

Elections are Run by the States: A Guide to Statewide Offices and Election Power

While we think about elections as big national events, they're run by the states. The governor, the attorney general, and the secretary of state are in charge of making sure elections are free, fair, and secure. *They're the guardians of our democracy.*

It really matters that your secretary of state believes in free and fair elections. It really matters that your attorney general is committed to defending the will of the voters, no matter the political outcome. It really matters that your governor believes in counting every legal vote. These are the people who set the rules, run the elections, supervise the counting of ballots, certify the results, and protect those results.

The quick guide below provides some detail on each statewide office and the role it plays in our elections. While not a fully comprehensive analysis, this information is designed to illustrate the power and influence each of these positions has when it comes to election administration.

GOVERNOR

In 2022, 36 states have contests for governor. Governors have key roles and responsibilities in several aspects of election administration and voting procedures.

Legislation: state-level legislation significantly shapes the contours of election procedures and voting rights within a state. Governors play a pivotal role in the legislative process because they take action on—generally by signing or vetoing—all bills that pass the state legislature. Many times, their act of signing or vetoing a bill is accompanied by an official written statement, which may outline their policy priorities, legal considerations, and the reasoning behind their legislative action. These statements become part of the legislative record and can serve as a guide for future bills or be used in court cases. Governors may also have their departments and agencies pursue specific bills related to elections or authorize executive branch officials to testify on legislative proposals and weigh in on bills with legislators.

Budget: governors submit proposed state budgets to the legislature, who then review, consider, and pass a budget for the governor's signature. In some states, governors have the power to issue line-item vetoes that eliminate or reduce appropriations in the state budget. State budgets provide funding to the agencies that engage in enforcement of election laws (attorney general and sometimes local prosecuting agencies), election administration agencies (secretary of state or state election board or commission), and agencies that engage in voter registration functions (department of motor vehicles).

Executive action: governors can issue executive orders to create advisory or investigative committees and commissions, manage intergovernmental coordination, and in some states in times of emergency, suspend existing state laws. In the election and voting arena, a governor could suspend election laws so that election officials can adapt to changing circumstances during a pandemic or natural disaster. Governors could also create a commission to study interagency cooperation and resources on election issues, such as implementing automatic voter registration across state agencies.

Appointment power: governors have the authority to appoint state executives, board members, and commissioners, including individuals who have a role in election administration or oversight (such as state auditors). In many states, governors have the power to make appointments for judges that will hear subsequent challenges to state election laws and procedures. Many governors also have the power to appoint replacements for state constitutional officers, including the attorney general and secretary of state, if the current officeholder leaves office.

Litigation: while the attorney general represents the state in litigation involving state laws, governors sometimes also hire their own outside counsel or have their in-house attorneys represent their interests in cases involving voting rights, election issues, and redistricting.

Redistricting: governors can be involved in the redistricting process in a variety of ways. In some states, the governor appoints commissioners to redistricting commissions, the governor may serve on a political redistricting commission with other state officials, or the redistricting process may require the governor to propose backup district maps in the event of legislative deadlock or because of litigation.

Approval of state voting materials: in some states, the governor must review and approve statewide election guidance to local election officials before it is issued by the chief election official.

Presidential elections: governors are involved in the electoral college process because they issue certificates of ascertainment to the electors for the candidate who wins the state's presidential election race. These certificates can play a critical role in tabulating electoral college votes in congress when disputes or challenges arise to a state's slate of electors.

Key Takeaways

- The governor can sign or veto legislation and state budgets that shape the contour of state election procedures and financial resources for administering elections.
- The governor can issue executive orders to improve intergovernmental coordination on election issues or address emergency situations impacting elections.
- The governor can be a part of litigation impacting a state's election and voting laws or redistricting process.

Examples of pro-democracy actions a governor can take:

sign legislation that expands or preserves the freedom to vote; veto legislation that undermines the right to vote or facilitates election subversion; draw fair district maps as part of the state's redistricting process; propose state budgets that invest in election infrastructure and administration; appoint state officials who will advance pro-democracy policies; and issue certificates to presidential electors that reflect the official winner of the state's presidential race.

Examples of anti-democracy actions a governor can take:

veto (in full or part) state budgets that fund state election administration and enforcement; sign legislation that adds barriers to voters' access to the ballot box; increase partisanship in election administration or audits; underfund election officials; subvert official election results; draw district maps that constitute a political gerrymander or that deprive communities of equal democratic participation; and issue certificates to presidential electors who do not represent the official winner of the state's presidential race.

STATE ATTORNEY GENERAL

In 2022, 30 states have elections for state attorney general. Attorneys general have key roles and responsibilities in several aspects of election administration, election law enforcement, and voting procedures.

Legislation: attorneys general can ask legislators to introduce election and voting rights bills and sometimes may sponsor bills themselves. They can also weigh in with a position on pending elections bills with legislators and the governor's office to share their policy and legal analysis of pending legislation and how these bills would impact their duties as the state's chief law enforcement official.

Budget: as head of a state agency, the attorney general has authority over the agency's budget, as appropriated by the legislature, and can allocate funding along statutory parameters.

Litigation: state constitutions and statutes provide attorneys general with the power to represent, defend, and enforce the legal interests of their states. Attorneys general represent the people—through state agencies and officials or directly on behalf of the state—in election and voting rights-related lawsuits that challenge or seek to enforce state election laws and procedures. They also defend the state’s official election results from legal challenges. They can author or join friend-of-the-court (amicus) briefs on cases involving election and voting issues. They also give legal advice to state election officials and agencies and can issue public advisory opinions on election topics.

Chief law enforcement officer: in many states, the attorney general is the chief law enforcement officer. They have the authority to prosecute election-related crimes, including crimes relating to voting misconduct, voter intimidation, and voter suppression. Sometimes attorneys general issue guidance to local law enforcement leaders in advance of an election detailing new and existing rules governing election-related law enforcement activity to ensure that voters can safely cast their ballots without intimidation and interference.

Ballot measures: in some states, attorneys general review and approve ballot initiative language before it goes to voters so that voters receive fair, accurate, nonpartisan information about ballot measures. Ballot initiatives can include election topics (e.g., which community members are included in the franchise or early voting and vote-by-mail procedures).

Redistricting: in a few states, the attorney general serves as a part of the political redistricting commission.

Approval of state voting materials: in some states, the attorney general must review and approve statewide election guidance to local election officials before it is issued by the chief election official.

Key Takeaways

- The attorney general defends state voting laws and election results in court.
- The attorney general is often the state’s chief law enforcement officer and can take legal action to prevent or address voter intimidation or election misconduct.
- The attorney general can be involved in the ballot initiative process to ensure voters receive nonpartisan, accurate information about ballot measures.

Examples of pro-democracy actions an attorney general can take:

defend the state's official election results and pro-democracy voting procedures from legal challenges; defend the privacy of voters' personal information from disclosure in election investigations; defend voters from intimidation and suppressive conduct; investigate and prosecute illegal attempts to suppress the vote; and issue robust guidance to local law enforcement detailing their role in safeguarding free, fair, and secure elections.

Examples of anti-democracy actions an attorney general can take:

pursue unsubstantiated lawsuits seeking to invalidate other states' official election results; fail to defend the state's pro-democracy voting laws and procedures from legal challenges; and fail to work in good faith with other state constitutional officers to approve election guidance materials.

SECRETARY OF STATE

In 2022, 27 states have contests for secretary of state. Many, but not all, secretaries of state serve as the state's chief election official. Secretaries of state have key roles and responsibilities in several aspects of voting procedures and election administration and certification.

Legislation: secretaries of state can ask legislators to introduce election and voting rights bills and sometimes they sponsor those bills. They can also weigh in with a position on pending election-related bills with legislators and the governor's office to share their policy and legal analysis of pending legislation and how these bills would impact voters and their own duties as the state's chief election official.

Budget: as head of a state agency, the secretary of state has authority over the agency's budget, as appropriated by the legislature, and can allocate funding along statutory parameters.

Litigation: in some instances, the secretary of state may be the client agency that the attorney general or outside counsel is representing in litigation over a state election law or procedure. The secretary of state may also bring affirmative litigation seeking declaratory or injunctive relief under state election law or procedure.

Ballot measures: in some states, the secretary of state oversees the ballot measure qualification process. All qualified measures then appear on voters' ballots, which can include election, redistricting, and voting-related initiatives.

Redistricting: in a few states, the secretary of state serves as a part of the political redistricting commission or administers the public application process for redistricting commissioners.

Administration and implementation: in states where the secretary of state is the chief election official, they oversee elections within the state to ensure they comply with all applicable laws, they work to safeguard the security and integrity of the voting process through cybersecurity and emergency planning initiatives, and they provide administrative and technical support for county and local election officials. Secretaries of state may also have a role in certifying voting systems for use in the state; conducting logic and accuracy testing of voting equipment before and/or after each election; guiding ballot design; administering and maintaining statewide voter registration databases; tracking and disseminating statewide voter registration statistics; developing and publishing voter education materials; providing and staffing public voter information hotlines; creating and distributing ballot guides detailing the candidates and measures on upcoming ballots; processing vote-by-mail applications; and certifying the official state election results. They may also liaise and enter into agreements with other state agencies that offer voter services, such as automatic voter registration services at the department of motor vehicles.

Key Takeaways

The secretary of state administers and oversees state election administration, including:

- Voting systems certification and logic and accuracy testing.
- Voter registration procedures and databases.
- Vote by mail applications.
- Voter education materials and hotlines.
- Guidance and support to local election officials.
- Certification of election results.

Examples of pro-democracy actions a secretary of state can take:

defend the state's official election results from legal challenges; request and advocate for legislation to expand voter access and voting options; robustly implement state voting right laws to ensure voters have access to the franchise and that election results are accurate and secure; issue election guidance to local election officials detailing how they can safely and securely administer elections in accordance with state law; perform rigorous, methodologically-sound election reviews and professional audits; and certify election results that reflect the official winners of the election.

Examples of anti-democracy actions a secretary of state can take:

examples of anti-democracy actions a secretary of state can take: engage in unprofessional or partisan reviews of election results; fail to issue election guidance or issue guidance that restricts voter access in contravention of applicable laws; advocate for legislation that adds barriers to voter access and voting options; and certify election results that do not reflect the official winners of the election.

HOW DO THESE STATEWIDE OFFICES WORK TOGETHER?

State constitutions and laws distribute election administration and voting rights enforcement powers and duties to the governor, attorney general, and secretary of state. Effective election administration that protects the will of the voters benefits from productive collaboration and coordination across these constitutional offices. Similarly, these officials can work together or at cross-purposes to undermine or interfere with free, fair, and secure elections.

Appointments: in many states, if an attorney general or secretary of state departs before the end of their term, the governor has the power to appoint their replacement. In other states, the governor always appoints the attorney general or secretary of state. This potential appointment power gives a governor significant opportunity to shape who has a role in statewide election administration and voting rights enforcement and what priorities they have for that office. For example, in 2021, the governor of California had the opportunity to appoint over the course of just a few months a new secretary of state and an attorney general when the current officeholders departed for federal appointments or elected office. Additionally, in 2022, the governor of Florida appointed a replacement secretary of state who would not answer whether he believed President Biden had fairly won the presidential election in 2020.

Budget and state funding: governors can advance their election priorities by submitting state budget proposals that include election investments for legislative consideration. For example, the governor of Wisconsin proposed implementing and funding automatic voter registration, but the legislature did not include this funding in the budget they passed. In some states, governors can issue line-item vetoes, also known as reductions, in the state budget passed by the legislature. This provides the governor with an opportunity to influence how much state funding is appropriated to other constitutional officers who have a role in election administration and voting rights enforcement. Those officers then use their role as head of their agencies to determine how to allocate and utilize these state funds to fulfil their official duties.

Implementation: in states where the governor and/or attorney general must sign off on election guidance documents from the secretary of state, disagreements can devolve into litigation and delays in the dissemination of information local election officials need to administer the elections. In Arizona, despite approving an updated elections procedures manual in 2019, the attorney general failed to work in good faith with the secretary of state to approve an updated manual in 2021, and then brought a lawsuit demanding issuance of a revised manual with significant changes in the middle of the 2022 election cycle.

Litigation: litigation over a state's election or voting laws can require coordination between the offices of the governor, attorneys general, and secretary of state as each office may have a role as the client or the counsel in the case. For example, in Pennsylvania, the attorney general is representing the governor and secretary of state to protect the privacy of voters' personal information from a subpoena from state legislators seeking to conduct an election investigation. Some states also require the attorney general to approve any election and voting-related consent decrees entered into by the secretary of state. The attorney general in some states may also have final decision-making authority in disagreements over election lawsuits with the secretary of state.

Legislation: bills signed by the governor can expand or limit the scope of the duties and responsibilities of the attorney general and/or secretary of state in election administration and voting rights enforcement. For example, the Michigan governor vetoed legislation that would have prohibited the secretary of state and local election officials from sending absentee voter ballot applications materials if a voter has not first requested an application. The governor of Florida recently signed election legislation creating a new election crimes bureau within the secretary of state's office to investigate voting irregularities and misconduct.

This document was prepared by the States United Democracy Center.

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We focus on connecting state officials, law enforcement leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. For more information, visit www.statesuniteddemocracy.org.