

PENNSYLVANIA |

A Democracy Crisis in The Making

Pennsylvania Legislation Increasing the Risk of Election Subversion

In the 21 months since the 2020 presidential election, legislatures across the country have moved to seize power from professional, non-partisan election administrators and to needlessly expose the running of elections to partisan influence and disruption. This effort increases the risk of a crisis in which the outcome of an election could be decided contrary to the will of the people. [This year alone](#), lawmakers across 30 states have introduced hundreds of new bills that increase the likelihood of election subversion, whether directly or indirectly. In some cases, the potential subversion is quite direct—for example, bills that give the legislature the power to choose a victor contrary to the voters' will. In others, the impact is less direct but still dangerous. Some bills would introduce dysfunction and chaos into the election system and could lead to delay, uncertainty, and confusion, all of which could provide cover for subversion. This factsheet spotlights the status of election subversion legislation and other efforts in Pennsylvania.

[In our report on this trend](#), we analyzed legislation introduced in Pennsylvania and determined whether they might fall into one of several types of proposals that increase the risk of election subversion. These categories include:

#1: Usurping control over election results.

A handful of states have considered bills that would give legislators direct or indirect control over election outcomes, allowing lawmakers to reject the choice of the voters. Although we do not expect any of these proposals to become law in 2022, that they are even being introduced indicates that legislatures are considering the option to overturn future elections. This raises obvious alarms for democracy.

As of July 31, we have found 3 bills in this category that were introduced this year in Pennsylvania or carried over from last year.

- [HR 7](#)
- [SR 8](#)
- [SR 9](#)



#2: Requiring partisan or unprofessional “audits” or reviews.

Legislation proposing unprofessional or biased reviews of election results has surged in 2022. These bills call for procedures that are vague or subject to abuse, and in some cases hand the power to call for audits to political parties or the legislature. These bills threaten to call election outcomes perpetually into doubt. They would tie up election administrators and likely would amount to state-sponsored vehicles for disinformation.

As of July 31, we have found 4 bills in this category that were introduced this year in Pennsylvania or carried over from last year.

- [HB 1482](#)
- [HB 2540](#)
- [SB 106](#)
- [SB 640](#)

#3: Seizing power over election responsibilities.

Legislatures have proposed shifting power from professional election administrators to partisan legislatures or legislatively appointed officials. These bills increase the danger of partisan election manipulation and raise the risk of an election crisis.

As of July 31, we have found 3 bills in this category that were introduced this year in Pennsylvania or carried over from last year.

- [HB 1800](#)
- [SB 819](#)
- [SB 821](#)

#4: Creating unworkable burdens in election administration.

These bills increase the risk of subversion by intruding on the granular details of election administration. One particularly dangerous flavor of these bills, under consideration in Arizona, would require all ballots to be counted by hand, practically guaranteeing delays, higher rates of counting error, and increased risk of tampering by bad actors.

As of July 31, we have found 7 bills in this category that were introduced this year in Pennsylvania or carried over from last year.

- [HB 1502](#)
- [HB 1596](#)
- [HB 1800](#)
- [HB 2044](#)
- [HB 2540](#)
- [HB 2647](#)
- [SB 982](#)

#5: Imposing disproportionate criminal or other penalties.

Legislatures have proposed criminal prosecution of election officials for poorly defined offenses and have created criminal and civil liability for steps that election officials routinely take to help voters cast ballots. States are also escalating the enforcement of election laws by creating entirely new law enforcement agencies, which can breed distrust in elections and election officials and interfere with effective election administration.

As of July 31, we have found 3 bills in this category that were introduced this year in Pennsylvania or carried over from last year.

- [HB 33](#)
- [HB 1800](#)
- [HB 2647](#)

Pennsylvania Legislative Spotlight

Pennsylvania has three pending bills to decertify the state's 2020 presidential election results (S.R. 8; S.R. 9; H.R. 7).

Also pending in Pennsylvania is HB 1596, which would allow the legislature to revoke any election rule or regulation they disagree with.

State Senator Doug Mastriano, the Republican nominee for governor, has introduced legislation (PA S 819 & S 821) that would fundamentally alter the entities that oversee election administration by stripping the secretary of the commonwealth from their role. In Pennsylvania, the governor appoints the state's chief election official.

Subversion from Beyond the Statehouse

Legislative Election Investigations

■ Pennsylvania has state and [local](#) legislative bodies continuing to investigate the results of the 2020 presidential election. In the fall of 2021, a [state Senate committee](#) with no previous election law or administration experience was tasked with overseeing a review of the 2020 election. The committee issued a broad-ranging subpoena to the Pennsylvania Secretary of State demanding sensitive and critical information related to election equipment. It also insisted that the secretary turn over sensitive and private information about individual voters, including the voting history, names, addresses, birth dates, driver's license numbers, and partial Social Security numbers of every registered Pennsylvania voter. Some of the data is protected by federal privacy laws. The committee did not indicate how it [intended to process and analyze](#) the extraordinary amount of personal data it had requested or how it would ensure the data's security. Observers warned that the [lack of clear goals](#) coupled with the extraordinary scope of data requested suggested the review was designed more for harassment than for conducting an accurate evaluation. In November 2021, the committee announced it would pay more than a quarter of a million dollars to a recently formed company called Envoy Sage to assist it in conducting the review. Multiple parties have [sued](#) to stop the committee's efforts and its efforts have stalled as the courts have considered the validity of the subpoena.

■ Separately, in late July 2022, the Butler County Board of Elections [decided](#) to conduct an extra-legal and unusual "audit" of the 2020 election that is still pending.

Election certification delays

A similarly concerning example of subversion by those entrusted with fairly administering elections is the fact that several months after state's primary, several counties still [refuse](#) to certify the full results of the election. Three counties—Berks, Fayette, and Lancaster—have refused to count absentee and mail-in ballots cast by eligible voters that were received in a timely manner and otherwise valid except for the fact that the exterior return envelope was not hand-dated by voters. In litigation earlier this spring, a federal appeals court ordered that comparable ballots cast in an earlier election must be counted. And in June, a Pennsylvania court ordered that these ballots be canvassed. Nevertheless, the three counties refused to include the valid ballots in their counts. A commissioner from one county stated that he decided not to follow the earlier court order to canvass the ballots during a hearing regarding in a lawsuit brought by Pennsylvania's Secretary of State against the counties.

Threats against election officials

In Pennsylvania, at least 21 election directors and deputy directors have [left their posts](#) since 2020, taking with them years of invaluable institutional knowledge.

Election Deniers

As 2022 began, more than 100 so-called election deniers were in the [running](#) to be either governor, attorney general, or secretary of state. Many of them are [campaigning](#) on lies and conspiracy theories. Doug Mastriano, the Republican nominee for governor, is an Election Denier who was outside the U.S. Capitol on January 6, has called for audits and delays of the 2020 presidential election, and has promoted baseless claims of [election misconduct](#).