

The Election Sabotage Scheme and How Congress Can Stop It

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PUBLISHED NOVEMBER 8, 2021

Over the past few months, the drive to allow partisan sabotage of the election process had a series of frightening public successes. The Arizona State Senate [concluded](#) its partisan review of the 2020 election in Maricopa County, a nakedly political bid to feed disinformation and conspiracy theories. The Georgia legislature passed a bill [along party lines](#) to remove the elected secretary of state — [who stood up to requests](#) to overturn the 2020 election results — as chair of the State Elections Board and replace him with a hand-picked chairperson. In Texas, the governor signed [a law](#) that targets local election officials and poll workers with new penalties, empowers partisan poll watchers, and cuts down on access to voting. The Texas secretary of state also [announced](#) a dubious election review, the day after former President Donald Trump urged it. And in states like Missouri and Oklahoma, legislators introduced even more extreme bills that would have allowed them to

directly overturn legitimate election results. While these bills did not pass, their mere introduction is a shocking affront to democratic norms.

Following a legislative season that saw many states increase barriers to voting, these laws and proposals, often added quietly and late in the legislative process, would change who runs elections, who counts the votes, and how. They go beyond vote suppression to enable direct election subversion. And they have a distinctly authoritarian flavor. Joseph Stalin [put it pungently](#): “I consider it completely unimportant who in the party will vote, or how; but what is extraordinarily important is this — who will count the votes, and how.”

Legislation enabling partisan interference in election administration is part of a broader “election sabotage” or “election subversion” campaign, a national push to enable partisans to distort democratic outcomes.¹ It includes partisan reviews of vote tallies to justify overturning elec-

1 The election subversion trend has been well documented in several other reports in recent months. The States United Democracy Center, Protect Democracy, and Law Forward published a [report](#) describing elements of the trend and analyzing important bills to counter it. Another [recent report](#) by the Voting Rights Lab built upon this research and linked these bills to other developments. And an [analysis](#) by the Center for American Progress looked at particularly troubling subversive legislation in Arizona, Florida, Georgia, and Texas.

tion results and enacting new laws to subvert fair elections in a growing number of states. It includes attacks and pressure on state and local election officials to subvert fair election rules or election outcomes. It includes the unprecedented push in the states to restrict access to voting. And finally, it includes a movement by majority parties in [multiple state](#) legislatures to entrench themselves in power through extreme gerrymandering and [other discriminatory tactics](#) — an effort that could distort our democracy for the next decade, just as maps drawn with partisan bias after the 2010 Census skewed elections in 2012, 2014, 2016, 2018, and 2020.

While the partisan sabotage bills have not been enacted into law at the same pace as vote suppression bills, they are a new and dangerous twist on the same legislative agenda. Each is driven by the [Big Lie](#) that there is widespread voter fraud. And each is part of a broader ongoing partisan project to thwart democratic elections and rig electoral outcomes, especially by undermining or canceling the votes of people of color. Each is antidemocratic and toxic to a free and fair society. And each demands urgent intervention by Congress to prevent irreparable corruption of our electoral system.

This paper briefly catalogs recent election sabotage legislation and the status of those efforts and explains how they threaten our democratic system. Specifically, there are four categories of legislation to sabotage the electoral process: (1) legislation to give state officials the power to change or reject election results; (2) legislation to give partisan state officials the power to seize control of the election administration and vote-counting processes; (3) legislation to restrict, control, or punish the conduct of local election officials; and (4) legislation to make it harder to vote.

The paper then details the most significant legislative solution: the Freedom to Vote Act (FTVA), a transformative voting rights and democracy reform bill that would thwart most election sabotage efforts. The Freedom to Vote Act includes provisions targeted at specific election sabotage threats. But its core voting rights provisions would also defang election sabotage laws. By establishing clear, enforceable national standards on issues such as early voting, vote by mail, and the counting of ballots, the Freedom to Vote Act would deprive partisans of the discretion to suppress or discard legitimate votes. It would also deprive partisans of the raw material that underlies their phony claims of fraud whenever marginalized

communities are given fair access to the ballot. Partisan election boards, for example, could not claim that counties had improperly allowed people to vote by mail if they were merely following unambiguous federal requirements. The same is true for vote-counting standards. Congress must act quickly and decisively to blunt the election sabotage scheme before it gathers more momentum at the state level.

Direct Election Sabotage: Partisan Authority to Change Election Results

State legislators brazenly introduced at least 10 bills in seven states during the 2021 legislative session that would have directly empowered partisan officials to change or overturn election results. While none of these bills have become law, they expose the antidemocratic motivation behind the larger election sabotage movement and provide a worrying marker of how far voting rights opponents want to go. Their widespread introduction is an urgent warning sign for the health of our democracy.

These bills would authorize partisan actors to reject election results in a few different ways. In **Arizona**, **Missouri**, and **Nevada**, legislators introduced bills that would have allowed the state legislature to directly reject election results.² **Michigan** legislators introduced a bill that would open up the election certification process to post hoc partisan meddling by allowing a member of any county board of canvassers to rescind a vote to certify an election by affirming that they made their original vote under duress.³ In **Texas**, legislators introduced a bill that would have allowed individual judges to throw out election results if they perceived evidence of a certain number of supposedly illegally cast votes.⁴ **Idaho** legislators introduced a bill that would have counted only in-person votes and absentee votes cast with a valid excuse when determining presidential electors, even though Idaho is a no-excuse absentee state.⁵ And in **Oklahoma**, legislators introduced a bill that would have eliminated the popular vote for presidential electors entirely until Congress passes national legislation requiring photo ID and paper ballots.⁶

2 AZ H.B. 2720; AZ H.B. 2800; AZ H.B. 2826; MO H.B. 1301; NV A.J.R. 13.

3 MI H.B. 4966. Notably, a county board of canvassers in Michigan was [already the target](#) of a postelection pressure campaign by President Trump in November.

4 TX S.B. 7.

5 ID H. 0105.

6 OK S.B. 33.

Arizona Rep. Brenda Barton introduced one of the nation’s most dangerous election subversion bills, which would have allowed the legislature to directly reject the results of any election during a special legislative session.⁷ While this bill was not enacted, Barton introduced several other antivoter bills that were, including a new law that bars election officials from modifying deadlines during emergencies and prevents them from accepting grants from private foundations to fill budget shortfalls, and a resolution opposing federal democracy reform legislation.⁸

Outright license to reject election results represents the extreme end of the spectrum of antidemocratic legislation. None of these bills have passed,⁹ but they are part of the same partisan legislative project as vote suppression, gerrymandering, and efforts to undermine fair election administration. As such, they provide context for understanding the motivations behind other bills that would more indirectly subvert elections and manipulate election results — bills that are, in fact, becoming laws.

Indirect Election Sabotage: Partisan Control of Election Administration and Vote Counting

At least three states have passed, and at least 10 more have considered, bills that would sabotage the democratic process in more indirect ways, by allowing political partisans to seize control of certain aspects of election administration typically handled by professional election personnel. These include bills that would authorize partisans to remove local election officials and step in to administer an election; allow partisans to take control of other aspects of election administration, such as voter registration or polling place relocation; and authorize illegitimate partisan reviews or investigations into allegations of fraud. This legislation officially makes it easier for partisans to accomplish what many of them attempted unsuccessfully in 2020 — throwing out legitimate votes.

7 AZ H.B. 2800.

8 AZ H.B. 2794; AZ H.B. 2569; AZ H.C.R. 2023.

9 The only such bill to advance through even one legislative chamber is S.B. 7 in Texas. Many provisions of this bill were ultimately incorporated into S.B. 1, which passed in a special session; however, the provision allowing judges to reject election results was not reintroduced.

10 AR S.B. 487 (use of vote centers); AR S.B. 498 (review of complaints regarding election law violations); AR SB 557 (supervision of election workers).

11 A.C.A. § 7-4-102 (establishing the membership of county boards of election commissioners as two members elected by the county committee of the majority party and one member elected by the county committee of the minority party); A.C.A. § 7-1-101(18) (defining the majority party as the political party in the state whose candidates were elected to a majority of the statewide constitutional offices in the last preceding general election). See also the [Arkansas State Board of Election Commissioners](#).

New Laws Authorizing Partisan Takeovers of Local Election Administration

At least **two states** have passed laws that allow partisan actors to remove professional election officials and seize complete control of election administration in a specific jurisdiction.

- **Arkansas: S.B. 644** allows a special legislative committee to investigate county election officials for alleged violations of election law and send recommendations to the State Board of Election Commissioners on what action to take in response to violations. The board may then vote to decertify and remove the election official or even take over election administration in the county entirely, which could enable partisans to achieve a specific election outcome. Arkansas also enacted three laws that take certain election administration powers away from elected county clerks¹⁰ and grant them to county boards of election commissioners, which are controlled by the majority political party in the state. This power grab would disempower voters in counties where the majority party is out of power on the state level.¹¹
- **Georgia: S.B. 202** removes the secretary of state from the State Election Board and empowers the legislature to handpick a chairperson to take his place. The bill also allows the legislature-controlled State Election Board to suspend county election officials if they find “nonfeasance, malfeasance, or gross negligence.” By increasing partisan influence on the State Election Board and then empowering it to remove local election officials, the state legislature has given itself the power to replace professional election officials with partisan operatives who could manipulate the election administration process or even sabotage vote counting.

Bills Allowing Partisan Influence in Specific Aspects of Election Administration

Legislators in **Arizona** enacted **S.B. 1819**, which transfers the power to defend state election laws in court from the secretary of state to the state attorney general, but only until a new secretary of state is elected in 2022. This bill

seems to be a direct effort to curb the ability of the current secretary of state, Katie Hobbs, to settle voter access lawsuits.

Legislators in at least **10 other states** have introduced, but not passed, bills giving partisan officials new powers to seize control of aspects of the election administration process.¹² The following states are among those that have introduced such bills.

- **Louisiana: S.B. 220** would have empowered the legislative auditor — a partisan official appointed by the legislature — to audit any state, local, or federal election using any “scope, frequency, and methodology” the auditor wants, and then to submit a report to certain legislative committees. Combining undefined scope and methods with partisan influence could weaponize these partisan audits against targeted jurisdictions. The bill passed both chambers but was vetoed by Gov. Jon Bel Edwards.
- **Michigan: S.B. 297** would require local election officials to obtain approval from a member of each party on the county board of canvassers before hiring an assistant to help with the vote-counting process. This requirement would allow partisan actors on a county board of canvassers to unilaterally slow down vote counting by refusing to approve the hiring of additional staff. It seems to be a direct response to conspiracy theories about vote tabulation that emerged in Michigan in the days after the 2020 election.
- **Missouri: H.B. 738** would have allowed the secretary of state to audit the voter rolls of any county and withhold funding if local officials refuse to remove a voter the secretary determines is ineligible. This could be used to pressure counties to engage in irresponsible purges of the voter rolls in a manner that would disenfranchise eligible voters.
- **Wisconsin: A.B. 304** would have granted the state’s Elections Commission the power to issue temporary restraining orders against local election officials and review election officials’ decisions regarding recounts. Currently, only courts have these powers in Wisconsin. The Elections Commission, while officially bipartisan, was created to shield former Gov. Scott Walker from a campaign finance investigation and has a [history of partisanship](#). Two of its members [objected](#) to certifying the 2020 general election results.

Partisan Election Reviews Designed to Cast Doubt on Legitimate Election Outcomes

At least five states — **Arizona, Michigan, Pennsylvania, Texas, and Wisconsin** — have conducted or are conducting illegitimate partisan reviews of the 2020 election. These reviews are being conducted by partisan actors and are specifically designed to cast doubt on legitimate election results. They are setting the stage for future efforts to suppress votes and subvert election outcomes. As the [Brennan Center has reported](#), these partisan reviews serve no legitimate election integrity purposes. They uniformly fail to satisfy basic security, accuracy, and reliability measures for postelection audits, and the individuals tasked with conducting these reviews themselves fail to meet basic qualifications and objectivity standards. Moreover, these partisan reviews come after each of these states already conducted legitimate postelection audits under existing state procedures that confirmed the outcome of the election. In contrast to the validated procedures that election officials use to ensure election integrity, these partisan reviews are designed to [sow doubt](#) about our elections.

These actions are all indirect methods of subverting election outcomes and fair elections. Partisan control of the vote-counting process offers political operatives opportunities to meddle with election results. Partisan control of election administration offers political operatives opportunities to restrict voter access in targeted and discriminatory ways. And partisan control of election audits undermines faith in our election system and opens the door to future partisan interference with the election process. The resulting damage could facilitate more extreme antidemocratic measures.

12 AK H.B. 196; CT H.B. 5540; HI H.B. 853; LA S.B. 220; MI S.B. 297; MO H.B. 738; NC S.B. 105; PA H.B. 1482; SC S.B. 129; WI A.B. 304.

Controlling Officials as Election Sabotage: Partisan Power to Control or Punish Election Officials

Legislators in at least 17 states have introduced a long list of bills that permit partisan punishment of election officials and increase the power of partisan poll watchers. By allowing state officials to target specific jurisdictions or specific voting practices, these bills increase the risk of partisan sabotage of election outcomes. And by imposing chilling criminal and civil penalties and pointless restrictions, these bills are accelerating the mass exodus of experienced, professional election officials from their jobs, opening the door to further partisan influence in election administration.

Bills to Coerce Election Officials with Criminal and Civil Penalties

At least **six states** have enacted bills that will create new crimes, increase existing criminal penalties, or create new civil penalties for legitimate election official actions or minor mistakes, and at least **10 additional states** have introduced similar bills.¹³ In a politically charged environment, partisan actors could easily use these new penalties to coerce or intimidate election officials, thwart voter participation, or otherwise undermine free and fair elections. The following states are among those that have enacted such bills.

- **Alabama: H.B. 285** bans curbside voting, an [important option](#) for voters with disabilities, and makes it a crime for any election officer or poll worker to take a ballot into or out of a polling place in most situations. This puts poll workers or election officials who attempt to expand voting access for people with disabilities at risk of prosecution.
- **Arizona: H.B. 2794** makes it a felony for an election official to change any election deadline, and **H.B. 2905** makes it a felony for an election official to send a mail ballot to a person who has not requested one. These laws eliminate election officials' flexibility to modify processes to protect voters under exigent circumstances. **H.B. 2720**, which did not pass, would have

disqualified any election official from serving for 10 years in the event of disruption of a live video feed of the ballot-counting process.

- **Iowa: S.F. 413**, one of the first restrictive voting bills enacted into law in 2021, allows prosecutors to criminally charge election officials for a variety of reasons, including not being sufficiently aggressive in purging voter registration rolls or obstructing poll watchers. Aggressive purges of voter rolls disenfranchise legitimate voters, and lax oversight of poll watchers results in intimidation of election workers and voters.
- **Texas: H.B. 574** makes it a felony to knowingly count invalid votes or refuse to count valid votes. And **S.B. 1** makes it a felony to affirmatively distribute mail ballot applications to voters who did not request them, or to solicit or truthfully inform voters of their right to request such applications. It also creates civil penalties specifically targeted at election officials for minor mistakes. The Brennan Center is [currently suing](#) Texas over S.B. 1.

Bills Empowering Partisan Poll Watchers at the Expense of Election Workers

At least **three states** have enacted bills granting new powers to partisan actors serving as poll watchers, poll observers, or challengers.

- **Texas: S.B. 1** empowers partisan-appointed poll watchers at voting locations in several ways. The law makes it a crime for election judges to reject qualified poll watchers, establishes that poll watchers must have free movement throughout an entire voting location, and bars election judges from removing poll watchers for certain violations of election law unless they personally observe the misconduct. These provisions will substantially impede the ability of election officials to maintain orderly polling places and to address intimidation or other misconduct.
- **Florida: S.B. 90** requires election officials to allow partisan-appointed observers to examine the markings on every ballot that is duplicated during the tabulation process because the original was damaged, and it also allows observers to make an unlimited number of challenges to each ballot's validity. This empowers partisan observers to stand intimidatingly close to election workers and to slow down or gum up the ballot-counting process.

¹³ The bills that have been enacted are AL H.B. 285; AL H.B. 589; AZ H.B. 2794; IA S.F. 413; KS H.B. 2332; ND H.B. 1253; and TX H.B. 574. The bills that have been introduced are AK H.B. 196; AK S.B. 39; AR S.B. 604; AZ H.B. 2811; GA H.B. 132; MI H.B. 4963; NC H.B. 715; PA H.B. 1703; RI H.B. 6099; SC H.B. 4255; SD S.B. 116; TX S.B. 97; and WI A.B. 310.

- **Georgia: S.B. 202** enables mass challenges to voter eligibility and threatens county election boards with sanctions for failing to respond to voter roll challenges. Partisan interest groups made several attempts to challenge the eligibility of thousands of Georgia voters before the 2021 U.S. Senate runoff elections, including one attempt that [targeted more than 364,000 voters](#). Georgia's new voting law will make it more difficult for election officials to rein in partisan challenges like these in the future.

Many of these bills are a direct response to actions taken by election officials in 2020 to promote voter access and keep voting safe and secure. They build upon a new and deeply concerning trend of attacks on election officials, including threats of physical violence, as the Brennan Center and the Bipartisan Policy Center documented in a [report](#) earlier this year. Of course, it is important that election officials follow state law, but statutes do not and cannot address every possible issue that will come up when running an election. Election officials [must](#) be able to implement laws in a way that considers the needs of their voters and ensures the integrity of the election process. The threat of criminal penalties will chill election officials from exercising this discretion — or worse, it could foster inappropriate actions to undermine voter participation. Moreover, in the context of persistent harassment, physical threats, disinformation, partisan interference, and overall exhaustion from the challenges of 2020, state efforts to impose criminal penalties and restrict election official activity will push experienced and knowledgeable public servants out of election administration altogether.

Vote Suppression as Election Sabotage: New Laws and Bills Making It Harder to Vote

State legislators have also introduced bills that restrict access to voting more generally. As the [Brennan Center has thoroughly documented](#), 2021 has been a record-breaking year for vote suppression bills. At least **19 states** have passed 33 different laws that restrict access to voting as of October 4, 2021. Overall, legislators in **49 states** introduced more than 400 such bills.

For example, in addition to the previously discussed provisions about partisan removal of election officials and mass challenges, **Georgia S.B. 202** [includes a number of restrictions on voter access](#). The law requires voters to provide either an ID number or a photocopy of an ID

document with a mail ballot application, shortens the window for applying for a mail ballot, and restricts the use of mail ballot drop boxes. These restrictions will place more barriers to mail voting after an election in which for the first time a [greater share](#) of Black Georgians voted by mail than white Georgians. In **Iowa**, in addition to targeting election officials with unreasonable criminal penalties, **S.F. 413** contains several restrictive voting provisions. The law expands voter roll purges, which [could lead](#) to eligible voters being removed from the voter rolls. It also shortens the mail ballot application window, shortens the early voting period by nine days, and requires polling places to close an hour earlier than they have in the past on Election Day. These changes increase the burdens of voting for many people. In **Florida**, in addition to curtailing election officials' authority, **S.B. 90** restricts access to mail voting by requiring voters to provide an ID number on their mail ballot (with no exception for voters who do not have an ID) and making it more difficult to access mail ballot drop boxes. And in **Texas**, in addition to establishing new criminal and civil sanctions against election officials working to protect voter access and new powers for partisan poll watchers, **S.B. 1** [restricts](#) community groups' ability to assist voters with disabilities or limited English proficiency.

Restrictive voting legislation distorts and subverts the electoral process by keeping out eligible voters. What is more, many of these new laws target, and [disproportionately](#) burden, voters of color. At a time of razor-thin election margins, there is no question that voter disenfranchisement and racist vote suppression is properly viewed as a form of election sabotage.

Compounding the harms associated with vote suppression, the country is entering another redistricting cycle in which partisans are already leveraging control of the congressional redistricting process to lock in their power regardless of changing voter preferences. Many of these efforts are expected to target Black, Latino, and Asian communities in states undergoing major demographic shifts, such as [Florida](#), [Georgia](#), and [North Carolina](#). [Texas](#) has already released a new, distorted congressional map that would create additional majority-white seats even though people of color accounted for 95 percent of the state's population growth over the past decade.

The Freedom to Vote Act: Critical Protections Against Election Sabotage

The multifaceted threat of election sabotage requires a multifaceted response. The [Freedom to Vote Act](#) is a major and necessary part of that response. It creates clear national standards to protect the right to vote and end extreme gerrymandering. It blunts or stops partisan efforts to seize control of election administration. If partisans do gain control of the electoral process, the FTVA limits their ability to manipulate outcomes by making clear rules that ensure all valid votes will be counted. It also limits the impact of after-the-fact partisan election reviews and gives voters a clear legal remedy if officials unreasonably refuse to certify or otherwise set aside the results of an election.

Congress has strong authority under the Constitution to enact these changes. Indeed, only Congress can effectively respond to the threat of election sabotage. Political mobilization and organizing cannot overcome election sabotage efforts. Nor can the courts be relied upon to protect American democracy without strong new laws; the Supreme Court has in recent years retreated from protecting voting rights and has seriously weakened prior voting rights laws. Clear new directives from Congress are needed to fully protect the electoral process and every American's freedom to vote.

The FTVA Response to Vote Suppression and Gerrymandering Is Wide Ranging

The Freedom to Vote Act directly responds to vote suppression and gerrymandering with clear and enforceable national standards guaranteeing every American reasonable access to the ballot. For example, the act would preempt the numerous attempts to restrict mail voting in states such as Iowa, Florida, Georgia, and Texas by requiring states to offer no-excuse mail voting to all eligible voters, without restrictive ID requirements or other hurdles like requiring witnesses or notarization. The act would also require states to make drop boxes widely available for mail ballot return. The Freedom to Vote Act would curb discriminatory purge practices that disenfranchise eligible voters, and it would foil specious mass challenges to voter eligibility based on dubious information like those sanctioned by Georgia's S.B. 202. These and other new protections for voter access would block partisans from using restrictions on voting to manipulate election outcomes. The Freedom to Vote Act also contains an outright ban on partisan gerrymandering and requires states to use clear, neutral standards and transparent processes when drawing congressional district lines.

A second bill, the John R. Lewis Voting Rights Advancement Act (VRAA), is also needed to bolster protections against racially discriminatory vote suppression and redistricting abuses. The VRAA would restore and update the protections against racial discrimination in the landmark Voting Rights Act of 1965. Given the [racially targeted nature](#) of so many efforts to subvert election results, the VRAA adds a critical layer of protection beyond the national standards in the Freedom to Vote Act.

The FTVA Responds to Efforts to Seize Control of Election Administration

The Freedom to Vote Act responds to each of the new election sabotage tactics that seek to put partisans in control of election administration with specific safeguards.

- **Attempts to retaliate against or replace specific election officials:** [Sec. 3001](#) of the FTVA creates legal protections for election officials facing politically motivated removal proceedings, such as those permitted under Georgia S.B. 202. It establishes that local election officials can only be removed by state election administrators for specific reasons, such as gross negligence or malfeasance in office, and gives them the right to challenge their removal in federal court.
- **Attempts to criminalize or prosecute election officials:** [Sec. 1301](#) of the FTVA specifically bars states from prohibiting anyone from providing a mail ballot application to an eligible voter. This requirement would, for example, preempt the provision in Texas's new law that makes it a crime for an election official to distribute mail ballot applications to voters who have not specifically requested them. The Freedom to Vote Act's national voter access standards also create a broader shield, since a state cannot prosecute an election official for taking an action required or authorized under federal law.
- **Attempts to intimidate election officials:** [Sec. 3601](#) of the FTVA regulates poll watcher behavior and limits poll watchers' ability to challenge voter eligibility. [Sec. 3206](#) strengthens legal protections against threatening or intimidating conduct directed at election workers during the vote tabulation, canvass, and certification process.

These protections will make it much harder for partisans to seize control of election administration processes. But even where they do, the Freedom to Vote Act institutes robust protections regardless of who is counting the votes, as discussed below.

The FTVA's Rules Address Partisan Attacks on the Vote-Counting Process

The Freedom to Vote Act institutes clear rules to ensure that legitimate votes are counted and preempts any effort by partisans to invalidate legitimate votes. The threat of partisan actors inconsistently applying vote-counting rules for partisan advantage loomed large over the 2020 election. Many of the bills advanced at the state level this year would further that effort by enabling partisans to discard mail ballots or other ballots cast by legitimate voters in certain circumstances. The act responds to these scenarios in several ways.

- **Naked ballots:** In Pennsylvania, some legitimately cast mail ballots were thrown out during the 2020 election because voters did not place their mail ballots in an extra secrecy envelope (these ballots were known as “naked”). The problem would have been much worse absent a multimillion-dollar public education campaign; Philadelphia’s chief election official [estimated](#) that roughly 6 percent of mail ballots cast in prior elections were “naked.” [Sec. 1301](#) of the FTVA requires election officials to provide voters with timely notice of any defect in their mail ballot and an opportunity to fix the defect and ensure their ballot is counted, thereby preventing uneven or partisan application of vote disqualification rules like the one in Pennsylvania.
- **Late-arriving ballots:** Mail delays were a [well-publicized problem](#) during the 2020 election. In states including Minnesota, North Carolina, and Pennsylvania, partisan actors attempted [through litigation](#) to invalidate legitimate mail votes that were cast on time but arrived after Election Day because of mail delays. A case filed in Pennsylvania seeking to invalidate late-arriving ballots made it all the way to the [Supreme Court](#). [Sec. 1301](#) of the FTVA responds to this threat with a uniform rule: all legitimate mail ballots that are sent by Election Day must be counted if received within seven days of the election.
- **Signature matching:** Many states require election officials to verify mail ballots by matching the signatures on the ballot envelopes with those on the voter rolls. During the 2020 election, partisan actors sought to use this requirement to toss out legitimate ballots based on technical mistakes and to prevent state actors from allowing voters to correct those mistakes. Since the election, at least four states, including Arizona and Texas, have passed laws imposing stricter mail ballot signature requirements, which could give partisan actors more discretion to reject ballots. The Freedom to Vote Act institutes specific rules governing signature verification and mail ballot processing. [Sec. 1301](#) requires that at least two election officials from differ-

ent political parties concur that a signature is invalid before rejecting a ballot. It also requires election officials to promptly notify voters when their ballot is rejected and give them an opportunity to fix the defect.

- **Ballots cast in drop boxes:** In several lawsuits following the 2020 election, including one in [Wisconsin](#), partisans sought to invalidate all votes cast through mail ballot drop boxes on the theory that those drop boxes were not authorized. [Sec. 1305](#) of the FTVA would preempt those efforts by creating a federal requirement that states establish secure mail ballot drop boxes.
- **Ballots cast by mail in general:** After the 2020 election, allies of President Trump sued several states across the country to invalidate votes cast by mail based on unfounded allegations of fraud. One of their more egregious lawsuits was against [Pennsylvania](#), where Trump allies attempted to invalidate more than 2.5 million votes. [Sec. 1301](#) of the FTVA mandates that all states offer no-excuse mail voting, a measure that would prevent partisan actors from throwing out legitimate ballots based on how they were cast.

The FTVA's Risk-Limiting Audits Further Respond to Vote-Counting Threats

The fight over election sabotage focuses on mail and provisional ballots because ballots cast in person via a voting machine are much harder to throw out. But the Freedom to Vote Act does incorporate additional protections for all votes, including a requirement in [Sec. 4001](#) that states conduct true risk-limiting audits starting in 2024. This type of audit is the gold standard for election security and can detect errors, manipulation of vote totals, and malfeasance using sound statistical methods.

The FTVA Responds to Partisan Election Reviews and Illegitimate Audits

To blunt the ability of partisans to use fraudulent election reviews and audits to cast doubt on results, [Sec. 4001](#) of the FTVA mandates that states audit election results starting in 2024 using proper risk-limiting audit techniques as described above. It also provides grants to support development of these practices. These new safeguards will promote confidence in election outcomes and minimize the risk of audits and recounts being used for partisan sabotage.

In addition to new rules about audits, [Sec. 3301](#) of the FTVA responds to the threat of partisan postelection reviews by creating stronger protections for federal election records and voting equipment. The act expands penalties for interfering with federal election records to cover electronic records and creates a federal cause of action for political candidates and the attorney general to enforce federal records protection laws. This provision

would prevent partisan actors from turning over ballots, records, and equipment to unqualified private vendors, [as Arizona State Senate Republicans did](#) in their widely discredited review of Maricopa County's election results.

The FTVA's Legal Cause of Action Further Counters Efforts to Set Aside Results

The final threat posed by the election sabotage movement is the potential for a state to unreasonably set aside or refuse to certify a legitimate election victory. While setting aside a valid election result would almost certainly violate constitutional guarantees for the right to vote, the Freedom to Vote Act also provides a clear statutory remedy through the new cause of action created by [Sec. 3402](#), which allows voters to sue for infringement not only of their right to cast a ballot but also to have that ballot counted and the result certified.

Other Legislation Can Also Counter the Threat of Sabotage

Additional legislation could help protect against efforts to sabotage presidential elections by Congress or the president. Most notably, the federal [Protecting Our Democracy Act](#) would, among other things, reinvigorate guardrails that prevent an unscrupulous president from weaponizing federal law enforcement to undermine valid election results, as then-President Donald Trump [reportedly attempted](#) in the aftermath of the 2020 election. Legislation should also be introduced to address [weaknesses](#) in the Electoral Count Act, the law governing how Congress tallies electoral votes, which also create opportunities for mischief. These reforms are critical to reinforcing the last lines of defense. But the Freedom to Vote Act's clear national standards for voting rights, curbs on partisan election reviews and other attacks on the vote-counting process, strong protections for election officials and workers, and other defenses will make it far less likely that these final safeguards would ever need to be called upon again.

Conclusion

The national partisan push to seize control of the election administration process and control outcomes is an attack on our democracy. Bills to authorize partisan takeovers of election administration, instigate questionable reviews of election results, and restrict access to voting all arise from the same strategy. And the worst could be yet to come in the form of bills allowing partisans to directly reject election results. Fortunately, Congress has the power to thwart this attack on our electoral system. By enacting the Freedom to Vote Act and other critical bills, Congress can protect our democracy from attempts to sabotage election outcomes.