appointed by the governor.<sup>74</sup>

This remarkable variation within a single state is usually a result of one of two legal features of American local government law: home rule or special legislation. A thorough exploration of these two pieces of law is outside of the scope of this brief, but it is important to note their impact on intrastate variation. Home rule allows local jurisdictions, such as towns and cities, to make their own decisions about who they empower to administer elections. It also limits the ability of state authorities to influence the local structures of election administration, including how local officials are selected and removed.<sup>75</sup> Special legislation, on the other hand, allows a state legislature to impose different systems of local election administration within a state, passing laws that apply specifically to one or a few jurisdictions in the entire state, potentially dictating not only the selection method of local election officials but also precisely who those officials are. For example, in Missouri, counties are generally empowered to choose between having a county clerk or a board of election commission administer their elections. However, special legislation in Missouri detailed specific conditions under which a jurisdiction would not be allowed to choose. The outcome of this special legislation was that every county in the state would have the ability to choose their structure of local election administration, except St. Louis County, St. Louis City, and Kansas City.<sup>76</sup> These jurisdictions that fall under state control, as opposed to allowing the county to choose their structure of local election administration, also have some of the largest populations of African American voters in Missouri.<sup>77</sup>

There is limited research suggesting that the outcomes of election administration may differ depending on whether the official is elected or appointed. One study in Wisconsin suggested that local officials who were elected were more likely to take actions to increase the ease and accessibility of voting in their jurisdiction, resulting in higher voter turnout, in comparison to appointed, local election officials.<sup>78</sup> While this study was limited to Wisconsin, it shows how incentives and mechanisms of accountability may differ between elected and appointed officials. The potential impacts of how local election officials are selected and removed is understudied and merits further research. As we explore in the next section, the appointment versus election of local officials may also interact with the partisanship of some local officials, influencing their decision-making in the administration of elections.

### **Impact of the Power to Select and Remove Local Election Officials**

The role of state authorities and of voters, in the selection and removal of local election officials, impacts who officials may ultimately feel accountable to serving. These complex hiring and firing mechanisms may also influence local election officials' decision-making where they have the discretion to implement pro-voter election procedures, such as expanding early vote options. Furthermore, as election jurisdictions vary across a state in terms of the racial and economic makeup of voters, it is critical to understand how local administrative power structures may vary within a state and the implications for racial equity in our democratic process.

## **6. PARTISAN AFFILIATION AND INFLUENCE**

The ways in which local election officials exercise their autonomy and decision-making powers can also be shaped by partisanship. In the United States, the officials who supervise and administer our elections are often affiliated with a political party. Two of the potential indicators of the partisanship of election administrators are 1) whether or not their party affiliation was a factor in their election or appointment and 2) the election officials' party registration.<sup>79</sup> As discussed in the previous section, approximately 60% of elections officials are elected by voters to their position, and most of them are openly affiliated with a national political party. In fact, about half of the voters in the United States are represented by

partisan election authorities.<sup>80</sup> While national surveys show that Americans prefer having an elected, nonpartisan board of elections, this is the least common type of local election authority in the US.<sup>81</sup> In recent years, it is more often than not partisan election officials in large jurisdictions, or in key counties in swing states, whose autonomy is challenged and decisions are scrutinized.

There are arguments for and against moving to a system of entirely nonpartisan election administrators. Some argue that partisan local election officials may be more vulnerable to national political pressures as they interpret rules and implement election procedures, while others would assert that having partisan election officials who are appointed or are elected by the voters from the majority political party is a mechanism to ensure accountability.<sup>82</sup> While there are arguments in favor of and opposed to a system of partisan local election officials, the wave of voting restrictions being considered in heavily gerrymandered state legislatures across the country in 2021 indicate that the arguments for nonpartisan election administration should be urgently considered in order to protect voting access for all Americans.

Studies have produced some suggestive evidence that election administration can be influenced by the partisanship of local officials, specifically in large jurisdictions. As national political parties are more likely to dispute the administration of elections in large jurisdictions, those local election officials may be influenced by the views of the national party or already hold the views of the national party with which they are affiliated.<sup>83</sup> Researchers have suggested that partisan differences in local election officials can influence the voter turnout rate, differences in how they administer the casting and counting of provisional ballots, and their likelihood to purge voter registration lists, among other decisions.<sup>84</sup>

### **Partisan Pressures on Election Administration**

In addition to the findings from such studies, local reporting also cites instances of partisan pressures on local election officials. In the governor’s race in Kansas in 2018, a local election official decided to relocate a polling place that served a majority Latino community to a new, less accessible location miles away. The local election official who made the decision was an elected Republican, who some members of the public viewed as an ally of Kris Kobach, the secretary of state and Republican candidate for governor on the ballot that year. In responding to criticism of voter suppression, Kobach stated that the decision was made locally and he had no jurisdiction over them as secretary of state.<sup>85</sup>

In 2018 in Hays County Texas, students at Texas State University—37% of whom identify as Hispanic<sup>86</sup>—spoke out about hours-long lines at the only early voting location on campus. They advocated for county election officials to expand early voting hours to accommodate the high numbers of student voters. Upon becoming aware of the student’s outreach to local officials, the North Hays GOP President Wally Kinney rallied local Republicans to oppose any extensions of early voting hours, stating in an email that this “probably means that it is going to favor the Democrats, so maybe I should not be in favor of this.”<sup>87</sup> In response to residents’ outreach, the Republican commissioner, who was elected to his position by the voters, stated “I want everyone to know and understand that we are doing our best. We are trying to follow the laws and allow the opportunity for all to be able to vote in the most efficient manner possible.” The county was pressured by voters from both political parties and threatened with multiple lawsuits. In an emergency meeting, the Republican-dominated commission ultimately voted to expand the hours at the early voting site that operated on campus.<sup>88</sup>

### **Influence of State and National Partisanship on Local Election Officials**

The context in which local election officials are operating is particularly important when examining the role of partisanship in administrative decisions. It is important to consider factors such as whether a local election official belongs to the minority or majority party in their county and state as well as the political pressures of an election, for example, a presidential election in a swing state. The 2020 election brought intense partisan rhetoric and political pressure on local election officials in battleground states. In Michigan, each of the state's 83 counties has a Board of County Canvassers, which is composed of two Republicans and two Democrats who are each appointed by the County Board of Commissioners to four year terms.<sup>89</sup> In 2020, there was enormous political pressure directed at the partisan county board members, particularly in the swing state of Michigan and in Wayne County where Detroit is located. When the Republican members of the Wayne County Board of Canvassers were preparing to certify the election results, they found themselves singled out by conservative talk show personalities, the state's Republican Party, and President Trump, who personally called the chairwoman of the Board of Canvassers.<sup>90</sup> The two Republican canvassers on the board initially blocked the certification despite being legally required to send to the secretary of state a certified copy of a statement of the election returns within 24 hours of the vote count.<sup>91</sup> These Republican officials finally fulfilled their duty to certify the election results after they were promised an audit of the election.<sup>92</sup>

Partisan pressures will continue to be a factor in the local administration of our elections, especially in large jurisdictions in swing states. In the future, partisan pressures could have even more consequential outcomes than members of one party conditioning their certification of results on an audit.

### **Impact of Partisan Affiliation and Influence**

The partisanship of local election officials, particularly in relationship with state and national politics, can influence the ways in which they exercise their autonomy and use their discretion. There may be additional mechanisms for accountability for partisan election officials in comparison to nonpartisan officials; however, their autonomy can also be heavily influenced by the political forces at the state and national levels, especially in highly contested federal elections. While partisan local election officials have long been a feature of the American system, the 2020 election and the wave of new, restrictive voting laws being considered by partisan state legislatures in 2021 have underscored the potential benefits of having nonpartisan officials administering our elections.

## **Local Resources and Capacity**

Local election officials rely on local resources and capacity to administer free, fair, and secure elections. In the 2020 election, government underfunding and new sources of philanthropic funding impacted local election officials' ability to provide services to voters and make administrative decisions based on local needs during the pandemic. This section will examine how the availability of resources to administer elections impacts the autonomy and discretion of local officials. This includes the local election officials' power to secure funds and use their discretion to address resource needs. It also examines their role in building capacity through training local officials and their coordination with state authorities in doing so.

## 7. LOCAL POWER TO ADDRESS FINANCIAL RESOURCE NEEDS

Local officials require adequate and reliable funding to effectively administer elections. Local election officials with more autonomy over their budget may also have more latitude to administer elections in ways that meet the needs of their voters and make the process more secure. Tammy Patrick, a former local official in Maricopa County, Arizona, has written about the critical lack of funding for elections in the United States. In her testimony to the Committee on Homeland Security, she stated that “episodic federal funding does not sufficiently bridge the gap nor stabilize election administration to allow for planned considerations of improvements and modernizations. Infusion of funding far too often happens late in the election cycle, thus limiting its effectiveness.”<sup>93</sup> Many local election officials agree. In the Democracy Fund/Reed College 2018 Survey of Local Election Officials, respondents said that a lack of resources was one of the biggest limitations on their ability to engage and educate voters and to assure a positive voter experience. Local election officials highlighted the critical need for funding to pay staff and poll workers, purchase new technology, and provide training and voter education. As one local election official stated, “Simply put, it is a funding issue. If you want voter education & reach out that’s funding. If you want more early vote centers that’s money. If you want shorter lines at the polls . . . that’s money. If you want equipment you can count on that’s money . . . If you want to continue to stay up to date and educated, that’s money! It all comes back to funding for me!”<sup>94</sup>

### The Cost of Administering Elections

Despite the importance of funding, we do not know how much elections cost in the United States. There are several reasons for this, from a lack of a common “chart of accounts” to the variation in data policies to the fact that some jurisdictions do not track certain costs, such as the cost to register voters.<sup>95</sup> Some costs of running elections can be intermittent, like buying new voting equipment, but the majority are ongoing costs required for every election, such as printing ballots and paying local officials.<sup>96</sup> In most states, counties and localities are responsible for the majority of election-related costs; however, some funds to run various aspects of elections can come from federal, state, and local government coffers.<sup>97</sup> While it is difficult to precisely account for the cost of elections, it is clear that there are significant resource disparities that local election officials must contend with in jurisdictions throughout the country and within states. For example, in North Carolina, some counties had as few as 51 voters per voting machine in 2018, while local officials in other counties in the state had to manage more than 500 voters per machine.<sup>98</sup> It is more often than not lower-income and communities of color that have fewer resources available to meet the needs of their voters when administering elections. The Brennan Center reported in 2018 on the strong correlation between demographic and economic change and electoral resources, finding shrinking electoral resources in counties where the white population also shrank over the past decade.<sup>99</sup>

Election policies are typically developed and passed into law by state legislators, and then local election officials must figure out how to use the available resources and their authority to translate policy into practice. New reforms or procedures can impact the total cost of administering an election, and state legislatures do not always provide localities additional funds to enact voting changes. Local election officials who participated in the Democracy Fund/Reed College 2018 Survey of Local Election Officials reported frustration with legislative changes to elections that all too often occurred without input from local officials or the funding needed to implement new policies.<sup>100</sup> Only in Alaska and Delaware does the state cover all expenses for federal or state elections. Furthermore, only some states pay for things like training and compensation for local election officials, information for voters, polling places, ballots, and related supplies. Local officials can find ways to expand voter access with available funding when they have the authority to implement services such as vote centers or to establish all-mail

elections, which can also lower the overall cost of administering elections.<sup>101</sup> With many states instituting new election reforms in 2021, local election officials will require resources to implement changes to voting procedures. Local officials who lack the autonomy to address their financial resource needs may be unable to take steps to implement changes equitably and educate voters about their options for participating in future elections.

### **Role of Philanthropic Funding of Elections**

The 2020 election shone a light on the desperate need for funding to go along with changes in election administration. Local election officials found themselves preparing to administer a presidential election during a once-in-a-century global pandemic without the financial resources required to do so. Without adequate government funding, philanthropy stepped in to try to fill the gap in state and local resources. In one case, Mark Zuckerberg and his wife Priscilla Chan donated \$350 million to the Center for Tech and Civic Life (CTCL), almost the same amount that was appropriated by Congress in the CARES Act. CTCL in turn awarded grant money directly to over 2,500 jurisdictions to administer their elections at the local level. This open-call grant program was ultimately available to every local election department in every state. For the local election officials who had the interest and capacity to apply for these grants, some were able to more than double their funds available to administer the election.<sup>102</sup> CTCL reported that election offices generally used the grant funds to pay for staffing costs, including poll workers and overtime pay and for equipment and supplies, such as ballot printers, tabulation machines, and envelopes.<sup>103</sup>

While these funds helped local election officials administer a fair and secure election in 2020, the influence of these private funders and implications on our elections is not yet well understood, and many would argue that private funders should not replace consistent and reliable government funding of our elections. Following the 2020 election, some states are considering passing legislation in direct response to outside funding. In April 2021, Florida Governor Ron DeSantis signed into law S.B. 90, containing provisions that will make it harder for local election officials to get additional resources to administer elections. The new law prohibits officials from soliciting, accepting, or using any outside funding or donation for election-related expenses, including funds for voter education or outreach.<sup>104</sup>

While states are restricting local election officials' options for obtaining additional funding to administer elections, many new voting procedures proposed by state legislatures in 2021 are not accompanied by the funding to implement them. One of the many changes made to how voters would access the ballot in a new Florida law include ID requirements to apply to vote by mail and limiting access to secure ballot drop boxes. The Pasco County GOP Supervisor of Elections Brian Corley responded to the proposed changes, writing that "the current Vote-By-Mail [VBM] statutes, as well as the established security procedures with regards to VBM 'DropBoxes' worked extremely well in Pasco County, and to my knowledge, all of Florida. The provision that voids all vote-by-mail requests will not only impact millions of Florida voters but will also cause an unfunded mandate of millions of dollars."<sup>105</sup>

### **Impact of Local Power to Address Financial Resource Needs**

Local election officials' ability to implement voting procedures is dependent on the financial resources to do so. Limited budgets in turn limit local officials' ability to meet the needs of voters and promote participation in elections. Local resource constraints often hamper the autonomy of local officials in lower-income jurisdictions and disproportionately impact voters in communities of color. Meanwhile, changes in voting laws at the state level often do not account for the financial resources that local officials will need to implement reforms, ultimately impacting the voting experience and exacerbating the inequities in our electoral system.



## 8. TRAINING FOR ELECTION WORKERS AND LOCAL OFFICIALS

Local election officials can exercise their autonomy in deciding how to train election workers in their jurisdiction. Local election officials themselves receive varying levels of training and guidance in how to administer the election, based on the dynamic with the state election authority, and in turn those same local officials are largely responsible for hiring and training poll workers. Given the complexity of election law and the challenge of implementing new voting reforms, providing sufficient guidance and training to local officials on state law and procedures is extremely important.<sup>106</sup>

### The State's Role in Training Local Officials

Statewide training is one tool that state election authorities can use to promote compliance with federal requirements, set standards for uniformity across the state, and promote best practices for election administration. But state election authorities vary in the degree to which they require, or even offer at all, training to local election officials.<sup>107</sup> Local election officials who have fewer proscribed training requirements from the state may have more autonomy to develop their own resources that are tailored to the unique context of their election jurisdiction, in comparison to local officials in a state whose training model is more “top-down.” In 35 states, local officials are either certified by the state or are provided mandatory training by the state, whereas 13 states provide only voluntary training for local election officials or training on certain aspects of elections, and 2 states do not provide any training programs for local election officials, though they may publish handbooks with information on election laws.<sup>108</sup>

New York is one of two states where local election officials are not offered any training by the state, putting an additional burden on local election officials.<sup>109</sup> In the 2020 election, local officials used different practices across New York to assist in their counting of ballots, leading to errors, confusion, and a delay in the certification of the results. In New York State, election laws require that absentee ballots challenged by election commissioners or campaigns must be marked in ink with the specific challenge or objection.<sup>110</sup> In New York's 22nd district (NY-22), seven out of the eight counties did not properly follow procedures laid out in New York State election laws, which requires objections to be written on the ballot in ink and initialed by board of elections commissioners.<sup>111</sup> In Oneida County, officials used sticky notes to record challenges. When those notes fell off the ballots and the recorded objections were mixed up or lost, it put the contested ballots into question and threw the congressional election in NY-22 into chaos. It took over 100 days of counting, lawsuits, and recounts to certify the results.<sup>112</sup> The autonomy of county officials in how they train workers, a lack of state resources, or available funding for training could have all contributed to the failure of local election officials to effectively count and record the votes in NY-22.

### Training Poll Workers

In the 2020 election in Pennsylvania, many first-time poll workers who were running polling locations as a judge of elections reported being unprepared, receiving essential training materials only days before the election. Pennsylvania state election law is mostly silent on the training of poll workers, only requiring that the state develop a training program in consultation with county officials. The depth and quality of training is mostly at the discretion of the county officials.<sup>113</sup> The requirements for a poll worker vary by state and also within a state, county by county.<sup>114</sup>

Across the country there are also plenty of examples of local election officials leveraging local resources and expertise from the community to effectively train election workers. In Maryland, the Anne Arundel County Board of Elections partnered with a local university to develop online educational modules for election judges on cybersecurity and the voting process. Election workers trained in 2020 not only completed the training modules, but they also took assessments to ensure they understand cybersecurity practices and were prepared to administer the election securely.<sup>115</sup> The Wake County Board of Elections in North Carolina developed creative ways to train poll workers during the pandemic through a weekly virtual talk show for election officials called “Coffee with Nick,” which led to a 28-page resource of frequently asked questions and answers.<sup>116</sup> The discretion that local election officials can use to develop and provide tailored training, or little formal training at all, can result in disparities in election administration within states, in contrast to a state that is more top down in their training requirements.

### **Impact of Training for Election Workers and Local Officials**

Local election officials can exercise their autonomy in how they train election workers. This discretion in the approach, tools, and information used to train Election Day poll workers can be incredibly beneficial if those staff gain a comprehensive understanding of how to administer the election and have a nuanced understanding of the specific needs of voters in their jurisdiction. Training can be a tool to expand access to the ballot and ensure that every eligible vote is counted. This local discretion in training can also result in some election workers being underprepared or unaware of the complexities of the election code, especially if local officials are resource constrained. Ultimately, this impacts the voting experience in these jurisdictions and can even result in suppressing votes that should have otherwise been counted.

## **Conclusion and Recommendations for Further Research**

Local election officials use their discretionary powers and expertise to administer elections for the voters in their jurisdictions. They are key decision makers with local knowledge and play a substantive role in deciding how elections are run, directly impacting the voting experience, from voter registration to early vote to Election Day and through the postelection process. These local decisions have the potential to promote voter participation and make access to the ballot more equitable across communities; they also have the potential to erect barriers for voters. To ensure inclusive and fair elections and to protect and expand voter access, we must understand the role local election officials play and the diversity of their powers.

We hope that the framework offered in this brief can help readers better understand the arenas in which local election officials exercise their autonomy and decision-making powers in their own communities. Local discretion can be used to administer an election in ways that meet the specific needs of voters living in very different communities across the United States. Our decentralized election system will never look “equal” from county to county, but voting access can be made more equitable if local officials are empowered to use their expertise, have the resources they require, and have appropriate accountability mechanisms in place to ensure they are acting in the interests of all eligible voters. It is important that the implications that local autonomy has in terms of ballot access, voter participation, and the racial inequities in our electoral system continue to be studied. In writing this brief, we identified numerous aspects of local election administration and local authority that merit further scholarly research.

1. The implications of the methods of selection and removal of local election officials is not well understood. Further research is needed to understand how the hiring and firing methods of local officials may impact equitable access to the ballot and voter participation rates more

broadly. This information would help inform policy decisions to improve the structure of local election administration and the balance of independence and accountability mechanisms for local officials.

2. The consequences of partisanship in local election administration are also an understudied area that merits more research. As we noted, we came across arguments both for and against a system of entirely nonpartisan election administrators. However, in light of the partisan-driven changes in state and local voting laws in 2021, it is critical to understand the impacts of partisanship on officials' interpretation and implementation of election procedures at the local level and how it might affect voter participation outcomes.
3. The impacts of local variations in voting access within a state and the state-local dynamics that contribute to variations in voting access within a state is an understudied area as well. The ways in which state-local dynamics, as well as the divergent administrative decisions of local officials across a single state, impact voter participation merit further research.

Finally, and perhaps most critically, the autonomy and influence of local officials in administering our elections is still not well understood by the public and by advocates seeking to protect and expand voting access. Particularly in the context of the new voting laws following the 2020 election, there is an urgent need to empower communities with the information to understand the role and authority of their local election officials and to share approaches for how to partner with those local officials to ensure that every eligible voter can access the ballot and have their vote counted.

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