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States Must Stand Guard Against Outside Influence in Elections

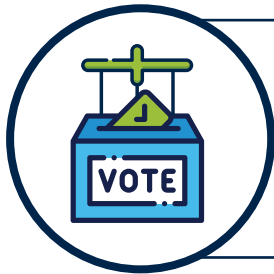
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KEY FINDINGS



STATES ARE AND SHOULD BE RESPONSIBLE FOR REGULATING THEIR OWN ELECTIONS.



EFFORTS TO UNDERMINE STATE ADMINISTRATION OF ELECTIONS ARE UNDERWAY.



BIDEN'S ELECTION TAKEOVER PLAN IS ILLEGAL, UNETHICAL, AND UNCONSTITUTIONAL.



STATES MUST BE PROACTIVE IN SAFEGUARDING THEIR AUTHORITY OVER THE CONDUCT OF ELECTIONS.

THE BOTTOM LINE:

STATE POLICYMAKERS MUST STAND GUARD AGAINST OUTSIDE INFLUENCE IN ELECTIONS AND EFFORTS TO CIRCUMVENT STATE ELECTION LAW.

Overview

There are some who criticize the decentralized nature of U.S. elections, ridiculing the process as a patchwork system of inconsistent rules and regulations. But this is a feature, not a bug. Granting primary authority to states to decide the times, places, and manner of elections held within their border helps promote free, fair, and efficient elections.¹ With voters generally more confident that votes cast in their county and state are counted as intended, and less confident of that being the case for votes cast nationwide, the decentralized local election system helps foster trust in election results.² Trust in the outcome of elections is no less important than accuracy. Both must be achieved to promote voter participation, and an election system run largely by the states is the best model for achieving both in equal measure.



**THE DECENTRALIZED LOCAL ELECTION SYSTEM
HELPS FOSTER TRUST IN ELECTION RESULTS.**

The decentralized system also makes practical sense. Americans vote for only four national offices. Meanwhile, there are hundreds of state and local decisions made each election. The decentralized system reflects this reality, recognizes that there is not a one-size-fits-all election system suitable for all states and localities, and promotes democracy by making it difficult for a party that takes control at the national level to rig the process to keep themselves in power.

But now, efforts are underway to undermine state election administration, specifically through an executive order that seeks to insert the executive branch into the process. This cannot be allowed, and it is up to states to lead the effort to stop this illegal, unethical, and unconstitutional power grab. Fortunately, states have commonsense tools at their disposal to protect against unlawful federal overreach, including this new and unprecedented threat.

Efforts to undermine state administration of elections are underway

The threats to state administration of elections are real and on the rise, and states should be proactive to protect against outside influence in elections.



**THE THREATS TO STATE ADMINISTRATION OF
ELECTIONS ARE REAL AND ON THE RISE, AND
STATES SHOULD BE PROACTIVE TO PROTECT
AGAINST OUTSIDE INFLUENCE IN ELECTIONS.**

IN 2020, IT WAS ZUCKERBUCKS.

In 2020, a now-infamous grant program primarily funded by donations from the Chan Zuckerberg Initiative marred the integrity of election results across the country.³ These grants were disproportionately allocated and influenced the election by boosting turnout in Democrat-leaning areas.⁴ State legislators jumped into action and nearly half the states have enacted legislation to restrict election offices from accepting or spending funding from third parties. States that have put these safeguards in place have protected themselves from one form of outside influence, but more attempts are on the way.

NOW, IT'S BIDENBUCKS.

The Biden administration is seeking to leverage the power and resources of the federal government to do what Zuckerbucks did during the 2020 election, only on a much larger scale. Instead of Zuckerbucks, it's Bidenbucks.

On March 7, 2021, President Biden signed Executive Order 14019, titled "Promoting Access to Voting."⁵ That order directed hundreds of federal agencies to submit a plan to "promote voter registration and voter participation," and to support approved third-party organizations to provide voter registration services at federal agency offices scattered across the country.⁶ Who approves these third-party organizations and the criteria for approval is left to the imagination.

But this plan was not dreamed up by the Biden administration, it was developed by a well-funded progressive think tank called Demos.⁷ Shortly before Executive Order 14019 was issued, senior officials from Demos were hired by the Biden administration and placed into key positions in the White House to help oversee the implementation of the plan.⁸⁻⁹



With the lack of oversight and transparency, there is a genuine concern that this effort will primarily target Democrat strongholds to help turn out voters that the Biden administration believes are more likely to vote Democrat.



With the lack of oversight and transparency, there is a genuine concern that this effort will primarily target Democrat strongholds to help turn out voters that the Biden administration believes are more likely to vote Democrat—much like Zuckerbucks did in the 2020 election.¹⁰ If these concerns prove true, then this is a massive get-out-the-vote effort designed to benefit one political party all paid for by taxpayers.¹¹ **It is illegal, unethical, and unconstitutional.**¹²⁻¹⁵

To date, the Biden administration has kept the details of this plan a secret, refusing to respond to Freedom of Information Act requests and demands for documents and answers from dozens of members of Congress.¹⁶

What is worse is that the Biden executive order is not the only example of this administration's efforts to run elections from 1600 Pennsylvania Avenue. The Bidenbucks approach can also be seen in the president's FY 2023 Budget Proposal. In it, the Biden administration called for \$10 billion in new election assistance funding—funding that will likely come with strings attached.¹⁷ It also calls for leveraging the United States Postal Service to make vote-by-mail more widespread.¹⁸

States must be proactive in safeguarding their authority over the conduct of elections to help stop outside influence

Threats from outside influence in state election administration, especially federal overreach, are real and on the rise, underscoring the need for policymakers to act. Secretaries of state and other state election officials can sound the alarm to make local election officials aware of these efforts, and ensure they are given the information and resources they need to comply with state election rules and procedures. In addition, state attorneys general can provide election administrators with legal advice to help them avoid inadvertently violating state election law based on misguidance provided by the federal government.



STATE LAWMAKERS ALSO HAVE AN IMPORTANT ROLE TO PLAY IN CHECKING THE POWER OF THE PRESIDENT AND STOPPING THIS EFFORT TO SIDESTEP STATE ELECTION LAWS.

State lawmakers also have an important role to play in checking the power of the president and stopping this effort to sidestep state election laws. The best way to do this is to pass legislation that grants the state oversight and approval authority over three key areas of federal executive branch election meddling: guidance, communications, and funding.

REQUIRE LEGISLATIVE APPROVAL TO IMPLEMENT ANY NEW FEDERAL GUIDANCE ON ELECTIONS

Federal guidance from bureaucrats can cause problems, especially when that guidance contradicts state law. Such guidance can be misleading and intimidating and can cause serious confusion for officials attempting to follow the law as they administer local elections.

While the Trump administration placed limits on the use of sub-regulatory guidance, the Biden administration has reversed course.¹⁹ For instance, a weaponized Department of Justice (DOJ) staffed with President Biden’s appointees has issued a wave of new election guidance already.²⁰ This so-called “guidance” is nothing more than an attempt to reinterpret existing laws that have been on the books for decades and is not legally binding.



Federal guidance from bureaucrats can cause problems, especially when that guidance contradicts state law.



State policymakers should require the legislature to examine any federal election guidance to ensure it is accurate and lawful before state election officials implement it. Such legislation would give states an opportunity to challenge inaccurate or unlawful guidance in court if needed. It would also protect local officials from inadvertently violating state law or being coerced or manipulated to do so through unlawful guidance, all while preserving the integrity of state elections.

REQUIRE NOTICE OF FEDERAL EXECUTIVE BRANCH COMMUNICATIONS RELATED TO ELECTIONS

While federal guidance is usually highly publicized by the media, direct communications such as an email, a phone call, or even an in-person meeting are usually done quietly and through back channels. In some cases, state agencies can be contacted directly by federal bureaucrats in Washington, D.C. and subsequently directed on how to run a state program without the governor or legislature even knowing the communication took place.

State policymakers should ensure that the governor, secretary of state, and legislature are made aware of all election-related communications from federal agencies. This would enable the state to respond as needed to ensure its agencies are not being coerced to potentially violate state law by federal bureaucrats contacting them through back channels.

REQUIRE LEGISLATIVE OVERSIGHT OF NEW FEDERAL ELECTION FUNDING

Any new funding provided by the federal government for election administration needs state-level oversight. The lack of oversight of the private funding that poured into local election offices during the 2020 election was catastrophic for voter confidence. And guidance alone from state election officials had minimal effect. Even with state officials advising clerks to reject any grant awards, two Louisiana offices took the money anyway.²¹⁻²²

Importantly, traditional federal funding through the Help America Votes Act (HAVA) provides sufficient state-level oversight since state election officials are generally the recipient of those grants.²³ New federal funding should continue to be dispensed in that same manner—with explicit state approval. Legislation codifying that requirement will prevent a Zuckerbucks-like situation with federal grants.



THE LACK OF OVERSIGHT OF THE PRIVATE FUNDING THAT POURED INTO LOCAL ELECTION OFFICES DURING THE 2020 ELECTION WAS CATASTROPHIC FOR VOTER CONFIDENCE.

THE BOTTOM LINE: State policymakers must stand guard against outside influence in elections and efforts to circumvent state election law.

In the U.S., power is carefully divided between the states and a national government, and within each, between the various branches of government. The reason for this careful division of power

is evident. As Madison warned, “[i]n framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”²⁴

This division of power extends to the administration of elections, with states retaining the power to be the arbiters of their own election laws, with limited oversight from Congress. Nowhere is the president granted authority to interfere in the administration of elections, yet that is precisely what the current administration is attempting to do through executive order and agency guidance. States must actively guard against outside influence and efforts to circumvent state election law, whether they come from third parties such as Zuckerbucks, or from the federal executive branch in the form of Bidenbucks. Setting forth requirements that communications, guidance, and funding be shared with state officials and approved before they are implemented will help ensure that state law is not circumvented by federal bureaucrats or political operatives trying to change the way state-run elections are administered. In the face of these new and unprecedented threats to free and fair elections, states must stand their ground.



In the face of these new and unprecedented threats to free and fair elections, states must stand their ground.



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