

## **American Voters' Alliance Model Elections Reform**

Citizens have a right to secure and fair elections that are accountable, transparent, and inclusive.

### **MODERN ELECTIONS:**

U.S. election codes are largely antiquated and out of touch with the current technologies and procedures used in election administration. It is essential that we enact meaningful and comprehensive reform that upholds our federalist system of government, protecting the proper jurisdictional authority in our institutions while addressing the needs and concerns of modern day elections.

#### **A. Standing Committee**

The legislature shall establish a Joint Standing Committee comprised of an equal number of members from both legislative chambers<sup>[i]</sup> and both major political parties appointed by lot. The Committee shall be able to meet on call of the Chair or Vice Chair, which shall be members of opposite political parties, even while the legislature is not in session. The Committee shall be charged with issuing the report outlined below and shall be granted the powers outlined to accomplish this objective.

#### **Report on the Election:**

The Committee Shall, after each election, issue a "Report on the Election" to the body as a whole indicating:

- Whether state and federal laws followed in the election; if not, what laws were violated and if violated, which laws by whom (where).
- Where election procedures followed; if not, which procedures were violated and by whom (where).
- What impact, if it can be determined, did violations of law and procedures have on the election result.
- Possible remedies, if necessary, for such violations of law and procedure.
- Whether, in the committee's judgment, the election(s) should be certified as to specific races.
- The committee of the whole must meet to receive the report and vote whether to certify the election results.
- The Committee shall issue an interim election report resolving the above questions by January \_\_\_\_ in the year following the election.
- The issuance of such interim report does not prohibit the committee from further review and issuing a later final report on the election.

#### **Committee Report to Not Certify and Committee, Candidate and Private Party Standing:**

If the final committee report states a past election should not have been certified:

If the election pertains to a member of the state or national legislature the report shall issue to the leadership in the respective chambers for consideration. Moreover, if the report states any past election should not have been certified then the report shall issue directly to all candidates in that election who shall have standing to initiate a challenge to the election in an appropriate court.

The court may order a new election or refer the matter to a special master for hearing who, in turn, may refer the matter to the appropriate legislative chamber for a full vote on seating the appropriate member. The special master may also reject any challenge.

The Standing Committee shall have standing to judicially challenge any election and such power shall be exercised by committee vote in equipoise or majority.

Private parties, and individual persons, have standing to sue local election officials and the state for any intentional or reckless violations of state laws and procedures that result in any disparate treatment of voters or ballots based on race, gender, residence, party membership or affiliation, age, ethnicity, or any targeting demographic characteristic.

Nothing in these provisions prohibit the standing afforded to candidates and others currently existing in state law.

In making its findings the committee should include consideration of the following issues:

- Voter roll updates properly cleaned and implemented;
- Written and verifiable chain-of-custody records of eligibility documents and ballots;
- Ballot drop box records and live video footage of drop boxes in real time;
- Poll watcher compliance and complaints;
- HAVA compliance;
- Any evidence of local officials amending the process contrary to state or federal statute;
- Allocation of private funding, etc.
- A review of the implantation of the state election plan required by the Help America Vote Act and a statement post-election regarding any violations of the plan. The report shall also include any recommendations to improve election accountability, transparency, and inclusion.

### **Remedies for Violations:**

Material violations of the state election law will render city or county officials responsible for funding forensic audits by disappointed candidates by the auditing firm of their choice. Such provisions shall not replace criminal culpability. Remedies may also include the power to stay election results or grant injunctive relief when necessary. States should also have appropriate standing for those who need to intervene. Receivership may also be an option as a last resort.

### **B. Res Ipsa Loquitur (Civil Rights / Standing)**

As part of the Joint Standing Committee, legislators shall issue a report on the election with a recommendation on whether to certify the election. If a recommendation is made not to certify

the election, the burden to show that the election results were valid, and that the election laws and procedures were substantially followed, shifts to election officials. Such a recommendation also allows standing for the losing candidate to file an election challenge in the appropriate court.

**C. Polling Access: USPS Facilities, Preprocessing Facilities (clerk's office), Counting Facility USPS facilities handle all mail-in ballots.**

For this reason, the federal government should enable states to adopt legislation that allows observers to begin watching the process of ballot design, printing, and delivery to, and collection in federal mail sorting facilities.

**D. Citizen Avenue for Cleaning Voter Rolls**

States should expand standing to allow a voter to challenge incorrect voter registrations in the appropriate court upon a showing of good cause. A voter's ability to challenge voter registrations upon a showing of good cause should be allowed to occur throughout the year. States should also establish a citizen avenue for a registered voter to challenge the voter registration of another voter if evidence is brought to the appropriate governing elections official (generally the clerk) who finds, upon a showing of good cause, that a voter on the registration rolls is improperly registered. The clerk or appropriate official will take action to remove or revise the address of the voter registration in accordance with state and federal law.

**EQUAL TREATMENT OF BALLOTS AND VOTERS:**

Equality before the law and equal treatment by the law are foundational to a free society. The Constitution and federal legislation (HAVA) require all citizens be treated equally and given the same access to vote without undue burdens placed upon them.

**A. State Election Plan**

Each state must submit a state election plan in accordance with the Help America Vote Act (HAVA) for national election contests. This report shall serve as the basis for an annually published state elections plan. This plan must be approved by the Governor, Speaker of the House, and Senate President. The annual state election plan must be publicly posted and made available for public comment within a specified timeframe prior to implementation. Additionally, the governing election authority must publicly publish any rule changes, guidance, and training manuals used at the local municipal level as part of the state election plan. Any changes that need to be made to the plan must be done in accordance with HAVA and be approved by the Governor, Speaker of the House, and Senate President. Any and all changes must be publicly posted and made available for public comment prior to implementation.

The state election plan shall be designed to promote the equal treatment of citizens and ballots and the promotion of transparent, inclusive, and accountable elections.

**B. Private Funding**

No state or local government, government official, or elections board or authority, or any other government entity shall accept, receive, or appropriate private monies for election purposes, unless said funds are expressly received and appropriated by the state legislature. This funding prohibition shall include but is not limited to the following: election administration, voter registration, get out the vote efforts, election training, election materials, designs, or technical assistance. Moreover, in-kind contributions and services are expressly prohibited in any and all election processes, procedures, and administration. This section shall not be construed to prohibit the operation of a polling place in a facility furnished by a private individual or nongovernmental entity that otherwise meets the requirements for polling places provided by state law.

**C. Government Funding**

Any state or local government acceptance of federal funds and assistance in the administration of the election, voter registration, or to promote voter turnout shall only be accepted consistent with a state plan approved by the legislature detailing the equal and fair use of such funds so that all voters, constituent populations, and the ballots of all individuals within the state are treated equally under the law. No funds shall be accepted upon conditions which creates disparate treatment of citizens.

Any state effort to assist in voter registration and to enhance voter turnout shall also be consistent with a state election plan approved by the legislature which provides for the equal treatment of citizens in the expenditure of such funds and resources.

**D. Friendly lawsuits / Sue and Settle**

Executive branch officials such as the Attorney General or Secretary of State sometimes enter into "consent decrees" wherein the government official agrees to a lawsuit that changes the practical application of the law. These suits are usually filed by parties friendly to the executive branch official's position, allowing the executive branch official to agree to a judicially made change to legislation that bypasses the legislature. For this reason, these types of unilateral "sue-and-settle" agreements should be prohibited as a general rule. If, however, consent decrees are adopted, such decrees must be approved by the Governor, Speaker of the House, and Senate President.

**E. Uniform Terminology and Treatment of Vote and Voter**

All ballots and all voters within a state should be treated uniformly.

**F. Protected Persons: Incapacitated, Elderly, Citizenship / Non-Citizen**

Voting is a citizen's solemn right. There are specific populations susceptible to exploitation, states must protect these vulnerable populations. It shall be illegal to coerce, mislead, and / or pressure any person to vote or to vote in any particular manner.

**INCAPACITATED:** It is unlawful for any person to cast a ballot on behalf of an incapacitated person, or coerce, mislead, and / or pressure any person under a diminished mental capacity that may be under the protection of a court ordered power of attorney.

**NURSING HOME RESIDENTS:** A nursing home resident's next of kin or emergency contact on record shall be notified (a) when a nursing home resident requests an absentee ballot, and/or (b) when the local elections clerk's office collects (or any other entity) ballots from the nursing home or residential care facility.

No one may request an absentee ballot on behalf of any person in a residential care facility who has not requested the ballot because of their diminished mental capabilities. Furthermore, it is illegal to fill out the ballot for any person who is unable to fill out the ballot because of diminished mental capabilities.

When the elections clerk's office collects ballots from a nursing home or residential care facility, it shall dispense two poll workers, one from each of the two political parties obtaining the most votes at the prior two consecutive statewide elections. The local clerk or board of elections shall post 14 days in advance the date, time, and location of when and where the dual set of poll workers will collect ballots from residents, and furthermore maintain a list, available to the public upon request, of each home or facility where the two poll workers have been dispatched.

The residential care facilities may not turn over absentee ballots to any outside group whether for profit or nonprofit. Absentee ballots should only be collected by election officials as prescribed above.

Observers must be able to confirm that proper procedure is used without in any way interfering or influencing or being noticed by voters while voting.

Defrauding a disabled or elderly person of their vote, whether by discarding the ballot or filling it out in an unlawful manner falls under the category of ballot larceny and shall be treated as such.

**NON-CITIZEN:** Non-citizens illegally present in the US are vulnerable to being taken advantage of by being incorrectly registered. States should encourage immunity policies for illegal residents who report legitimate election fraud. Harvesting a ballot from a person illegally present in the country and not eligible to vote is a crime. The person voting has immunity from such charges if the person truthfully reports and/or cooperates with an investigation. Harvesting a ballot from an incapacitated person is a crime, and immunity is available to any person truthfully reporting and/or cooperating with investigators regarding said crimes.

### **G. Ballot Harvesting**

Every voter shall transport and deliver his or her own ballot, with exceptions for the Post Office handling of ballots. If a voter is not able to transport his or her mail-in ballot prior to election

day, the voter may appoint a ballot transporter. However, the transporter may not transport more than one ballot per election cycle and must fill out and sign an affidavit to do so and present ID at the time of ballot delivery.

### **BALLOT INTEGRITY:**

An election is only as secure as the ballots. The ballot as a representation of a citizen's voice must be completely secured and protected throughout the process.

#### **A. Paper Ballot**

##### **I. Voter-Marked Paper Ballot**

Votes shall be marked on a paper ballot by the voter who is casting the vote. Voting should not be on computers or touch screens. All voters, unless there is an accommodation for disability, should vote on paper ballots.

All votes should be cast on voter-verified, hand-marked paper ballots. The voter should be able to determine whom he or she voted for by looking at the ballot (or using an assistive reading device), and the machine should tabulate votes based on those hand-made markings. This also provides for a permanent paper record suitable to be used in a manual recount.

Nothing in this section prevents the state or local election officials from making appropriate accommodations for the disabled or visually impaired who are unable to mark or read their selections on a paper ballot.

##### **II. Mail-In and No Excuse Absentee Ballots**

Mail-in voting is prohibited without a legal exception. Exceptions are as follows:

- (1) Health exception or physical disability;
- (2) Age exception (65 or older);
- (3) Religious exemption, the days conflict;
- (4) Work-related travel will take the voter out-of-state, OR the voter is going to be an election worker on election day;
- (5) Is overseas, or away serving in the military;
- (6) A college student away at college

The following requirements must also be met:

**SWORN WITNESS:** The voting of an absentee ballot must be accompanied by a sworn witness verifying the voter's identity and photo ID.

**NO EARLY COUNTING:** Eligibility decisions for remote voters may be performed upon receipt of the ballot packet but the enclosed ballots may not be removed for scanning until election day and aggregate results may not be reported until after polls close.

**SAME DAY REGISTRATION ANNOUNCED:** Voter name, residence address, YOB, and precinct split for remote voters and same-day registration voters (where applicable – never recommended), except for those in Address Confidentiality Programs, should be provided within 24 hours to the public.

**SEPARATED BY PRECINCT:** Remotely voted ballots must be organized and separated by precinct and transported to the precinct on the day that voting equipment is transported to the precincts. Political parties must be given notice and opportunity to be present for transportation of these ballots.

**NO PERMANENT LIST:** There shall be no permanent list of absentee ballot voters. Voters should request an absentee ballot each election cycle.

**ENVELOPES:** Absentee ballot return envelopes may not include any visible holes or openings once sealed that could allow observance of the ballot inside of the envelope. All voter ID (including return address, if for some reason used,) must be located on one side of the envelope. If a signature is required, the voter name must be placed adjacent to the place where the signature belongs.

**PARTY DESIGNATION:** Neither the originally mailed envelope nor the return envelope should identify the voter or ballot's political party.

**MARKING ENVELOPE:** No absentee envelope should be marked to reflect a voter's behavior by election workers. For example, in the 2021 California recall election, the ballots of voters who did not wear a mask were marked "COVID."

**DOUBLE VOTING:** In a state that allows absentee mail-in voting, a clear process should be established for when a voter is shown to have voted twice. In the case of a voter being shown as voting by mail, who then presents in person to vote, a provisional ballot should be given to the voter. The voter should then be given the opportunity to cure a returned in envelope ballot prior to the canvass and certification of the ballot. All campaigns on the ballot should also be notified of the provisional ballot voters and given the opportunity to motivate a cure. In order to ensure that all mail-in ballots can be found under these circumstances, absentee ballots must be segregated and sorted by precinct.

### III. Ballot Larceny

It shall be illegal for any person to vote a ballot assigned to another voter. This provision shall not preclude the assistance of a disabled voter to receive assistance in his/her precinct in the presence of a Republican and Democrat observer/worker. Illegal ballot trafficking and intentionally voting under another registered-voter's ballot shall be a felony offense

### IV. Ballot Fraud Countermeasures

Ballots today lack modern, industry-standard security features, which leave ballots susceptible to being duplicated. Each ballot should have at least a unique identifying number within a limited universe of ballots. This should be done by "sheet-style" or other measures in order to protect voter privacy. A state may consider a detachable number or separating challenged ballots to make these ballots easier to locate at the final canvas. Paper ballot circulation and printing should be controlled, and the process should be transparent. States should consider a combination of security measures to protect ballots from being illegally duplicated.

## B. Handling / Chain of Custody

### I. Ballot Storage and Transportation and Recording of Ballot Handling

A chain of custody must be established for every batch of ballots. This will enable authorities to track a ballot at every stage of the election process. In order to achieve this end, a mandatory record of (a) who handled a ballot, (b) the reason the ballot was handled, (c) where the ballot was transported, and (d) the date and time of the handling, should all be recorded and in the presence of a member of each political party. An evidence form should travel with the box/batch of ballots so that the location and handling of the ballots can be accounted for at each stage of the process. Additionally, there must be a mandatory recording of ballot handling with its video record maintained for five (5) years after the election. Uncompleted ballots, completed mail-in ballots, and completed early ballots being transported should be in the presence of a member of both of the two major political parties at all times. The locations of all ballot storage facilities should be made public in advance and be staffed by a member of each of the two major political parties at all times when any person is present. Records of chain of custody should be stored adjacent to but not locked within the record containers.

## **II. Drop Boxes**

There shall be no unattended ballot drop boxes, for example outdoor 24/7 boxes. Mail-in ballots can be dropped off through USPS mailboxes. If an election office accommodates after-hour drop-off, then there shall be video, and a chain-of-custody log specifying the worker who handled the ballots, time, date, and number of ballots. Preferably the video of the area around the box will be recorded from the box itself, and chain of custody started by logging the specific envelope dropped. The log and recorded materials are subject to FOIA. Failure to maintain records shall automatically subject ballots in question to 100% audit and recount. A breach in the chain-of-custody creates an automatic challenge unless the ballots in question exceed the margin. In that case, the losing party holds the burden of proof to demonstrate the ballots' validity.

## **C. Curing**

### **I. Mail-in Ballot Curing.**

Manual "curing" or "fixing" of ballot envelopes shall be unlawful. States should adopt statutory standing to allow suits to be filed on behalf of voters in neighboring jurisdictions, against non-compliant jurisdictions when ballot curing exceeds what is allowed under state law. Envelope curing has a history of being unfairly and unequally applied. Disparate treatment of a voter's ballots violates the Voting Rights Act and should therefore be avoided.

Photo identification, voter signature, witness signature, privacy envelopes, and other identifying information of the voter are precautions taken to ensure that a voter's sacred voting right is protected. When a mail-in ballot lacks a witness or voter signature, photocopy of a photo ID, privacy sleeve, etc., legal integrity measures have not been met. When a voter fails to comply with the law, states must issue guidance that ensures that all voters are treated equally. Curing ballots in one jurisdiction as opposed to another creates unequal treatment of voters resulting in disparate impact. Accordingly, ballot curing shall be prohibited due to both security and equal treatment concerns.



If a state chooses to include ballot envelope curing measures, with envelope curing defined as the process of an election worker contacting the voter and having the voter confirm the details of the cure, then it must include the following measures:

- (1) Mail-in ballots cannot be held to a lower legal standard than in-person voting ballots.
- (2) Political party observers from both of the two major political parties are allowed to watch during the process.
- (3) Whenever ballots are being cured, each ballot duplication must be agreed upon by a member of each political party.
- (4) Duplicated ballots should have a corresponding number to the original ballot.
- (5) Duplicated ballots must be segregated from other ballots.
- (6) Any and all ballot curing measures shall be implemented identically within the state.
- (7) The disparate implementation of ballot curing measures shall be sufficient to justify an independent cause of action by any voter within the state and/or any agency of government, as a violation of that voter's civil rights.
- (8) All cured envelopes, duplicated ballots, and challenged ballots shall be maintained and segregated in such a fashion that the envelope, duplicate and/or cured ballot or ballot image is accessible with the newly created ballot and challenged ballots accessible with any related challenge logs or forms.

## **II. Military / Overseas Ballot Duplication**

Oftentimes, military and overseas ballots are required to be duplicated in order to be counted. In these circumstances:

- (1) Ballots must be duplicated on numbered paper ballots and kept segregated and recorded for later review.
- (2) Members appointed by both major political parties must be appointed to duplicate every ballot in consultation with each other in bi-partisan pairs.
- (3) Poll observers must be able to watch the process in a manner that allows the observer to witness the duplication process and with his or her own eyes that the ballot was properly duplicated
- (4) The duplicated ballot must have a number or identifying mark that allows the duplicated ballot to be matched to the original overseas or military ballot.
- (5) Duplicated ballots must be segregated from other ballots.

## **III. Military Ballot Access and Security**

Every reasonable effort must be made to ensure overseas military personnel receive ballots in a timely manner suitable for the election. Additionally, ballot secrecy and chain of custody must be protected.

## **VOTER VERIFICATION:**

Verifying voter identity ensures all our voices are protected and equally heard.

**A. State-Issued Photo I.D.**

Voter ID laws are only as good as the ID itself. A physical government-issued photo ID that indicates citizenship is required to be presented and verified to receive a ballot in-person or by mail/absentee for every election.

States should require a strong government-issued voter ID requirement for in person, absentee and mail-in ballots, with at a minimum, a photo, matching name, DOB, and physical (residential) address as well as his/her apartment number if applicable. This provision applies to mail-in ballots and mail-in ballot applications - where mail-in ballots are permitted. For voters without required ID, the voter is able to fill out a provisional ballot with the ability for the voter to cure later prior to certification of that contest. States shall issue physical photo identifications at no-cost to low income residents.

**B. Wet Signature Verification**

A voter must physically sign a wet signature - e.g. by ink- in front of an official] [prior to or as part of a request for a ballot delivered by mail. No mail-in or absentee ballot can be accepted without a comparison of two or more wet signatures for verification or another process that serves electors incapable of signature or replicates the integrity of the process of in-person check-in.

**C. "Motor Voter" / Opt-In Voting**

Politicians in a growing number of states have made voter registration an extension of obtaining a driver's license. Some states have created an "opt-out" system where driver applications are presumed to be voters and must affirmatively take action to opt-out of voter registration. This can lead to double registrations, registration of underage residents, and registration of illegal aliens, etc. Accordingly, there should be no automatic voter registration. Instead, residents must affirmatively opt-in to voter registration.

**ELECTION ADMINISTRATION:**

The individuals, processes, and procedures are accountable to the voter for being in accordance with law and the principles of accountability, transparency, and inclusion.

**A. Appointment of Local Election Boards**

Some states allow the judicial branch or administrative bureaucracy to appoint local election officials to local city or county election boards. When state law allows for the appointment of local election officials, appointments should be made by political parties and/or elected officials pursuant to state law. Appointment of local members of boards of elections by judicial branch or unelected officials creates a veneer of "independence," but very little transparency and accountability to voters. Appointed election boards should reflect [equal] representation of major parties.

**B. Election Officials**

Election officials should be bipartisan, with an equal number of the two major political parties being hired. While most states have required both political parties to be present at in-person precincts, mail-in procedures have created layers of ballot handling without any bipartisan accountability. All processes of ballot handling should take place in the presence of workers appointed by both political parties. Additionally, a list of all election officials should be published 90 days before appointment, and the source of compensation must be disclosed to the state campaign finance authority.

**C. Consolidated Counting Centers**

Mail-in ballots should be prohibited for persons not in one of the exempted categories of voter eligibility. However, where mail-in ballots are allowed, the following processes should be followed. Mail-in ballots should be processed and counted with in-person ballots to avoid disparate treatment of voters. Therefore, mail-in ballots should be mailed back to their local clerk's offices, collected and transported to the local precinct the day before the election along with the election machines.

Chain-of-custody must be maintained. In light of this, there should be no central count centers where all the mail-in ballots for the entire jurisdiction are counted in one arena or community center.

Counting of ballots must occur at the precinct level by hand. This will eliminate the need for central count centers and large warehouse storage facilities.

If mail-in ballots are to be used, they will be sent to the county clerk's office and stored unopened until election day equipment is transported to the local precincts. At that point, mail-in ballots can be transported, in the presence of appointed representatives from the two major political parties, to the precincts with the equipment. Statutory right of poll observers is to be present and follow the transportation of ballots. All ballot handling should be recorded on ballot transfer sheets kept with but not locked inside ballot containers.

The number of outstanding ballots to be counted should be announced by 10 p.m. on election night. If a state allows ballots to come in after closing of the poll.

**D. Same Day Voting**

A single day of in-person precinct voting is the preferred election model.

**E. Early In-Person Voting**

AVA recommends a system based around in-person, election day voting at one's neighborhood precinct. However, the move to expand opportunities to vote has led to the adoption of widespread mail-in voting. Mail-in and other forms of remote voting are demonstrably more susceptible to voter fraud. If states must expand the opportunity to vote beyond election day, early in-person voting is preferable to no-excuse mail-in voting. If a state has no-excuse mail-in

absentee voting, early in-person voting should be encouraged as a method of voting which mitigates the chain of custody and eligibility determination issues present with mail-in voting.

If early in-person voting is allowed, it should be at one central location for a city / county where voters adequately authenticate themselves in-person and present a state issued photo I.D.. Early in-person voting is an extension of the election administration process. Accordingly, all laws and regulations pertaining to voters, ballots, election administration, etc. apply equally. All laws pertaining to any polling place or election office apply to early voting center, including but not limited to observers, parity, etc.

The following requirements must also be met:

- (1) Early In-Person voting is not to exceed 45 days.
- (2) Ballots should be submitted by voter into a scanner and delivered to a secure ballot storage container. The scanner should in future reveal the ballot image to the voter and also the cast vote record for confirmation of accuracy. A digital signature should be created of the image that becomes a matter of public record to prevent any modification of the ballot image.
- (3) The ballot storage container should remain locked or tamper-proof sealed and votes not aggregated until election day. On election day, early votes may be counted at early voting precincts, but not reported before polls are closed.
- (4) Daily Machine Ballots Counted Subtotal Report should be posted online which shows the number of ballots tabulated by each machine.
- (5) Daily Poll Book Report of the voters who voted, not including how the ballot was cast, will be made available to at least the two major political parties and the campaigns represented on the ballot.
- (6) Daily Public Poll Book Report should be posted online which includes the number of votes by precinct of residence.
- (7) The precinct report must distinguish and show as separate categories the number of election day, and early in-person ballots cast and the number of mail-in ballots received and approved for counting as well as those returned from other remote voting methods such as UOCAVA and disability and emergency and undeliverable.

#### **F. Poll Book Management**

Poll Book management must be: (1) open and transparent for observers to physically read the name of the voter and address in the poll book during the check-in process of voting; (2) inputs and / or changes should be done by workers appointed by both political parties, (3) changes made in the poll books must create a historical record of the change, (4) poll books should track provisional ballots status.

#### **G. Challenges Made by Any Eligible Elector**

The eligibility to vote on contests included on ballots may be challenged for a variety of reasons, including but not limited to, ineligible voter, late arriving ballot, incorrect ballot style, fraudulent ballot, suspected ballot harvested ballot, etc. Observers may challenge eligibility decisions upon a showing of good cause.

**CHALLENGE OF REMOTELY VOTED BALLOTS:** When a challenge is received, that ballot shall be segregated, left uncounted and unopened if applicable, logged into the poll book, and treated as provisional to be reviewed prior to and up until the end of canvassing. Challengers should be given an identification number for the challenged ballot/envelope; this identification number should be reflected in the poll book for ease of followup observation and verification.

**CHALLENGE OF IN-PERSON VOTERS:** The status of a person casting a ballot may also be challenged at in-person voting for non-compliance with eligibility requirements. For example, this includes but is not limited to illegal registration, or failure to prevent physical state-issued photo identification.

### **MACHINES:**

You can't count or verify what you can't see. There will always be a barrier to assessing the accuracy of election results when machine[s] are used to determine voter eligibility or interpret voter marks or tabulate and report interpretations of votes. Where machines are used there are mitigating strategies to prevent vulnerabilities and make systems more secure.

***\*\*\*If machines are used, the following (A-E) applies:***

#### **A. Proprietary Ownership**

Vendor contracts lack transparent accountability to voters. Vendors often claim proprietary ownership over software and hardware and even ballots and other election artifacts and evidence that ought to be public record that inhibits the public's understanding of the elections process. Voters must be allowed to know how scanners and tabulator machines operate. Therefore, no vendor contracts shall prohibit access to ballots or any other vote representations, software, hardware, or computer logs as part of election verification including public observation of process including any audit or any election challenge.

#### **B. Internet Connectivity / Capability**

Tabulators, scanners, and optical ballot readers shall not have internet capability. These machines should be air-gapped, having no network interfaces, wired or wireless, that could be connected to outside networks. This applies to all tabulators, including but not limited to precinct tabulators / scanners and high-speed tabulators / scanners. Precinct results should be agreed upon as certified in writing by every election worker in the precinct before transmission. Precinct results should be transferred under bipartisan oversight to the county / city election office. Precinct results should then be posted at the polling or tabulation location and online. County results must also be agreed upon as certified in writing by at least one deputized representative from each major political party, manually reported at a publicly accessible well known county location, and posted online.

#### **C. Logic + Accuracy Testing with observer access (prior to election)**

Localities must hold public "logic and accuracy" tests of every tabulation machine prior to every election. The county or applicable district party chairman of each of the two major political parties at the last two statewide elections must be notified of the testing and the same notification published on the applicable election website. Prior to the testing, the elections office will load new ballot software for the upcoming election in full public view. Then, designated testers with the optional participation of attending public must run a series of tests by running various completed ballots through the machine to test accuracy. (This is already done as a matter of course in most states).

**D. Posted online (software / updates USB).**

As part of the Annual State Election Plan, the state must collect and report on plans and schedules for software updates that will be uploaded onto voting machines, tabulators, and scanners prior to each election. This will be published and approved as part of the annual plan.

**E. Optical Readers and Scanners.**

Voting machines, scanners, and tabulators must rigorously comply with HAVA including the most recent Voluntary Voting Systems Guidelines of the Elections Assistance Commission.

**ADMINISTRATION REVIEW:**

Post-Election Day verification processes are necessary to ensure that all votes were properly counted and the final result accurately reported.

**A. Reconciliation**

As a bank or business must account for every dollar in the safe, election officials must account for every ballot in and out of circulation. Prior to the certification of elections, local precincts or county or city-wide canvassing boards must reconcile and report on all ballots. This is simple fractional math: the numerator and denominator should match. The locality should report how many ballots are produced. That is the denominator. The locality must then account for all these ballots. Some of the ballots will be (1) voted; (2) other ballots will be left blank; (3) a number of ballots will show mistakes and be voided / spoiled; some ballots will be mail-in ballots that were not returned; (4) some ballots will be used in the duplication process. These ballots should be tracked, reconciled, and reported. The number of voted ballots + spoiled ballots + the amount of unused ballots + the number of unreturned mail-in ballots = the number of produced ballots.

In rare circumstances, print-on-demand ballots may be necessary when a precinct runs out of ballots. These ballots, along with any test ballots in circulation must be accounted for and categorized appropriately in the reconciliation process.

## **B. Forensic Audit**

All data from election machine vote scanners/tabulators shall be available to audit including risk-limiting audits.

A post-election review and audit should include a review of voter roll procedures, ballot creation and handling procedures, the treatment of voters, and the use of machines. Many of these items can be covered under the components of the JSC. However, machines are best reviewed through the use of "Risk-limiting audits" or "RLA" with an appropriate level of ballots tested and from every precinct. A small sample of ballots from a few precincts would not uncover a ballot harvesting scheme at other precincts. An RLA must be thorough. In addition, a much higher number of ballots should be chosen for review than in previous years. This will provide mathematical certainty in election results. The same RLA process should be applied to a post-election door-to-door canvassing effort in the year after an election. By choosing neighborhoods to canvass and check against voter registration rolls, officials can determine whether rolls are being kept current or require further scrutiny.

Optical Readers and Scanners (audits):

The most efficient way to review machines is through Risk Limiting Audits. An RLA is an audit protocol that makes use of statistical principles and methods and is designed to limit the risk of certifying an incorrect election outcome. By taking a sample of a number of ballots run through a certain ballot scanner/tabulator, and comparing the number to election night totals off of that machine, authorities can evaluate the accuracy of the count to a mathematical certainty. Many recent RLA's have under sampled races, machines, and ballots. This yields the same results that an under sampled poll would produce -- imprecise results. RLA's should adhere to general RLA principles of random sampling. However, RLA's should review 20-33% of machines in EVERY jurisdiction.

If an election jurisdiction uses machines to count ballots the jurisdiction shall, in each election, conduct a scientifically valid RLA of the election. Candidates and representatives of both political parties shall have access to witness said audit. If the audit is not conducted consistent with scientific principles and the margin of difference of the candidates is less than 7%, a hand recount of the ballots shall occur.

## **RECORD MAINTENANCE:**

Citizens have a right to know how their elections are conducted. Accordingly, all records, contracts, computer logs, and election reports must be maintained in a public online database.

## **A. Tabulation + Machine / Computer Logs**

Machine tabulators / scanner results must be made public. This includes each tabulation device's zero and results printout tape. Precinct reports should not only be posted on the door of the precinct, but also online. Localities can contract with independent auditors to perform audits. Election systems, ballot tabulators, etc., shall provide machine logs within 24 hours of

the closing of the polls to political candidates and respective parties. All computer data from vote tabulation shall be available to audit including risk-limiting audits. Each local precinct shall print an election tally report off the machine at the end of election day and post the results online within an hour of the final tally. If the final tally is not yet completed, the precinct shall report the number of counted ballots and candidates as tallied to that point, as well as the number of remaining ballots.

### **B. Voter File Transparency**

States should allow for transparent access to voter files by any political party or voting rights and / or election integrity organization free of charge. Requesting party or organization must reside in or be based in the locality of the requested list. List must include all voting designations, such as indefinitely confined, permanent mail-in (if applicable), etc. The list should contain monthly updates that reflect who has dropped off of the list and who has been added.

Commercial use of the list for non-election purposes is expressly prohibited. Upon request, voter's name and / or address information can be redacted from the public list upon showing cause or if under a protective order. Name, address, and other identifying information would be substituted with an anonymous Voter ID where applicable.

### **C. Ballot Image**

All ballot images as recorded by the voting tabulator/scanners should be uploaded on the state's website within 24 hours of results being reported. In parallel a digital hash or signature of each side of each image should be created under public oversight and published as soon as practical after scanning. The ballot images should be identified by precinct split and tabulator. The ballot images cannot and should not in any way identify who the voter of a certain ballot was. These images should be searchable by precinct. Ballot images are public record and subject to FOIA.

### **D. Dual Reporting**

Election reports are periodically reported incorrectly and subsequently corrected. This can create the impression that election records have been altered. Precincts should dually report results on election night to two different entities. This will allow the public to track where mistakes were made and have confidence in the election outcome. These final tallies are often posted on the door of the precinct, the only difference will be that these numbers will be reported directly to the public, posted on each state's statewide elections website.

As election administrators upload election results on election night, the raw totals should be reported both to the statutorily recognized state election authority as well as a legislative committee formed to review incoming results. This election records should also be made available in real time to the public. As part of the public record, the information shall also be subject to FOIA.



### **E. Record Retention**

All election records shall be retained for a minimum of two years, in compliance with federal law. All should mean all. This includes ballots, envelopes, affidavits, applications, ballot images, cast vote records, pollbooks, access logs, all physical precinct tally sheets, machine receipt/tape reports, video recordings, and manual chain-of custody record logs, etc.

“Election records” include records kept as software , or in digital form such as databases, and electronic pollbooks. Subsequent machine software updates shall not overwrite any digital data that has not yet been separately archived in a manner suited to forensic evaluation. Therefore the following must be maintained for a minimum of seven years: lists of active registrations, inactive registrations and voters actually voting by each election cycle, all ballot images or original ballots, publicly available (personal identifying data redacted), backup copies of all databases before every software update.

Lack of voting machine memory capacity is not an excuse to override, overwrite, or delete any data not adequately archived.

### **F. Maintenance of Accurate Voter Rolls**

Required Activities Include:

- (1) Withdrawing from ERIC and finding an alternative substitute.
- (2) Cleaning interstate double-registrants;
- (3) Cleaning Intrastate double-registrants;
- (4) Using the Social Security Death Index and publishing plan & names removed monthly;
- (5) Removing "USPS undeliverable" registered voters from the active rolls;
- (6) Using the federal "Systematic Alien Verification for Entitlements" or SAVE database to remove illegal aliens;
- (7) Checking DOB's & verifying against state records to ensure legal age to vote;
- (8) Publish monthly plan to remove felons;
- (9) Collect jury refusal data;
- (10) Report the number of registered voters 120 days before an election in a locality, that way it can determined if it exceeds 100%.
- (11) Each election jurisdiction creates access for one appointed custodian of the voter rolls to add/subtract voters. Larger jurisdictions may allow an additional custodian for every 100,000 voters. The appointed custodian would be in charge of list maintenance for the locality, further promoting transparency and government accountability. This work, as any election work, should be done with bipartisan oversight.

A state's voter registration rolls should be regularly evaluated weekly to ensure that voters who have moved, passed away, or stopped voting for an extended period of time are removed from the master list of registered voters. Persons who should no longer be registered to vote should be taken off the voter rolls. If persons are discovered who were ineligible due to non-citizenship, they should be flagged to prevent re-registration.

States and localities sometimes refuse to remove false voters from the voter rolls. Therefore, states should create voter standing to file lawsuits in the appropriate court to remove false voters from the voter rolls upon a showing of good cause.

Localities should conduct periodic door-to-door field operations to canvass residences to confirm voter eligibility, and require a full canvass within a 4-year cycle. When localities fail to perform duties properly, they should automatically be put into receivership by authority of the state legislature.

### **VENDORS AND THIRD-PARTY ACTORS:**

Any agent conducting business on behalf of the government must be subject to the same laws and rules that apply to government actors performing that same function.

#### **A. Private Consultant Disclosure**

All private party vendors and consultants who assist in elections in any way must be disclosed to the public within thirty days. Contracts should also be posted on the state board of election / Secretary of State website within thirty days of being awarded. Private experts and consultants must be disclosed to the public in a similar manner to comparable government roles such that their activities are made subject to open records requests.

#### **B. Private Parties and Administrative Access to Voter Registration List**

No third parties should have administrative access to a state's voter registration database. No third parties are allowed to use a Web Application Programming Interface that allows access to voter registration lists. If third parties obtain applications for voter registration, these applications should be presented to local election offices who will then register (or not register if improper) the voter.

Voter registrations shall only be entered by election officials designated by law with such authority. The state and local officials shall not enter into any data-sharing agreements or other contracts allowing private parties to alter or enter data into the state's voter registration database.

Nothing in this act prohibits private parties from conducting voter registration drives and providing such information to election officials for data-entry. Election officials shall maintain any data provided for voter registration from private entities in a manner that allows a third-party to identify voter registrations created with the private group providing the information. No election official or government agency shall enter into any contract with any vendor for services in managing the election or the counting of votes which prohibits candidates, the media or the public from having access to any information, computer logs, documents, etc. that are necessary to validate the proper completion of the contracted services and/or the election result.

#### **C. Vendor Performance + Accountability**

Vendors must be more accountable to voters and taxpayers. Vendors should be more transparent about what ballot software is loaded onto scanners/tabulators, ballot printers, and

electronic eligibility devices such as epollbooks and signature verification or envelope scanner/sorter devices.

Outside consultant assistance must be disclosed.

Any organization receiving appropriated funds by the legislature to perform government functions is subject to FOIA in all services rendered to perform said functions, including contracts, agreement, communication with government officials, equipment, and software. Any organization receiving appropriated funds by the legislature to perform election administration processes is subject to the same rules of transparency, accountability, and access that applies to that service as though the government were performing that function, including citizen observers, etc.

### **ACCESS:**

Citizens have a right to be in the counting room. Government accountability increases with citizen and multi-partisan observation and involvement.

#### **A. Poll Observers' Bill of Rights and Responsibilities**

All states must have a poll observer provision that allows voters access to witness and verify the integrity of the handling and counting of all ballots, not only to observe, but to challenge decisions and process that in good faith that should have been handled differently.

**FUNCTION AND PURPOSE:** Poll observers are a vital part of the American election process to provide transparency, accountability, and citizen participation. Elections are becoming more centralized and mechanized. These trends, along with increased remote voting means the average voter never sees and understands the process and likewise the system does not see the voter and therefore is unable to protect the integrity of voting and casting. For all these reasons, deliberate access for citizens to the election process behind closed doors is increasingly needed.

**PUBLIC OBSERVERS:** General citizen observers unaffiliated or not appointed by a party, candidate, or issue committee shall have access to observe without the power to challenge a ballot. Where capacity limits are reached, observers from the official slate from the parties will be given preference and ensured equal access. Observers from outside the local jurisdiction shall be allowed.

**OBSERVERS WITH POWER TO CHALLENGE:** If a state chooses to distinguish between a public observer and a party / campaign appointed observer with the power to challenge ballots, it shall allow: observers from the two major political parties with the most votes in the last two consecutive statewide elections, observers from the two local major political parties with the most votes in the last two consecutive statewide elections, and observers from the campaigns on the ballot. Observers from outside local jurisdiction shall be allowed.

**DISCRIMINATION:** Poll observer applicants may not be discriminated against based on race, gender, sexual orientation, religion, creed, disability, vaccination status, or decision whether or not to wear a mask.

**EVIDENCE COLLECTION:** Poll observers shall be allowed to possess and use cell phones and/or cameras in all areas of the elections process. Observers should not photograph a voter while voting or record a voter's information, unless a challenge is made to an individual voter registration upon a good cause belief and shall cover the social security number.

**ACCESS:** Election observers shall have access to all areas where completed ballots are being printed, stuffed, labeled, delivered, received, accepted for counting, pre-processed, counted, cured, duplicated, audited, recounted etc. Access shall mean that observers can see what the election worker can see on the paper ballot and see and hear the actions the election worker is taking with respect to any election artifact such as a ballot envelope,] a ballot and the poll book or other equivalent eligibility determination process.

**CHALLENGES:** Election observers should have the ability to challenge a ballot's ability to be counted. Challenges don't have to be accepted if the challenge is not proper. However, the challenge must be logged in the poll book, and the ballot must be identifiable and accessible at the canvass. When a challenge to a ballot is accepted, the challenged ballot shall be segregated. An accepted ballot challenge requires the ballot be segregated and recorded as challenged, but not counted in the tabulation. The voter has a right to appeal the challenge during canvassing.

**HARASSMENT:** Observers shall not harass other observers or election officials or staff. Violators will be denied access. Election officials shall not harass anyone including voters and observers.

**RECOURSE:** Evidence of the intentional or wrongful exclusion of observers shall be immediately reported to the special standing committee, which shall have the authority to appoint a special master to manage observer access at the location engaged in the improper conduct. Special master appointment shall be made by a tie or majority vote. If both the Chair and Vice-Chair of the standing committee declare an emergency under this section, the Chair and Vice-Chair shall have the authority to appoint a special master. The selection of the person to serve as special master shall be by a majority committee vote or by agreement between the Chair and Vice-chair if an emergency is declared. If the committee cannot agree, or if in the case of an emergency the Chair and Vice-Chair cannot agree, two special masters shall be appointed, one each by the party members of the two major political parties. States may require observers to obtain credentials by an appointing authority to enter into rooms with the most sensitive voter data. Observers should not be required to stand in limited locations with poor visibility or ability to hear and should not be required to be escorted. Observers must be allowed to speak with and ask questions to obtain answers from designated elections officials.

## **B. Media**

A rotating press pool shall be allowed for recording of the ballot handling process. The process must allow observation and recording by a wide cross-section of print, podcast, and television media to observe ballot counting and the process at any and all ballot counting areas or locations where there is a presence of election staff. Special considerations to preserve voter

privacy are needed when voters are present and when voter intent is in the vicinity of voter identity information.

### **SECURITY:**

All systems have points of vulnerability. Mitigating that vulnerability ensures a secure election.

#### **A. Voter Registration**

Voters should register to vote in-person with a state-issued photo identification that indicates citizenship. Voter registration should close one month prior to election day. Voters who will be 18 years of age by Election Day will be allowed to register to vote in that election.

#### **B. Hotline**

A statewide hotline maintained by the JSC/AG/SOS should be established to receive tips of illegal election and voter fraud issues.

#### **C. Machine Accessibility.**

Poll observers are allowed to observe software update and attachment of security seals during the Logic & Accuracy Testing. Poll observers must also be allowed to observe certification testing if applicable and all other election software updates up until, through, and after election day.

#### **D. Physical Server Presence.**

Jurisdictions including states should store and report election results on internal government-operated servers physically located within the United States. Other devices used for central eligibility determination and vote count should likewise be under government control and preferably in facilities operated by the appropriate governing authority.

### **REMEDIES:**

When a law is not being followed, citizens have a right to seek remedy in order to hold officials accountable to the rule of law.

#### **A. Expand Standing**

Standing to file election challenges should be expanded.

(1) Election challenges when a result is in doubt may be filed by local or statewide political parties, candidates, and incorporated election integrity organizations.

(2) Voting rights are civil rights. When a voter is denied the right to vote or observe an election, it should be viewed as a civil rights violation. States should ensure statutory standing to be filed on behalf of voters that are denied their right to vote, observe, or challenge illegal processes.

(3) Legislatures should define “harm” to enable these suits. If the citizenry loses faith in its election system, harm results. If one illegal ballot is counted, or a legal ballot is voided -- this represents a legal harm. Standing for civil rights claims should be expanded.

### **B. Rocket Docket**

Once early voting or mail-in ballots are sent out, election challenges and all suits related to elections should take precedence in court. Courts must prioritize these suits by scheduling preliminary hearings within 24 hours and holding the hearing within 72 hours of the challenge. Challenges should be heard within 24 hours of filing in the week before and after election day. Injunctions should be issued stopping the challenged conduct until the court can rule. Localities should consider creating a specific docket dedicated to these challenges during election season. Courts should be empowered and encouraged to issue injunctive relief upon good cause. Challenging candidates should have legal recourse to demonstrate harm as harm is occurring. No state should require the certification process to be completed prior to allowing a challenge or presentation of proof of harm. State legislatures should all review statutes and regulations to ensure that they do not obstruct the opportunity for potential litigants to obtain the evidence that would be needed to establish standing for purposes of election litigation.

### **C. New Election**

In criminal law, a constitutional violation of a citizen's Fourth Amendment rights may result in the exclusion of evidence. Constitutional and statutory violations must present the opportunity in law to be remedied. State law should allow for a new election in circumstances where the appropriate authority (JSC, legislature, appropriate court) orders a new election.

### **D. Law Enforcement Investigations and Multijurisdictional Investigative Grand Juries**

Failure to follow election law and / or election fraud impacts more than only the locality in which it occurs. An illegally cast ballot on one side of the state undermines and erases a legally cast ballot on the other side of a state. For this reason, jurisdiction for the investigation and prosecution of election fraud should be broadened. Prosecutors should be given jurisdiction to investigate and prosecute election fraud claims that could impact election outcomes in their jurisdiction.

For example, a prosecutor may live in a state house district that consists of two separate counties. If voter fraud is alleged in the prosecutor's neighboring jurisdiction, the prosecutor should be allowed to investigate and charge in the prosecutor's county. While the fraud may not have occurred within the boundaries of the prosecutor's county jurisdiction, the voter fraud is likely to impact the election held within the prosecutor's jurisdiction.

**DEFINITIONS:**

- A. Ballot - A piece of paper or paper equivalent that is used to record someone's vote.
- B. Election - A formal and organized choice by vote of a person for a political office or other position.
- C. Election Challenge - When an observer formally calls into question a voter's credentials to vote or the legality of a ballot. The challenger may be questioning the eligibility of the voter to cast a ballot in an election. Challenges can be lodged against voters in both in-person and absentee/mail-in voting settings.
- D. Machines - A mechanical device used for recording and counting ballots or votes cast in an election.
- E. Cast - To record a vote in an election.
- F. Reconciliation - the action of making precinct ballot counts consistent. All ballots – voted, unvoted, spoiled, etc., must be accounted for following an election.
- G. Envelope Curing - the process of an election worker contacting the voter and having the voter confirm the details of the ballot envelope that may have appeared missing or incorrect.
- H. Ballot Curing - the process of an election worker or preferably a team of election workers interpreting the vote of an absentee voter who is not present, based off of the markings on the ballot. This often arises in the case of a damaged ballot that is unable to be read by the tabulator. The ballot will be cured by having election workers transpose the voter's original markings from the damaged ballot, onto a new ballot that is not damaged.
- I. Sheet - a "sheet" is a piece of paper that is used in creating a paper ballot. Some ballots are composed of a single "sheet", while others contain multiple sheets." Sheet, as used in this document, refers to a single sheet of paper that serves as a component of the ballot.