

THE LEGAL E

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Voters in 2024 Election May Face Restrictions

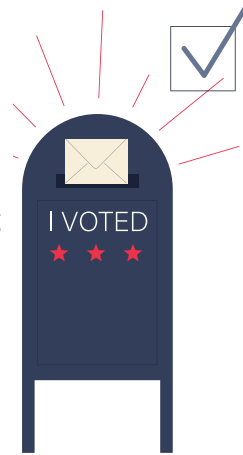
by Emily Pecot

For the 2024 presidential election, voters in 28 states will face restrictions that were not in place for the 2020 election, according to the Brennan Center for Justice, a nonpartisan law and policy organization.

In its latest “Voting Laws Roundup” from May 2024, the Brennan Center reported that these restrictions include how mail-in ballots are handled and collected, shortened deadlines for requesting absentee ballots, and additional requirements for voter registration organizations.

For example, a Tennessee law “limits who can assist others with registering to vote and establishes a fine of up to \$5,000 for any

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Threats to Election Workers Threatens Democracy

by Jodi L. Miller

Running America's elections—whether it's a presidential election, a mid-term election or an off-year election—is a lot of work. Yet, every Election Day election officials and poll workers work diligently to make elections across the country run smoothly.

According to the U.S. Election Assistance Commission (EAC), an independent government agency that serves as a resource for election administration, more than 150,000 polling places across the country were open for the 2022 mid-term elections. Those locations were staffed by more than 600,000 poll workers.

While 600,000 seems like a lot of poll workers, that number is down from previous elections. According to the EAC, 900,000 poll workers were employed for the 2016 presidential election. The number dipped for the 2020 presidential election to 775,000 poll workers when many states had less or no in-person voting mostly because of the impacts from the Covid-19 pandemic. The increase in threats hurled at poll workers and election officials also accounts for the diminished numbers, according to the EAC, and they say those threats are



Artificial Intelligence and Election Integrity—A Global Problem Censorship?

by Maria Wood



In January 2024, in the midst of the Democratic presidential primary season, some voters in New Hampshire received a robocall supposedly from President Joe Biden urging them to save their vote for the November election.

Here's what the call said: “This coming Tuesday is the New Hampshire Presidential Preference Primary. Republicans have been trying to push **nonpartisan** and Democratic voters to participate in their primary. What a bunch of malarkey. We know the value of voting Democratic when our votes count. It's

important that you save your vote for the November election. We'll need your help in electing Democrats up and down the ticket. Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday.”

While the robocall may have appeared to be a typical campaign communication, the voice on the call was not President Biden and the information was not true. The creators of the call used artificial intelligence, or AI, to create his voice and spread misinformation. Artificial intelligence is essentially computer technology that has the ability to mimic human reasoning and, as this call indicated, human voices. AI can also produce high quality fake images as well.

The League of Women Voters of New Hampshire filed a lawsuit alleging the robocall

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violated federal law, as well as a number of state laws. The suit sought to impose a fine and stop the creators of the robocall from producing similar media.

The fake robocall also caught the attention of the Federal Communications Commission (FCC). In February 2024, the FCC issued a declaratory ruling that made AI-generated voices used in robocalls illegal.

“Bad actors are using AI-generated voices in unsolicited robocalls to extort vulnerable family members, imitate celebrities, and misinform voters,” FCC Chairwoman Jessica Rosenworcel said in a statement. “State Attorneys General will now have new tools to crack down on these scams and ensure the public is protected from fraud and misinformation.”

This robocall is just one example of what are called **deepfakes**—audio and/or visual media made with AI tools that can simulate photos from events

that never happened or create audio statements that were never said by a candidate. The potential danger is that voters may be swayed by false information about a candidate or dissuaded from voting altogether.

Ability to deceive

The capabilities of AI have grown in recent years, reaching a level of sophistication that could only have been dreamed of just a few years ago. David Opderbeck, a professor at Seton Hall Law School and co-director of its Institute for Privacy Protection, suggests that sophisticated tools that are readily available now make it easier to generate AI content that seems realistic, swamping already overloaded voters.

“Today, AI allows the substance of the content to be generated and manipulated in ways not possible before. One of the biggest dangers is that it makes it easy to generate content that seems authentic and seems as if it’s coming from a reliable source but isn’t,” says Professor Opderbeck, who is also co-director of the Gibbons Institute for Law Science and Technology. “Unless you are really aware of what you are consuming it’s easy to be deceived. Combine that with the sheer scale and volume that automated AI produces, and that is what many are rightly concerned about.”

Ellen Goodman, a professor at Rutgers Law School in Camden, maintains AI is not necessarily a bad thing. Campaigns, she notes, frequently use AI to sharpen and micro-target their messages to certain voters. It is when AI is used to amplify misinformation that voters can be easily misled.

“If you are giving wrong information about when and how to vote, or whether an election can be trusted—that can be a danger,” says Professor Goodman, who is the co-director of the Rutgers Institute for Information Policy & Law.

States, federal government take action

While campaigning has always veered toward sometimes sharp personal and misleading attacks between candidates, AI has increased the speed with which those attacks and false information can spread over social media. In response to AI technology, several states and the U.S. Congress have proposed and/or enacted laws attempting to regulate AI in campaigns.

Michigan, for example, enacted a law prohibiting the use of AI-generated content in political advertising without disclosing the source of the material. Likewise, California has banned the distribution of what it terms deceptive media with the intent to harm a candidate or deceive voters within 60 days of an election.

While not specifically addressing AI in elections, the New Jersey Senate is currently considering two bills regarding deepfakes and AI. One would establish a Deepfake Technology Unit to “provide technical aid, expertise, education, and training concerning the investigation and analysis of potentially deceptive audio or visual media to state and local law enforcement agencies, prosecutors, and state courts.” That bill is currently being reviewed by a New Jersey Senate committee.

The other piece of New Jersey legislation would mandate criminal penalties for the dissemination of deceptive audio or visual media, or deepfakes. The bill was voted out of committee but has not had a hearing by the entire New Jersey Senate.

New Jersey State Senator Andrew Zwicker says he voted yes on the bill to establish penalties for spreading deepfakes because of the rapid rise in AI technology. Current technology makes it “difficult if not impossible for a viewer to know whether it is a genuine video or a manufactured one,” he says.

Meanwhile, the U.S. Senate is mulling a trio of bills attempting to regulate the



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use of AI in elections. The Protect Elections from Deceptive AI Act would prohibit “materially deceptive” AI-generated content in federal elections. The AI Transparency in Elections Act would mandate disclosure of AI-generated content in political advertisements. Lastly, the Preparing Election Administrators AI Act would require the Election Assistance Commission to work with the National Institute of Standards and Technology to report to Congress how AI is used in elections as well as create/establish guidelines for state and local election officials. At press time, all three bills were awaiting a vote on floor of the U.S. Senate.



sentenced to seven months in prison following his **conviction** for conspiracy to interfere in the 2016 election. Mackey posted fake advertisements on his Twitter account telling Hillary Clinton supporters they could vote by text message.

Do social media companies have a role?

Election misinformation is a global problem. In addition to the U.S. election in November, national elections in more than 60 countries have taken place or will take place in 2024. Misinformation regarding these elections could potentially affect more than four billion voters globally.

As Senator Zwicker points out, voters today get much of their information online. Therefore, he says, social media companies should have a role in monitoring false or misleading content on their channels. In February 2024 at a security conference in Munich, 20 tech giants including Amazon, Google, LinkedIn, Meta (parent company of Facebook), Microsoft, OpenAI, Tik Tok and X (formerly Twitter), signed a voluntary accord pledging to monitor AI-created content as it pertains to elections.

In a statement, Brad Smith, vice chair and president of Microsoft said, “As society embraces the benefits of AI, we have a responsibility to help ensure these tools don’t become weaponized in elections.”

In August 2024, *The Washington Post* reported that X’s AI chatbot, called Grok, spread false information after President Joe Biden’s announcement that he was exiting the presidential race. The chatbot suggested Kamala Harris was not eligible for the 2024 presidential ballot, which is not true. An answer generated by Grok stated, “The ballot deadline has passed for several states for the 2024 election,” citing nine states in particular—Alabama, Indiana, Michigan, Minnesota, New Mexico, Ohio, Pennsylvania, Texas, and Washington.


The secretaries of state in four of those states—Michigan, Minnesota, New Mexico, and Pennsylvania—sent a letter to X owner Elon Musk, urging him to “immediately implement changes to X’s AI search assistant, Grok, to ensure voters have accurate information in this critical election year.”

Grok’s false narrative was corrected on July 31—10 days after President Biden’s announcement. While Grok is only available to Premium and Premium+ subscribers, the false information was “shared repeatedly in multiple posts—reaching millions of people,” according to the letter.

Senator Zwicker suggests the federal government mandate that social media companies label any altered media. One suggestion has been to mandate that AI-generated content carry watermarks to differentiate it from authentic content.

“Put the burden on them to keep up with the technology so that when the public is viewing something on social media, they are at least aware it is manipulated,” says Senator Zwicker.

Professor Goodman agrees more transparency is needed to help the public distinguish between AI-content and the real thing.

“If it’s AI-generated content in connection to electoral information, it should say so,” Professor Goodman says. 

AI and the First Amendment

Regulating AI in campaigns does have First Amendment implications. The concern is that regulations could infringe on free speech. Citing those concerns, Louisiana Governor Jeff Landry **vetoed** a bill in July 2024 that would have outlawed deceptive videos and images in political campaigns.

“While I applaud the efforts to prevent false political attacks, I believe this bill creates serious First Amendment concerns as it relates to emerging technologies,” Governor Landry wrote in a letter explaining his veto.

Professor Opderbeck agrees that regulating the actual content created by AI may clash with the First Amendment.

“The heart of the First Amendment is political speech and we do have to be careful about how we regulate in that area,” he says.

However, Professor Opderbeck notes that the First Amendment doesn’t protect against fraud. “So, I don’t think a law against deepfakes in elections necessarily violates the First Amendment if it’s getting things that are truly fraudulent.”

For instance, spreading false election information or interfering with voting is not protected by the First Amendment. In October 2023, Douglas Mackey was

DISCUSSION QUESTIONS



1. Besides a robocall, give two examples of AI-generated content that could be harmful to a political campaign or to election integrity in general. Explain how the examples could cause harm.
2. What do you think of the suggestion to label AI-generated content with watermarks? Will that solve the misinformation problem? Explain your answer.

Threats CONTINUED FROM PAGE 1

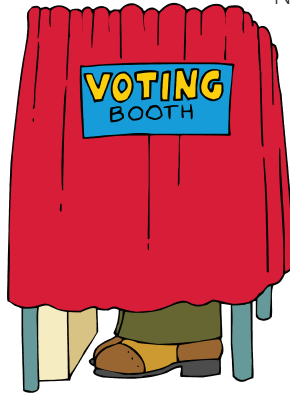
hindering efforts to recruit and retain poll workers for the upcoming 2024 presidential election.

What do poll workers do?

Harrison Clewell, an election law attorney in Newark, New Jersey who focuses his practice on state and local elections, advocacy efforts, and voter protection, explains that election officials and poll workers play important roles in ensuring elections run smoothly but have different responsibilities.

Election officials, Clewell says, help with the entire election process, including setting up and maintaining voting machines, addressing issues at voting locations, and counting votes. Poll workers, on the other hand, are a specific type of election worker, Clewell says, who are focused on tasks at the polling place, specifically on Election Day, such as greeting voters, checking voter information, ensuring voting machines are working properly, and tracking voter turnout.

“Both roles are crucial for maintaining a fair and efficient voting process,” says Clewell.



In some states, poll workers are volunteer positions. Other states pay their poll workers a nominal fee. For example, New Jersey pays its poll workers \$300 to work any primary, general or special election. Nebraska is the only state that “drafts” poll workers in a similar system to that of jury duty—randomly drawing on a pool of registered voters to serve on Election Day, according to the National Conference of State Legislatures (NCSL)

Forty-four states, including New Jersey and the District of Columbia, have Youth Poll Worker Programs, according to NCSL. These programs are intended to provide much needed help on Election Day, and to encourage young people to become engaged citizens and lifelong voters. New Jersey's Youth Poll Worker Program allows 16-year-olds to serve as poll workers. Maryland's program has the youngest age limit, allowing 14-year-olds to serve at the polls.

When poll workers are threatened

According to NCSL, states have had problems retaining and recruiting poll workers since 2018,

When Poll Watching Leads to Voter Intimidation

What is the difference between a poll worker and a poll watcher? According to Harrison Clewell, an election law attorney in Newark, a poll worker assists voters at polling places, ensuring they can vote easily.

“In contrast, poll watchers observe the voting process to ensure it is conducted fairly and without any cheating,” Clewell says. “Poll watchers, also known as ‘challengers,’ play a significant role in election integrity by making sure rules are followed.”

In New Jersey, Clewell says, poll watchers must be authorized by a candidate, political party, or political organization. They must stay in a designated area where they can observe without interfering and report any issues they see to the proper authorities, such as the election official in charge.

In general, poll watchers are appointed by political parties or specific candidates, according to the National Conference of State Legislatures; however, the requirements vary by state. For instance, in New Jersey political parties may appoint two challengers per election district. A New Jersey candidate may also serve as a challenger/poll watcher or appoint two challengers for each district.

History of poll watchers

According to a video titled *Poll Watchers and the Long History of Voter Intimidation*, produced by *The New Yorker*, poll watchers have played a part in U.S. elections since the 1800s.

In the video, Gideon Cohn-Postar, a fellow with the Mitchell Center for the Study of Democracy at the

University of Pennsylvania, explains that in America during the 19th Century voting took place out in the open. “Everyone could see who you were voting for and in that environment, the polls became a really raucous place,” Professor Cohn-Postar said in the video. “Violence and intimidation at the polls ranged from verbal threats to outright gunplay and stabbings.”

That’s when poll watchers came into play. According to Professor Cohn-Postar, official poll watchers were appointed to make sure that no fraud or intimidation was taking place; however, unofficial poll watching also took place and developed into voter intimidation.

“There is one famous case where a group of people, white intimidators, came out to a predominantly black area, stood around the polls with guns and claimed that they were deputy U.S. marshals there to ensure the safety of the polls,” Professor Cohn-Postar recounts in the video. “They threatened and scared off about 175 Black voters.”

Rick Hasen, a professor of law and political science at the University of California who also participated in the video, said when poll watching is done right, it serves an important function.

“We want our elections to be transparent. We want to know that eligible voters will not be **disenfranchised**, that ineligible voters are not being allowed to vote,” Professor Hasen said. “This [poll watching] is a regular thing in all elections throughout the world. The problem is when it crosses the line into intimidation and harassment.”

—Jodi L. Miller

Threats **CONTINUED FROM PAGE 4**

citing inadequate pay and **bipartisan** balance requirements as reasons. Many states require those working at the polls to be represented equally among the two political parties—Republicans and Democrats. In New Jersey, for instance, the law states: “The members of any district board shall be equally apportioned between the two political parties.”

An NCSL report released in August 2023 stated that bipartisan requirements often hinder poll worker recruitment efforts.

“In some **jurisdictions**, local election officials can recruit plenty of willing poll workers but struggle to find enough from one party,” the report said. “This problem is felt in both rural communities (where Democrats may be hard to recruit) and large cities (where Republicans may be hard to recruit), especially as more Americans are choosing not to register with a party.”

Currently, independent voters—those not affiliated with either political party—are the largest group of voters in the United States. While independent voters can serve as poll workers, according to NCSL, they “can’t be promoted to supervisory positions,” therefore, “brand-new poll workers may be forced to work as supervisors.”

In a committee meeting in Kansas to discuss broadening the pool of eligible poll workers, one legislator said, “The best way to improve voter confidence is to have them be a poll worker. When you actually see how the process works and all the safeguards that are in place, it really does make you think there is no way to corrupt this. The more people we can get to participate the better.”

The NCSL report also acknowledged that the harassment of election officials and poll workers is contributing to the shortage of qualified applicants.

“During and after the 2020 election, poll workers and election officials were subjected to public and private harassment,” the NCSL report revealed. “As skepticism about the outcome of the presidential election spread among some supporters of then-President Donald Trump, poll workers were accused of crimes, received targeted threats, and had their private information revealed online. This harassment has continued, and local election officials report that it has caused experienced poll workers to quit and potential new recruits to view working the polls as dangerous.”

Clewell says that ensuring the safety and security of everyone involved in the election process is essential for maintaining a strong democracy.

“Safety concerns can deter people from volunteering as poll workers, leading to fewer workers and potential problems such as long lines and confusion on voting day,” he says. “If people feel unsafe or distrustful of the election process, they could lose faith in the system and be less likely to vote. This

decrease in voter participation can weaken democracy by limiting the number of voices heard.”

Efforts to protect

According to a May 2024 Brennan Center for Justice poll, 38% of local election officials have “experienced threats, harassment, or abuse for doing their jobs.” In addition, the survey found that “more than one-third of local election officials know at least one person who resigned, at least in part, due to safety concerns.”

In June 2021, the U.S. Department of Justice (DOJ) created the Election Threats Task Force to address the rise in threats against election workers after the 2020 election. The Task Force works with state and local law enforcement, as well as the Federal Bureau of Investigation (FBI), to assess allegations and reports of threats against election and poll workers. Since its inception, the DOJ says the Task Force has received more than 2,000 reports of threats or harassment from the election community. It has prosecuted 17 cases, winning 13 **convictions**. Eight of those cases resulted in jail time.

In an article published in the *Ohio Capital Journal*, Jon Keller of the DOJ’s Public Integrity Section, said that the low number of convictions is due to free speech concerns.

“A **true threat** is a serious expression of an intent to commit an act of unlawful violence,” Keller said. “If they [those making the threat] don’t cross that line into invoking violence, they are generally not going to constitute a criminally prosecutable threat.”

According to the NCSL report, 18 states have enacted laws that address protections for election officials and poll workers. Maine, for instance, requires election workers to take classes in de-escalation tactics. Arizona, California, Oregon and Washington allow election officials to make their addresses confidential. In addition, 10 states criminalize intimidation and/or interference with election workers, with a conviction garnering either a fine or jail time.



An incident in Georgia

The most high-profile case of election workers being threatened occurred in Georgia after the 2020 presidential election. After the election had been called for then candidate Joe Biden, former President Donald J. Trump and members of his inner circle, including his personal attorney Rudy Giuliani, began spreading unfounded rumors that massive voter fraud had occurred during the election. In particular, they targeted the vote count in the Peach State where Biden had won by a thin margin—around 12,000 votes. Two separate recounts still had Biden winning the state.

Then, a video of Fulton County, Georgia election workers Ruby Freeman and her daughter Shaye Moss doing their jobs started making the rounds on the internet. The Trump campaign, particularly

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Threats CONTINUED FROM PAGE 5

Giuliani, contended that the video showed the mother and daughter handling “a suitcase full of fraudulent ballots” and “exchanging a USB drive” which he said was proof that they were manipulating votes.

After an investigation, it was determined that Freeman and Moss had not done anything wrong and there was no voter fraud committed in Georgia. The “suitcase” was a state-issued ballot box that was used every year, and the “USB drive” was actually a ginger mint that Freeman had given to Moss to soothe her sore throat.

The conspiracy theory took hold nonetheless and was perpetuated by Giuliani even after the investigation turned up nothing. The mother and daughter, as well as other family members, received threats on Facebook, via email and by phone. Their addresses were posted online, and people showed up at their homes to harass them.

Freeman received more than 400 threats, including an email that said, “We are coming for you and your family. Ms. Ruby, the safest place for you right now is in prison. Or you will swing from trees.” She was forced to flee her home for two months after FBI agents told her she was no longer safe. Hours after Freeman fled, a mob surrounded her home. The date was January 6, 2021—the same day that Trump supporters attacked the U.S. Capitol.

In December 2023, Freeman and Moss sued Giuliani for **defamation** and won. The jury ordered Giuliani to pay more



than \$33 million in defamation damages, \$40 million in damages for infliction of emotional distress, and \$75 million in **punitive damages** for a total of \$148 million.

DISCUSSION QUESTIONS

1. Why do you think there has been an uptick in threats to election workers? Do you think the DOJ is doing enough to protect them? Explain your answer.
2. What do you think about bipartisan balance requirements at polling places? What are the benefits and drawbacks of having such requirements?
3. Should independent voters be allowed to serve in supervisory positions if qualified? Why or why not?
4. Read the sidebar *When Poll Watching Leads to Voter Intimidation* on page 4. The role of poll watcher dates back to the 1800s when voting was not private and voter fraud was rampant. Do you think that poll watchers are still needed today? Why or why not.

Restrictions CONTINUED FROM PAGE 1

organization or individual who violates the law,” the Brennan Center reported. In addition, the Brennan Center report stated that 21 states considered **legislation** that would allow for election interference.

In June 2024, the Movement Advancement Project (MAP), a nonprofit think tank that provides research and analysis, tracking legislation in the LGBTQ+ and democracy movements, released a report titled “Diverging Democracy: The Battle Over Key State Election Laws Since 2020.” The report stated that the state legislatures in nine states—Florida, Georgia, Kansas, Kentucky, Missouri, Montana, Oklahoma, South Carolina, and Tennessee—enacted laws allowing the legislature to interfere in election administration.

Another interference law, referenced in the Brennan Center report, enacted in South Dakota opens election workers up to criminal penalties if they do

not give poll watchers more latitude to observe vote counting. The law states that every poll watcher should be stationed in a location from which they can “plainly see and hear what is done



within the polling place.”

“The criminalization of poll worker conduct deters people from serving as poll workers and makes those who continue to serve hesitant to enforce the rules necessary to keep order at the polls,” the Brennan Center said. “In turn, it raises the risk that disruptive and intimidating poll watcher behavior

will be left unchecked.” (See “When Poll Watching Leads to Voter Intimidation” sidebar for more on the role of poll watchers).

The Brennan Center also noted in its roundup that between January and May of 2024, 11 states enacted 14 laws expanding the right to vote. Those expansive laws include ones that make it easier for those with disabilities to vote, proactively update voter registration information, add requirements for translation of voting materials in additional languages, and expand the provisions for absentee voting.

States that swing

The definition of a swing state is one where the two major political parties—Republican and Democrat—have similar levels of support among voters. These states can often tip the scales of an election. As U.S. citizens move around the country and demographics change, the states considered to be swing

Restrictions CONTINUED FROM PAGE 6

states can also change. According to the University of Virginia Center for Politics, the eight states considered swing states for the 2024 presidential election are: Arizona, Georgia, Michigan, Nevada, New Hampshire, North Carolina, Pennsylvania, and Wisconsin.

Voting Rights Lab, a **nonpartisan** voting advocacy organization, released a report in October 2023 titled, “Battleground 2024: How Swing States Changed Voting Rules After the 2020 Election.” The report noted that in the 2020 presidential election, the winner in five of these eight swing states was determined by less than two percentage points.

“Changes to how elections are run can have a profound impact when margins are so razor thin,” the Voting Rights Lab report states.

Battleground 2024 noted that voters in four swing states—Georgia, New Hampshire, North Carolina, and Wisconsin—will face new restrictions when they cast their ballots. For example, in North Carolina, voters who wish to vote via mail-in ballot will need to return their mail ballot with signatures from two witnesses or a notary, as well as include a copy of their photo ID. While New Hampshire instituted voting by mail for the 2020 election due to Covid-19 restrictions, for 2024, voters in that state will only have the option to vote in person on Election Day, joining Mississippi and Alabama as the only states that do so.

On the plus side, voter access in Michigan and Nevada expanded, according to the Voting Rights Lab report. Michigan increased opportunities to vote early, both in-person and via mail-in ballot. The state also enacted a law giving election administrators more time to process mail-in ballots. Every registered voter in Nevada will receive a ballot in the mail for the 2024 election because the

state’s lawmakers made the expanded mail voting access rules, put in place during the pandemic, permanent.

Nebraska, Maine and the Electoral College

One potential election law change probably won’t be taking place for the 2024 presidential election and that is the Electoral College, which is outlined in Article II, Section 1 of the U.S. Constitution and is how the United States elects its president.

The Electoral College is a body of electors that gathers every four years to select our nation’s top two heads of government—president and vice president—based on the voter’s will in their state. Each political party at

the state level nominates electors, usually long-standing supporters within the party. There is a slate of Republican electors and a slate of Democrats in every state. Depending on which candidate wins depends on

which slate of electors casts the state’s votes.

So, how many electoral votes does each state have? The number is based on each state’s representation in Congress. For example, New Jersey has 12 congressmen and two senators, so it gets 14 electors or electoral votes. The magic number to win the presidency is 270 electoral votes.

Washington D.C. and 48 states use a “winner-takes-all” system, meaning that whatever candidate wins the popular vote in that state is awarded all of the state’s electoral votes. Nebraska and Maine, however, go a different way. They award two electoral votes to the winner of the statewide popular vote and one vote each for the winner of the popular vote in each congressional district. For example, in the 2020 presidential election, former President Donald Trump was awarded four of Nebraska’s five

electoral votes—two for winning the popular vote in the state and he also won two of the state’s three districts. Then candidate Joe Biden received one of Nebraska’s electoral votes because he won the state’s 2nd District where the city of Omaha is based.

“Nebraska, as a state, leans Republican, and Maine, as a state, leans Democratic,” notes Ian Drake, a political science professor at Montclair State University. “But there are congressional districts within each state that could turn out with a different winner than the statewide winner.”

In April 2024, Nebraska legislators proposed switching the state’s method to the winner-takes-all system, giving a potential advantage to the Republican candidate. The measure fell short of passing, but not before Maine weighed in and said if the Cornhusker State passed the measure, Maine, the more Democratic-leaning state, would follow suit, thereby leveling the playing field.

After the presidential race changed—with President Biden dropping out and Vice President Kamala Harris becoming the Democratic nominee—the issue cropped up again. In August 2024, reports surfaced that Nebraska Governor Jim Pillen would call a special legislative session for September to revisit the possibility of moving to a winner-takes-all system. It is not clear that the governor has the votes to make the change, and at press time, the fate of Nebraska’s electoral vote system was still unsettled.

National Popular Vote Interstate Compact

Electoral College results don’t always reflect the will of the people. So far, there have been five times in U.S. history when the winner of the presidential election did not also win the national popular vote. Those presidents include John Quincy Adams (1824); Rutherford B. Hayes (1876); Benjamin Harrison (1888); George W. Bush (2000); and Donald J. Trump (2016). In fact, in the 2000 election the popular vote winner—Al Gore—garnered nearly half a million more ballots than the



Restrictions CONTINUED FROM PAGE 7

ultimate winner selected by the Electoral College. In 2016, the gap widened when Hillary Clinton won the popular vote by nearly three million votes.

Currently, it is the Electoral College result that takes precedence over the national popular vote. However, a multistate effort to bypass the Electoral College and award the presidency to the winner of the national popular vote is gaining momentum.

The National Popular Vote Interstate Compact (NPVIC) is an agreement among participating states that would ensure national popular vote winners in future presidential elections would also claim an

Electoral College victory. In other words, the states in the Compact are agreeing to award their electoral votes to the candidate that wins the national popular vote, not necessarily the candidate that won the state's popular vote.

Using the Garden State, which is a member of the Compact, as an example, Professor Drake explains.

"In recent presidential election cycles New Jersey is reliably Democratic," Professor Drake says. "But under the Compact, its electoral votes would go to the winner of the national popular vote. If a Republican won the national popular vote, then New Jersey and other members of the Compact would be obligated under the terms of the Compact to allocate their state's electoral votes to the Republican."

In April 2024, Maine became the 17th state, along with the District of Columbia, to join the NPVIC, bringing the combined total of electoral votes to 209. The


Compact would only go into effect once enough states join to collectively hold 270 or more electoral votes, the number needed to win the presidency.

Professor Drake explains that proponents of the Compact argue that it is a more democratic system, reflecting a national tally of voter sentiment. While opponents of the Compact point out that the current Electoral College system

allows for recounts at the state level, which NPVIC does not. Many question NPVIC's feasibility and potential impact on the traditional electoral system. For his part, Professor Drake opposes the Compact.

"I think it would reduce the unifying and moderating role of the parties even further and result in more extreme policies on the left and right," Professor Drake says. "If implemented, the Compact would likely be challenged in state and federal courts, and its constitutionality and practical voting effects would be debated."

Since its adoption in 1787, the Electoral College has survived more than 750 attempts to either reform it or abolish it, according to the Congressional Research Service.

"At this point, there are only two potential ways to make a uniform national electoral voting law: a constitutional amendment or the National Popular Vote Interstate Compact," says Professor Drake. "The close partisan divisions at the state and national levels almost guarantee no constitutional amendment on this topic would be possible." 

270
ELECTORAL
VOTES
TO WIN

GLOSSARY

bipartisan — supported by two political parties.

conviction — the result of a criminal trial where the accused or defendant is found guilty beyond a reasonable doubt.

deepfake — an image, video or audio recording that has been digitally altered.

defamation — a deliberate false statement, either published or publicly spoken, that injures another person's reputation.

disenfranchise — to deprive of a privilege or right.

jurisdiction — authority to interpret or apply the law.

legislation — laws made by a legislative body (i.e., Congress or a state legislature).

nonpartisan — not adhering to any established political group or party.

punitive damages — damages that exceed simple compensation and usually awarded to punish a defendant in a civil case.

true threat — a threatening communication that can be prosecuted under the law

veto — to refuse approval or passage of a bill that has been approved by a legislative body. The executive branch of government has the power to veto, but that power may be overridden with enough support.

DISCUSSION QUESTIONS

1. Why do you think there have been so many restrictive voting laws passed since the 2020 presidential election? Explain your answer.
2. Select either the winner-takes-all system of awarding electoral votes or the split vote system that Maine and Nebraska use. Explain in detail why you think it is the best or most democratic system to use.
3. Would you support the National Popular Vote Interstate Compact? Why or why not?

