

UNILATERAL ELECTION ADMINISTRATION

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Election administration in the United States is fragmented. Instead of having one uniform system, each state governs elections under distinct rules and hierarchies. Yet, one feature remains consistent among the fifty systems: Each is led by a “chief election official.” Though some states rely on boards, most vest this authority in a single person—what this Article calls a “unitary chief election official.”

The unitary chief election official wields immense power. They enjoy unilateral authority to render decisions affecting voter registration, voting equipment, access to voting, ballot access, ballot measures, election counting and certification, and election official training, among other things. What is seemingly a procedural office can accordingly be used to impact substantive electoral outcomes. Because of this, subversive partisan actors have made increasing attempts over the years to co-opt the position, viewing it as a means to legally sway elections in their party’s favor.

Despite their significance, unitary chief election officials remain relatively underdiscussed in the literature. Questions remain about the precise extent of their authority, as well as what mechanisms exist to ensure that abusive officials can be held to account. This Article therefore makes a first, detailed attempt to answer these questions. To begin, the Article provides a descriptive account of the breadth of powers that the average unitary chief election official enjoys. It draws upon the election codes of eleven states to do this.

Next, the Article considers how to best construct an accountability regime that insulates the office from partisan manipulation. Through the lens of democracy theory, the Article concludes that we should deemphasize electoral accountability, as truly neutral chief election officials must answer to democratic principles rather than popular whims. Furthermore, we should treat ex post forms of accountability, such as lawsuits, as secondary fail-safe options rather than as primary ones. On the other hand, we should channel more resources to ex ante legal and internal modes of accountability. By reframing accountability for unitary chief election officials, this Article offers a path to shielding the office from undue partisan capture and, in turn, strengthening the democratic process.

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INTRODUCTION	594
I. THE UNITARY CHIEF ELECTION OFFICIAL	601
A. <i>The Role</i>	603
B. <i>Unilateral Authority</i>	605
1. <i>Appointments</i>	606
2. <i>Registration & Voting</i>	609
3. <i>Ballots & Ballot Access</i>	613
4. <i>Voting Equipment</i>	617
5. <i>Counting & Certification</i>	621
6. <i>Internal Administration</i>	622
7. <i>Public Education</i>	625
8. <i>Rulemaking</i>	627
C. <i>Misuse, Abuse, & Democratic Harm</i>	629
II. ASSESSING ACCOUNTABILITY	634
A. <i>Defining Accountability</i>	635
B. <i>Ex Ante vs. Ex Post Accountability</i>	637
C. <i>Modes of Accountability</i>	639
1. <i>Electoral Accountability</i>	640
2. <i>Quasi-Electoral Accountability</i>	645
3. <i>Legal Accountability</i>	647
4. <i>Internal Accountability</i>	657
III. REALIZING ACCOUNTABILITY	661
A. <i>A Rough Blueprint</i>	661
B. <i>Partisan vs. Nonpartisan</i>	670
C. <i>Centralized vs. Decentralized</i>	671
D. <i>Generalist vs. Specialist</i>	672
CONCLUSION	673

INTRODUCTION

The United States does not have a single uniform election administration system. Each state instead runs its own elections under its own distinct rules, resulting in a patchwork of structures in which federal, state, and local elections are governed differently on a state-by-state basis.¹ It takes many people to efficiently administrate elections,

¹ See Anthony J. Gaughan, *Ramshackle Federalism: America's Archaic and Dysfunctional Presidential Election System*, 85 *FORDHAM L. REV.* 1021, 1031–33 (2016) (declaring decentralization as lying “at the heart of the election administration problem”); Daniel P. Tokaji, *The Future of Election Reform: From Rules to Institutions*, 28 *YALE L. & POL'Y REV.* 125, 127 (2009) (“[D]ecentralization and partisanship remain the two dominant characteristics of American election administration.”).

from local election boards to registrars to poll workers.² And states vary widely in how they organize their election workforce. Yet, one feature remains consistent across all states: At the top of each hierarchy sits a head administrator, formally known as the “chief election official.”³

The chief election official is possibly the most influential public official that nobody can name. While seemingly bureaucratic in nature, the office has the potential to dramatically alter the democratic process, and, in turn, electoral outcomes. Indeed, chief election officials often have discretionary authority to render unilateral decisions affecting—among other things—voter registration, voter access, ballot access, ballot measures, districting, voting equipment, counts, recounts, canvassing, certification, election official appointments, election official training, and the public education of voters.⁴ In some states, the chief election official is simply one member of a state board of elections charged with governing the electoral process.⁵ But in most states—four-fifths, in fact⁶—the vast authority of the chief election official rests solely in the hands of one person. For this reason, some experts have dubbed chief election officials “critical guardians of democracy.”⁷

...But what if the chief election official weren't a guardian? What if they were instead a neglecter? A transgressor? An oppressor?

What if the chief election official, say, wrongfully denied the franchise to thousands of individuals with felony convictions when the law very clearly entitled them to vote?⁸ Or even blatantly ignored new legislation expanding felon voting rights because they simply did not agree with the law?⁹ What if the chief election official purged a record number of people from the voter rolls during the same election cycle that they were running for governor of their state?¹⁰ What if they use

² See Kathleen Hale et al., *State of the Field in Election Official and Poll Workers Recruitment, Training, and Retention*, 3 J. ELECTION ADMIN. RSCH. & PRAC. 67, 68–69 (2025).

³ *Who Is in Charge of Elections in My State?*, U.S. ELECTION ASSISTANCE COMM'N (Oct. 26, 2022), <https://www.eac.gov/who-is-in-charge-of-elections-in-my-state> [<https://perma.cc/NE9A-PJ2R>]. In most states, the chief election official is the secretary of state. See *infra* Section I.A, Figure 1.

⁴ See *infra* Section I.B.

⁵ See *infra* Section I.A, Figure 1.

⁶ See *infra* Section I.A, Figure 1.

⁷ JOCELYN F. BENSON, *STATE SECRETARIES OF STATE: GUARDIANS OF THE DEMOCRATIC PROCESS* 12 (Routledge 2016) (2010).

⁸ See Marianna Bacallao, *Tennessee's Voter Registration Process Is Now Before a Federal Court*, WPLN (Jan. 16, 2025), <https://wpln.org/post/tennessees-voter-restoration-process-is-now-before-a-federal-court> [<https://perma.cc/6QQD-AJB8>].

⁹ See *State ex rel. Spung v. Evnen*, 12 N.W.3d 229, 236–37 (Neb. 2024).

¹⁰ See Erin Durkin, *GOP Candidate Improperly Purged 340,000 from Georgia Voter Rolls, Investigation Claims*, GUARDIAN (Oct. 19, 2018), <https://www.theguardian.com/us-news/2018/oct/19/georgia-governor-race-voter-suppression-brian-kemp> [<https://perma.cc/KVS2-SR65>].

biased or misleading language when summarizing a ballot measure?¹¹ And what if they ordered a statewide audit of a presidential election based purely upon a conspiracy theory that said election was stolen?¹²

These are not mere hypotheticals. Over the years, the chief election official position has been marred by repeated instances of misuse, if not outright abuse. In our age of hyper-polarization,¹³ the problem is only poised to get worse. Indeed, in the wake of the 2020 election denialism movement,¹⁴ numerous proponents of “Stop the Steal” ran in chief election official races throughout the country in an attempt to co-opt election administration for their own political agenda.¹⁵ While many failed, many others succeeded. As of 2025, in fact, four states have chief election officials who expressly deny that Donald Trump lost the 2020 presidential election.¹⁶ In other words, millions of American voters presently have their electoral process overseen by overtly partisan election deniers.

When the top election administrator governs with partisan motivations, democracy suffers. Voting can become more difficult.¹⁷ Ballots can become more confusing.¹⁸ People can even lose their ability to vote.¹⁹ And even if the process itself has not changed, the *appearance* of partisan election governance can itself dissuade people from participating in the democratic process.²⁰ Perhaps this is why one scholar

¹¹ See Susan Tebben, *Ohio Ballot Board Approves Controversial Language to Describe Anti-Gerrymandering Amendment*, OHIO CAP. J. (Aug. 16, 2024, at 13:38 ET), <https://ohiocapitaljournal.com/2024/08/16/ohio-ballot-board-approves-controversial-language-to-describe-anti-gerrymandering-amendment> [<https://perma.cc/URG2-ERGT>].

¹² See William Vaillancourt, *Nothing Resembling Fraud Detected in Initial Findings of Texas Election Audit Trump Pushed for Desperately*, ROLLING STONE (Jan. 1, 2022), <https://www.rollingstone.com/politics/politics-news/texas-election-audit-phase-one-findings-1277704> [<https://perma.cc/VE9F-ESXB>].

¹³ See Ekim Arbatli & Dina Rosenberg, *United We Stand, Divided We Rule: How Political Polarization Erodes Democracy*, 28 DEMOCRATIZATION 285, 299–300 (2021); Liz Crampton, Dustin Gardiner & Nick Reisman, *Redistricting War Between Texas and California Is About To Jolt the Midterms*, POLITICO (Aug. 23, 2025), <https://www.politico.com/news/2025/08/23/trump-redistricting-california-texas-gerrymander-00521573> [<https://perma.cc/F9DF-5LQW>].

¹⁴ See *The Story of Election Denial in America*, REPLACING THE REFS, <https://electiondeniers.org/election-denial> [<https://perma.cc/MF4M-M3G5>] (last visited Dec. 22, 2025).

¹⁵ See *infra* notes 266–70 and accompanying text.

¹⁶ *The Landscape of Election Denial in America*, REPLACING THE REFS, <https://electiondeniers.org> [<https://perma.cc/LF4Y-TAS5>] (last visited Dec. 22, 2025) (scroll down to “The STATEWIDE Landscape”; then click “explore the data”; then click the “Secretary of State” tab) (listing Alabama, Indiana, Missouri, and Wyoming).

¹⁷ See *infra* notes 107–16 and accompanying text.

¹⁸ See *infra* notes 139–44 and accompanying text.

¹⁹ See *infra* notes 117–21 and accompanying text.

²⁰ See Sarah Birch, *Perceptions of Electoral Fairness and Voter Turnout*, 43 COMPAR. POL. STUD. 1601, 1615–17 (2010).

has referred to unitary chief election officials as “the most controversial partisan actor[s] in state election administration.”²¹

Despite their significance, unitary chief election officials remain relatively underdiscussed in the literature. Certainly, many have written on issues concerning partisanship in election administration.²² There have likewise been attempts to characterize unitary chief election official powers at a high, generalized level.²³ Less work has been done, however, on the granular level—that is, a deep dive into specific instances of statutory authority afforded unitary chief election officials across a variety of states. The office is thus long overdue for targeted treatment in the literature.

This Article provides that treatment. Specifically, this Article explores two questions: First, what is the precise breadth of unitary chief election official power? Second, given their extensive influence over the democratic process, how can we best insulate the position of unitary chief election official from partisan abuse? In other words, what does accountability ideally look like for the unitary chief election official?

Beginning with question one, this Article conducts a deep-dive study into the range of discretionary authority wielded by unitary chief election officials. To accomplish this, I survey the election codes of eleven states,²⁴ highlighting any statutory or regulatory grant of discretionary power to the states’ respective chief election officials. Comparing each state, I identify overlapping powers and notable outliers, culminating in a descriptive account in Part I covering eight categories of unitary chief election official powers: (1) appointments, (2) registration and voting,

²¹ Rebecca Green, *Partisan Parity in U.S. Election Administration*, in THE OXFORD HANDBOOK OF AMERICAN ELECTION LAW 1033, 1042 (Eugene D. Mazo ed., 2024) [hereinafter Green, *Partisan Parity*].

²² See, e.g., Rebecca Green, *Adversarial Election Administration*, 101 N.C. L. REV. 1077 (2023) [hereinafter Green, *Adversarial*]; Shannon Hardy, *Election Administration in Constitutional Trouble? An Investigation into Partisanship Requirements*, 54 COLUM. HUM. RTS. L. REV. 1061 (2023); Ethan Porter & Jon C. Rogowski, *Partisanship, Bureaucratic Responsiveness, and Election Administration: Evidence from a Field Experiment*, 28 J. PUB. ADMIN. RSCH. & THEORY 602 (2018). Much of this scholarship has focused specifically on local election officials. See, e.g., LOCAL ELECTION ADMINISTRATORS IN THE UNITED STATES: THE FRONTLINE OF DEMOCRACY (Paul Gronke, David Kimball, Thessalia Merivaki, Mara Suttman-Lea, Christian R. Grose & Bridgett A. King eds., 2024); Joshua Ferrer, Igor Geyn & Daniel M. Thompson, *How Partisan Is Local Election Administration?*, 118 AM. POL. SCI. REV. 956 (2024); Rebecca Green, *Legal Support for Local Election Officials*, 81 WASH. & LEE L. REV. 1017 (2024).

²³ See, e.g., 53 COUNCIL OF STATE GOV’TS, THE BOOK OF STATES 154, 156 (2021), <https://www.nga.org/wp-content/uploads/2022/10/CSG-book-of-the-states-2021.pdf> [<https://perma.cc/7M5V-QKZF>]; Green, *Adversarial*, *supra* note 22, at 1094–98.

²⁴ The states are Arizona, Florida, Georgia, Louisiana, Maine, Michigan, Minnesota, Nevada, New Hampshire, Ohio, and Pennsylvania, the focus being predominantly on battleground states. See *infra* note 71.

(3) ballots and ballot access, (4) voting equipment, (5) counting and certification, (6) internal administration, (7) public education, and (8) rulemaking. The goal here is not to outline the powers of any one specific chief election official, but rather to provide a generalized account of powers that unitary chief election officials often possess. Doing so, this Article offers a first detailed overview of unitary chief election official powers in the United States.²⁵

The Article then turns to its theoretical component, assessing which accountability mechanisms a democratic society should impose upon the unitary chief election official to ensure they remain neutral and dutiful. Accountability is, after all, a central component of a functioning democracy, especially for the individual who is quite literally administering democracy.²⁶ And while it is true that many chief election officials serve their terms honorably,²⁷ we do not design accountability for the best-case scenarios, but rather for the worst-case ones. It is therefore imperative to think critically about what modes of accountability work or do not work for the unitary chief election official.

On this front, the Article makes three claims. First, electoral accountability is a weak, if not counterproductive, mode of accountability for unitary chief election officials. While elections are often considered a means of holding officials accountable to the people,²⁸ this principal-agent relationship does not work so neatly with the unitary chief election official. For one, the purpose of electoral accountability is to ensure leaders' actions continue aligning with citizens' interests.²⁹ Elections may thus make sense for political actors serving in representative capacities, expected to engage in lawmaking driven by majoritarian desires. The unitary chief election official, on the other hand, is not meant to respond to the *people*, but rather serve a *process*: the democratic process. And a healthy democratic process

²⁵ In 2010, Jocelyn Benson wrote a book focused specifically on the role secretaries of state play as chief election officials. See BENSON, *supra* note 7. While this book describes the various functions that chief election officials play in the democratic process, it is written in narrative form, focusing on specific stories of chief election official conduct in action rather than a descriptive account of their powers.

²⁶ See Nicholas O. Stephanopoulos, *Accountability Claims in Constitutional Law*, 112 Nw. U. L. REV. 989, 996–97 (2018).

²⁷ See Green, *Partisan Parity*, *supra* note 21, at 1043.

²⁸ See Jeremy Waldron, *Accountability: Fundamental to Democracy* 27 (N.Y.U. Pub. L. & Legal Theory Rsch. Paper Series, Working Paper No. 14-13, 2014), <https://ssrn.com/abstract=2410812> [<https://perma.cc/Y8NU-45UR>].

²⁹ See Mark Warren, *Accountability and Democracy*, in THE OXFORD HANDBOOK OF PUBLIC ACCOUNTABILITY 39, 40 (Mark Bovens, Robert Goodin & Thomas Schillemans eds., 2014); Stephanopoulos, *supra* note 26, at 999 (“Electoral accountability exists when voters reward elected officials for good records by voting for them, and punish officials for bad records by voting against them.”).

is not one necessarily grounded in the will of the people, but rather steadfast commitments to impartiality, equality, and the rule of law.³⁰ The unitary chief election official must accordingly be accountable not to the people, but to a set of core, unwavering principles. (Never mind the fact that holding an individual accountable via elections becomes exceedingly more difficult when said individual literally governs the electoral process.³¹)

Second, lawsuits are an imperfect mode that, while necessary to give teeth to the rule of law, should only be treated as a secondary means of accountability. Indeed, while lawsuits are a popular way to check chief election official misconduct, their success is far from guaranteed. To begin, ex post modes of accountability are in general weaker than ex ante modes, purely due to the fact that voters have already suffered by the time we reach ex post accountability.³² Moreover, the U.S. court system often makes it difficult, at least in its current form, to attain meaningful results via civil election litigation. Plaintiffs routinely struggle, for example, to meet standing requirements in election cases.³³ Furthermore, even if you have standing, courts often avoid providing remedies in election cases under the *Purcell* principle, which forbids courts from granting relief too close to an election.³⁴ The recent Supreme Court decision in *Trump v. CASA* may also render it harder for litigants to receive relief that extends to voters beyond the named plaintiffs.³⁵ Finally, the realities of partisanship creep in the judiciary cannot be ignored.³⁶

With these two assertions in mind, the Article makes its third and final claim: States serious about accountability for their unitary chief election official should redirect focus and resources to ex ante legal and internal accountability mechanisms. Starting with the former, legal accountability need not occur only through trials. To the contrary, states can restrain unitary chief election officials through ex ante legal mechanisms that mitigate the risk of misconduct ever occurring. Lawmakers can enact, for instance, judicial preclearance requirements for chief election official decisions that implicate fundamental voting

³⁰ See *infra* notes 340–43 and accompanying text.

³¹ See *infra* notes 335–36 and accompanying text.

³² See *infra* Section II.B.

³³ See *infra* notes 378–82 and accompanying text.

³⁴ See, e.g., *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (“[T]his Court’s election-law precedents . . . establish . . . that federal district courts ordinarily should not enjoin state election laws . . . close to an election . . .” (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam))).

³⁵ See *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2552 (2025) (rejecting equitable authority of federal courts to grant universal injunctions).

³⁶ See *infra* notes 391–95 and accompanying text.

rights, such as mass voter registration cancellations. They could also place temporal limits on certain chief election official actions, barring the officials from dramatically impacting the electoral process within a specific amount of time before an election.³⁷ Finally, lawmakers could implement qualification requirements for the office, prohibiting anybody from being a chief election official unless they, say, have prior election administration experience.

Fellow executive officials and administrators are also capable of checking the unitary chief election official, a process known as internal accountability. Indeed, internal accountability offers unique benefits compared to other modes, such as continuous oversight, expertise-driven decisions, and flexibility.³⁸ Moreover, accountability processes specifically spurred on by citizen complaints help to retain some degree of democratic legitimacy for unitary chief election officials even in the absence of elections.³⁹ As such, this Article recommends that lawmakers adopt multiple means of internal accountability meant to monitor and, if necessary, counter unilateral chief election official decisions. Such recommendations include auditing, internal preclearance, administrative dispute resolution, administrative sanctions, and potentially even placing selection of the unitary chief election official in the hands of local election officials.⁴⁰

This Article proceeds as follows: Part I provides an overview of the unitary chief election official. It begins by broadly contextualizing the role within election administration. It then turns to the Part's primary descriptive contribution: a detailed account of the breadth and limits of unitary chief election official powers. The Part finally wraps up by observing precisely how chief election official discretion, if left unchecked, can damage democracy. Part II then shifts to the paper's theoretical component, considering which modes of accountability are more or less effective to use against the unitary chief election official. The Part first weighs the benefits of *ex ante* versus *ex post* accountability, and subsequently contemplates four modes of accountability: electoral, quasi-electoral, legal, and internal. Finally, Part III concludes this Article by providing guidance on what practical changes states can enact to build a more robust accountability framework for their unitary chief election officials.

³⁷ Cf. 52 U.S.C. § 20507(c)(2)(A) (barring chief election officials from systematically purging voters within ninety days of an election).

³⁸ See *infra* Section II.C.4.

³⁹ See Rebecca Green, *Administering Election Disputes*, 80 MIAAMI L.J. (forthcoming 2026) (manuscript at 16–33) (on file with the New York University Law Review) (overviewing administrative election dispute resolution) [hereinafter Green, *Election Disputes*].

⁴⁰ See *infra* Section III.A.

I

THE UNITARY CHIEF ELECTION OFFICIAL

Election administration in the United States does not operate under one uniform system. Rather, it comprises fifty distinct, state-controlled regimes, each with its own unique procedures for managing the democratic process.⁴¹ This rings true not only for state and local elections, but for federal elections too.⁴² Whereas some states conduct election governance via a state board of elections, for instance, many others delegate such authority to the secretary of state's (SOS) office.⁴³ Whereas some states provide mail-in ballots to all registered voters, many others do not.⁴⁴ Whereas some states may permit noncitizen voting in local elections,⁴⁵ many others outright ban the practice.⁴⁶

In short, U.S. election administration is a patchwork.

Yet, one characteristic remains common across every state's election administration apparatus: Each is headed by a "chief election official."⁴⁷ The chief election official is perhaps one of the most significant state-level offices in the country. Indeed, Michigan Secretary of State Jocelyn Benson has gone so far as to call them "critical guardians of democracy."⁴⁸ Chief election officials often have authority to make

⁴¹ See Gaughan, *supra* note 1, at 1031–33; Tokaji, *supra* note 1, at 127.

⁴² The Constitution explicitly grants states the power to regulate the "Times, Places and Manner" of holding congressional elections. U.S. CONST. art. I, § 4. While Congress retains the ability to preempt such regulations, *see id.*, states also hold exclusive authority to determine more substantive aspects of congressional elections, such as voter qualifications. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 16 (2013) ("[T]he Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them."). Furthermore, for presidential elections, states have exclusive authority to choose how to appoint their electors. *See* U.S. CONST. art. II, § 1, cl. 2.

⁴³ Green, *Partisan Parity*, *supra* note 21, at 1039. I only use the abbreviation "SOS" in this Article when not referring to a specific SOS's title.

⁴⁴ *See States with Mostly Mail Elections*, NAT'L CONF. OF STATE LEGISLATURES (Oct. 11, 2024), <https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections> [<https://perma.cc/7RV6-CEWY>] (noting that eight states and the District of Columbia "allow all elections to be conducted entirely by mail").

⁴⁵ John J. Martin, *Citizenship Voting Requirement in SAVE America Act Has No Basis in the Constitution—and Ignores Precedent That Only States Decide Who Gets to Vote*, THE CONVERSATION (Feb. 12, 2026, at 8:22 ET), <https://theconversation.com/citizenship-voting-requirement-in-save-america-act-has-no-basis-in-the-constitution-and-ignores-precedent-that-only-states-decide-who-gets-to-vote-275658> [<https://perma.cc/YXQ9-JNGA>] (detailing dozens of such localities).

⁴⁶ *See, e.g.*, ARIZ. CONST. art. VII, § 2; FLA. CONST. art. VI, § 2; OHIO CONST. art. V, § 1.

⁴⁷ *Who Is in Charge of Elections in My State?*, *supra* note 3. Some experts use the term "chief election officer" instead. *See, e.g., Who Runs Elections in Each State?*, ELECTION REFORMERS NETWORK (Mar. 1, 2022), <https://www.electionreformers.org/articles/who-runs-elections-in-each-state> [<https://perma.cc/39A5-MUSW>]. This Article chooses "chief election official" to reflect how the term is stated under federal statute. *See, e.g.*, 52 U.S.C. § 20505(b).

⁴⁸ BENSON, *supra* note 7, at 12.

decisions that affect, among other things, voter registration, voter access, ballot access, ballot measures, districting, voting equipment, counts, recounts, certification, election official appointments, election official training, and the public education of voters.⁴⁹ In four-fifths of states, they can make many such decisions unilaterally—a role this Article calls the “unitary chief election official.”⁵⁰

Individually, these decisions may seem inconsequential acts of bureaucracy. Yet, holistically, chief election officials have a real ability to substantively impact elections conducted within their state, even to a degree that sways outcomes. With a competent, good-faith actor in office, perhaps this is not a concern. With the rise of election denialism post-2020, however, the office has become a growing point of interest for both partisan actors looking to unduly influence elections and advocates looking to preserve impartial election administration.⁵¹ With the wrong person in charge, the democratic process in a given state could face substantial degradation.⁵²

This Part accordingly provides a descriptive account of the powers of chief election officials, with a particular focus on unitary chief election officials. Why this focus? Quite simply, unilateral decisionmaking constitutes the most abusable exercise of power, where a change in one officeholder can radically alter how the office is used.⁵³ As Rebecca Green puts it, “unitary [chief election officials] remain . . . the most controversial partisan actor[s] in state election administration.”⁵⁴ The first Section thus begins by explaining the office of chief election official in greater detail, including who they are, how they are chosen, and how most act in a unitary capacity. The following Section then illustrates the range of unilateral decisionmaking authority enjoyed by unitary chief election officials, drawing upon the statutory authority granted to them in eleven states. The final Section contextualizes how this authority has been abused in the past, how it may be abused in the future, and the negative repercussions such abuse has on our democratic processes.

⁴⁹ See *infra* Section I.B.

⁵⁰ See *infra* Section I.A.

⁵¹ See Amber Phillips, *What an Election Denier Could Do if Elected Secretary of State*, WASH. POST (Sep. 20, 2022), <https://www.washingtonpost.com/politics/2022/09/19/election-deniers-secretary-state> [<https://perma.cc/7RRN-2W5M>]; *Election Deniers in Secretary of State Races*, STATES UNITED DEMOCRACY CTR. (Dec. 7, 2022), <https://statesunited.org/resources/secretary-of-state> [<https://perma.cc/W428-BZXL>].

⁵² See *infra* Section I.C.

⁵³ Indeed, the public generally views unilateral decisionmaking as harmful to democratic society. Cf. Andrew Reeves & Jon C. Rogowski, *Unilateral Powers, Public Opinion, and the Presidency*, 78 J. POL. 137, 148 (2015) (noting “low,” albeit sizeable, public support for unilateral presidential power).

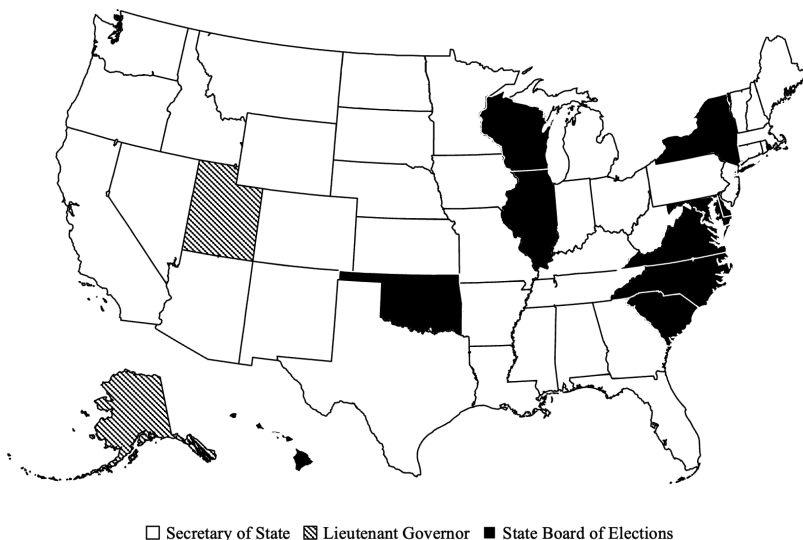
⁵⁴ Green, *Partisan Parity*, *supra* note 21, at 1042.

A. The Role

The chief election official is a statutorily mandated position. The National Voter Registration Act (NVRA), for instance, mandates each state to “designate a State officer or employee as the chief State election official.”⁵⁵ Each state’s election code additionally designates a chief election official.⁵⁶ These provisions typically define the chief election official’s primary duty as maintaining uniformity in the application of the state’s election laws.⁵⁷ Thus, while the specific powers of the chief election official vary by state, they can generally be labeled the overseer of the democratic process within their state.

Who holds the title of chief election official differs by state. In the vast majority—thirty-eight states total—the responsibility falls upon the SOS.⁵⁸ Yet, in two states—Alaska and Utah—the lieutenant governor acts as the chief election official.⁵⁹ Four-fifths of states therefore have unitary chief election officials governing their elections. Meanwhile, in the remaining ten states, elections are overseen not by one individual, but rather an appointed multimember board of elections.⁶⁰

FIGURE 1: CHIEF ELECTION OFFICIAL BY STATE



⁵⁵ 52 U.S.C. § 20509.

⁵⁶ See, e.g., ALA. CODE § 17-1-3(a) (2025); GA. CODE ANN. § 21-2-50(b) (2025); IND. CODE § 3-6-3.7-1 (2025); W. VA. CODE § 3-1A-6(a) (2025); WYO. STAT. ANN. § 22-2-103 (2025).

⁵⁷ For example, the Alabama Code states that the chief election official “shall provide uniform guidance for election activities.” ALA. CODE § 17-1-3(a) (2025); see also WYO. STAT. ANN. § 22-2-103 (2025) (similar).

⁵⁸ *Who Runs Elections in Each State?*, *supra* note 47.

⁵⁹ *Id.*

⁶⁰ *Id.*; Green, *Partisan Parity*, *supra* note 21, at 1039.

The breadth of the unitary chief election official's unilateral authority varies by state. Some states have a more decentralized system, where both the chief election official and a state board of elections split election administration responsibilities.⁶⁸ Other unitary chief election officials may share responsibilities with more specialized administrative boards.⁶⁹ And in some states, local boards of elections exert high levels of authority over areas such as the maintenance of voter rolls, the use of voting equipment, the management of polling places, and the certification of elections.⁷⁰

Still, even in more decentralized systems, unitary chief election officials retain sizeable unilateral influence over election administration. The next Section elaborates upon such authority in greater detail.

B. Unilateral Authority

Unitary chief election officials often act as sole decisionmakers. Understanding the implications of this reality for American democracy is not possible without diving into the actual statutory authority granted to chief election officials. This Section accordingly provides a descriptive account of the full range of unilateral powers that chief election officials enjoy when fulfilling their duties.

To do this, I surveyed the election laws of eleven states—Arizona, Florida, Georgia, Louisiana, Maine, Michigan, Minnesota, Nevada, New Hampshire, Ohio, and Pennsylvania⁷¹—combing for any mentions of the chief election official. States whose election administration regimes are governed by state boards of elections—for example, North Carolina, Virginia, and Wisconsin—are deliberately excluded from this analysis, because decisions made by said boards are by definition not unitary.⁷²

⁶⁸ See Green, *Partisan Parity*, *supra* note 21, at 1039 & n.33 (identifying such states as Arkansas, Georgia, Indiana, Kentucky, Rhode Island, South Dakota, Tennessee, and West Virginia).

⁶⁹ See, e.g., N.H. REV. STAT. ANN. §§ 665:6–9-a (2025) (establishing a “ballot law commission” that handles issues relating to nominations, ballots, and recounts).

⁷⁰ See, e.g., *Elections & Voter Registration*, FLOYD CNTY. GA., <https://www.floydcountyga.gov/elections> [<https://perma.cc/C9F9-WAU5>] (last visited Jan. 4, 2026) (noting wide range of county board of elections authority, including registering voters, certifying candidates, and maintaining voter equipment).

⁷¹ I focused primarily on battleground states because the actions of the chief election official within these states are arguably more impactful, at least from a national perspective, than those of chief election officials in other states. See *Presidential Battleground States, 2024*, BALLOTEDIA, https://ballotpedia.org/Presidential_battleground_states_2024 [<https://perma.cc/WW87-JNKB>] (last visited Jan. 3, 2026).

⁷² Some may argue that highly partisan election boards, where the dominant party consistently votes as a bloc, are essentially engaging in unilateral decisionmaking as well. The point is well taken. Indeed, out of the eighteen state election boards in the United States, thirteen have an odd number of members, with one party always constituting the majority. Green, *Partisan Parity*, *supra* note 21, at 1039. Nevertheless, even if we accept this as true, no prescriptive arguments in this Article should be interpreted as inapplicable to the practices of state election boards.

I specifically flagged any provision that granted the chief election official some degree of discretionary authority.⁷³ These provisions were broadly sorted into eight categories: appointments, registration/voting, ballots/ballot access, voting equipment, counting/certification, internal administration, public education, and rulemaking. The goal was not to provide an exhaustive survey of the unilateral authority of each state's chief election official. Rather, I aimed to identify common themes and noteworthy outliers among the examined statutory provisions to, in turn, illustrate the extensive ways in which the position of unitary chief election official can be used to unduly influence the democratic process.⁷⁴ The discussion below represents my findings.⁷⁵

1. *Appointments*

As the head of the election administration hierarchy, unitary chief election officials are typically granted the power to make certain appointments. These appointments range from board members to lower-level election officials, and span various areas of expertise. They nevertheless share a common trait across states: Few appointments require the approval of any additional person or body. Unitary chief election officials thus have the ability to substantively shape the internal make-up of election administrators within their state.

To begin, while many states decentralize election administration via the implementation of specialized boards, unitary chief election officials sometimes select those boards' members. In Minnesota, for instance, the SOS appoints two of the five members of the State Canvassing Board—the body that certifies statewide election results—while also serving as a member himself.⁷⁶ Consequently, while theoretically a separate

⁷³ Thus, statutory provisions that used phrases such as “shall” or “must” were generally disregarded.

⁷⁴ Accordingly, any exclusion of a citation to a particular state's code when discussing a specific type of power should not necessarily be interpreted as meaning that the chief election official within that state does not have similar powers.

⁷⁵ Following *Moore v. Harper*, in which the Supreme Court held that state courts cannot exceed the “ordinary bounds of judicial review” when interpreting state laws regulating federal elections, 143 S. Ct. 2065, 2089 (2023), some may ask whether similar limits apply to state executive officials. That is, must state executive officials act within similar “ordinary bounds” when executing state laws regulating federal elections? And would such a limit ultimately weaken unitary chief election official powers? While this topic is outside the scope of this Article, other scholars have contended *Moore* is unlikely to have such a sweeping effect. *E.g.*, Quinn Yeagain, *State Executive Branches Under Moore v. Harper*, 2025 WIS. L. REV. 593, 614–15; *cf.* Vikram David Amar, *The Moore the Merrier: How Moore v. Harper's Complete Repudiation of the Independent State Legislature Theory Is Happy News for the Court, the Country, and Commentators*, 2023–2024 CATO SUP. CT. REV. 275, 278–86 (adopting sanguine view of *Moore*). At the very least, the Supreme Court has yet to expressly extend *Moore* to state executive action.

⁷⁶ MINN. STAT. § 204C.31(2) (2025).

entity, the State Canvassing Board is effectively under the control of the elected SOS. To be sure, the discretion here is not without limit: The Minnesota SOS can only appoint state district court judges to fill these positions.⁷⁷ Statutorily mandated qualifications are, in fact, not uncommon for appointments made by unitary chief election officials.⁷⁸ At the same time, not all appointments statutes are as restrictive.

Take, for example, Ohio's Board of Voting Systems Examiners, two of whose four members are appointed by the SOS.⁷⁹ The relevant provision merely states that "[t]wo members [are] appointed by the [SOS]" without any qualifying language.⁸⁰ The statute goes on to say that the SOS acts as the tiebreaking vote in instances of two-two deadlocks for the board.⁸¹ Thus, while decisions on the examination and approval of voting equipment in Ohio are supposedly left to a distinct board, the board itself can function as a mere extension of the SOS's prerogative. Nothing seemingly prevents the SOS from appointing whomever they please.⁸²

Unitary chief election officials also routinely appoint lower-level election officials, often with no imposed limitations. Such appointments can include—among other officials—election monitors,⁸³ election auditors,⁸⁴ election clerks,⁸⁵ representatives at polling places,⁸⁶ recount supervisors,⁸⁷ ADA compliance officers,⁸⁸ and tribal liaisons.⁸⁹ Many unitary chief election officials also appoint individuals to assist in examining and/or approving voting equipment, though such individuals

⁷⁷ *Id.*

⁷⁸ In Pennsylvania, for instance, the SOS appoints eleven out of fifteen members of the state's State Plan Advisory Board, seven of whom must be county directors of elections, one of whom must represent an organization of disabled veterans, one of whom must represent an organization for the blind and visually impaired, and two of whom must be registered voters. 25 PA. STAT. AND CONS. STAT. ANN. § 2625(b)(5) (West 2025); *see also* ARIZ. REV. STAT. ANN. § 16-602(K)(2) (2025) (requiring members of SOS-appointed Vote Count Verification Committee to have special expertise); LA. STAT. ANN. § 18:1362.2(B)(1) (2025) (providing qualification requirements for SOS-appointed Voting System Proposal Evaluation Committee).

⁷⁹ OHIO REV. CODE ANN. § 3506.05(C)(2)(a), (a)(i) (West 2025).

⁸⁰ *Id.* § 3506.05(C)(2)(a)(i).

⁸¹ *Id.* § 3506.05(C)(3). Imposing certain qualifications on SOS-appointed board members is indeed common (though certainly not universal).

⁸² Contrast this with the SOS's authority to appoint one of the five members of the Ohio Elections Commission—the enforcement body of Ohio's campaign finance laws. *See id.* § 3517.14(A)(1). The SOS must appoint somebody with "at least four years of work experience in election administration." *Id.* § 3517.14(A)(2)(a)(ii).

⁸³ *See, e.g.*, N.H. REV. STAT. ANN. § 659:77(III) (2025).

⁸⁴ *See, e.g., id.* § 660:35(III).

⁸⁵ *See, e.g.*, 29-250-525 ME. CODE R. § 4 (LexisNexis 2025).

⁸⁶ *See, e.g.*, N.H. REV. STAT. ANN. § 659:77(IV); OHIO REV. CODE ANN. § 3505.21(D).

⁸⁷ *See, e.g.*, 29-250-502 ME. CODE R. § 2(1)(A).

⁸⁸ *See, e.g.*, LA. STAT. ANN. § 18:523(A) (2025).

⁸⁹ *See, e.g.*, NEV. REV. STAT. § 293.3572(6) (2025).

must typically demonstrate certain legal or technical expertise.⁹⁰ Sometimes unitary chief election officials also have a hand in designing certification programs for lower-level election officials, even if they do not directly appoint such individuals.⁹¹

Some are afforded extraordinarily far-reaching control over election official staffing. The Ohio SOS, for example, appoints each member of the state's eighty-eight county boards of elections,⁹² which have sweeping decisionmaking authority when it comes to administering elections.⁹³ And while the Ohio SOS must ensure each board has an evenly bipartisan composition,⁹⁴ the SOS gets to make tiebreaking votes in instances of deadlock.⁹⁵ Similarly, the Arizona SOS can deny the certification of any election officer, clerk, or county recorder if they have not demonstrated "to the satisfaction of the [SOS]" that they are competent to perform work.⁹⁶ The Arizona SOS can therefore effectively decertify any election official so long as the SOS provides some plausible cause for doing so. Conversely, the Georgia SOS may *wave* certification requirements at their discretion for election superintendents, chief registrars, absentee ballot clerks, and board designees.⁹⁷

Lastly, some unitary chief election officials can delegate wholesale responsibilities to appointees. In Michigan, for example, the SOS gets to appoint a "director of elections," who "shall be vested with the powers and shall perform the duties of the [SOS] under his or her supervision, with respect to the supervision and administration of the election laws."⁹⁸ Likewise, the Louisiana SOS can appoint a "first assistant" who

⁹⁰ See, e.g., ARIZ. REV. STAT. ANN. § 16-442(A) (2025); LA. STAT. ANN. § 18:1361(C); NEV. REV. STAT. § 293B.1045(3); 25 PA. STAT. AND CONS. STAT. ANN. § 3006(b) (West 2025). Evaluating expertise is, of course, a subjective inquiry. As the 2020 election audits showcased, many purported "experts" failed to provide actual high-quality, nonpartisan service. See, e.g., Letter from Pamela S. Karlan, Principal Deputy Assistant Att'y Gen., U.S. Dep't of Just., to Karen Fann, Sen., Ariz. State Senate 1-2 (May 5, 2021), https://www.justice.gov/d9/case-documents/attachments/2021/05/05/civil_rights_division_letter_to_arizona_senate_president_5-5_final_ro_tag_prop.pdf [<https://perma.cc/B92S-NBU9>] (detailing major issues with firm Cyber Ninjas' "audit" of the 2020 presidential election).

⁹¹ See, e.g., GA. CODE ANN. § 21-2-101(c)(1) (2025) (SOS creates certification program for variety of election officials); LA. STAT. ANN. § 18:421(D) (SOS prepares examinations for commissioners); MICH. COMP. LAWS § 168.683 (2025) (SOS approves examination for election inspectors).

⁹² OHIO REV. CODE ANN. §§ 3501.05(A), 3501.06(A) (West 2025).

⁹³ See *id.* § 3501.11 (detailing board duties).

⁹⁴ *Id.* § 3501.06(B)(1).

⁹⁵ *Id.* § 3501.11(X).

⁹⁶ ARIZ. REV. STAT. ANN. § 16-407(B) (2025).

⁹⁷ See GA. CODE ANN. § 21-2-101(c)(1) (2025) (providing "other reason deemed sufficient by the [SOS]" as a justification for waiver).

⁹⁸ MICH. COMP. LAWS § 168.32(1) (2025). The SOS may even provide the director of elections with employees. *Id.* § 168.35.

“possesses all the powers and authority granted by law to the [SOS] and may perform any of the duties and exercise any of the functions of the [SOS],”⁹⁹ though the first assistant must receive state senate confirmation.¹⁰⁰ These delegees are able to assume the role of an elected position despite not having been directly elected by the people.

2. *Registration & Voting*

Unitary chief election officials wield great authority over the practices of voter registration and voting itself, sometimes with few procedural constraints. Starting with registration, all chief election officials are tasked with maintaining a computerized statewide voter registration database.¹⁰¹ This requirement is mandated by federal law under the Help America Vote Act (HAVA).¹⁰² Yet, each state differs in the degree of discretion afforded to its chief election official. For example, some are allowed to determine which information is necessary to include in the database.¹⁰³ While seemingly trivial, this discretion can have real-world consequences on voter turnout. If a chief election official decides to, say, incorporate information on whether a person is an active or inactive voter, candidates and political parties that rely on this data may end up ignoring the inactive, “unlikely” voters during their get-out-the-vote campaigns (which, while perhaps sound strategy, is corrosive to equal democratic participation).¹⁰⁴ Unitary chief election officials can also sometimes decide who may access confidential portions of the database—including addresses, dates of birth, and social security numbers.¹⁰⁵ The New Hampshire SOS may, for instance, designate individuals as “database access points,” thus providing them “direct

⁹⁹ LA. STAT. ANN. § 18:421(A) (2025).

¹⁰⁰ See Press Release, Sec’y of State Nancy Landry, Secretary Landry Announces Catherine J. Newsome as Appointee for First Assistant Secretary of State (Jan. 8, 2024), <https://www.sos.la.gov/OurOffice/PublishedDocuments/CJN%20Announcement—FINAL%20.pdf> [<https://perma.cc/A8ND-U8TG>] (explaining that first assistant appointee must receive state senate confirmation).

¹⁰¹ 52 U.S.C. § 21083(a)(1)(A).

¹⁰² *Id.*; see also *Help America Vote Act*, U.S. ELECTION ASSISTANCE COMM’N (Dec. 23, 2025), https://www.eac.gov/about/help_america_vote_act.aspx [<https://perma.cc/Y2WA-Q5TQ>] (noting HAVA’s requirement for statewide voter registration databases).

¹⁰³ See, e.g., MICH. COMP. LAWS § 168.509q(e); NEV. REV. STAT. § 293.675(9)–(10) (2025).

¹⁰⁴ See Abby K. Wood, *Facilitating Accountability for Online Political Advertisements*, 16 OHIO ST. TECH. L.J. 520, 524 (2020) (“[M]ost campaigns and related groups mak[e] political expenditures . . . on mobilizing the people they perceive to be likely voters.”).

¹⁰⁵ In most states, nonconfidential voter registration data is accessible either publicly or upon request. See *Access to and Use of Voter Registration Lists*, NAT’L CONF. ST. LEGISLATURES (July 17, 2025), <https://www.ncsl.org/elections-and-campaigns/access-to-and-use-of-voter-registration-lists> [<https://perma.cc/RV9Q-TK7G>] (identifying state standards for access to and use of voter registration lists).

access to the voter database.”¹⁰⁶ The statute provides no guidance or limitations on such designation.

Unitary chief election officials also have sway over designing state voter registration forms.¹⁰⁷ Responsibilities can range from simply approving registration forms,¹⁰⁸ to recommending a model form to local officials,¹⁰⁹ to actually designing the forms—either paper or electronic—used statewide.¹¹⁰ Again, while an ostensibly minor task on its face, a poorly designed registration form can create additional barriers to voting for some individuals. In Florida, for instance, numerous would-be voters in 2018 failed to properly register because the online voter registration system did not explicitly state that applicants were required to include their middle name and any applicable suffixes.¹¹¹ And in Arizona, many Native Americans have had their applications rejected because the state’s voter registration form does not accommodate the fact that tribal lands often lack residential addresses.¹¹² Whether a product of incompetence, malice, or simple lack of foresight, how a chief election official shapes state voter registration forms can directly impact how many applications succeed.

The unitary chief election official’s influence also extends to *where* individuals can register to vote. Under the NVRA, states are mandated to provide federal voter registration forms at Departments of Motor Vehicles (DMVs), offices that “provide public assistance,” and offices “that provide State-funded programs primarily engaged in providing services to persons with disabilities.”¹¹³ Yet, states may also “designate other offices . . . as voter registration agencies.”¹¹⁴ In many states, this

¹⁰⁶ N.H. REV. STAT. ANN. § 654:45(II) (2025); *see also* OHIO REV. CODE ANN. § 3503.151(C) (2) (West 2025) (permitting Ohio SOS to grant access to confidential information to persons or organizations engaging in “legitimate governmental purpose[s]”).

¹⁰⁷ For federal elections, states must “accept and use” a federal form prescribed by the Federal Election Commission. 52 U.S.C. § 20505(a)(1).

¹⁰⁸ *See, e.g.*, MINN. STAT. § 201.071(1) (2025).

¹⁰⁹ *See, e.g.*, MICH. COMP. LAWS § 168.496 (2025).

¹¹⁰ *See, e.g.*, GA. CODE ANN. § 21-2-223 (2025); ME. STAT. tit. 21-A, §§ 152(1), (6), 182 (2025) (subject to certain requirements); MICH. COMP. LAWS § 168.509ii(1) (electronic forms); NEV. REV. STAT. §§ 293.507(1)(a), 293.5235(11), 293.671 (2025); OHIO REV. CODE ANN. §§ 3503.14(A), 3503.20(A) (subject to certain requirements).

¹¹¹ Alexandra Glorioso, *State Fixes Voter Registration Problem with Simple Updates*, POLITICO (July 23, 2018, at 05:06 ET), <https://www.politico.com/states/florida/story/2018/07/23/state-fixes-voter-registration-problem-with-simple-updates-522370> [https://perma.cc/P5U4-CSU5].

¹¹² Jen Fifield, *Arizonans Left Off Voter Rolls Just Before Primary Because of Problems with Their Forms, Analysis Shows*, VOTEBEAT ARIZ. (July 29, 2024, at 05:00 ET), <https://www.votebeat.org/arizona/2024/07/29/voter-registration-form-errors-maricopa-apache> [https://perma.cc/74BY-JB5G].

¹¹³ 52 U.S.C. §§ 20504(a)(1), 20506(a)(2).

¹¹⁴ *Id.* § 20506(a)(3)(A).

decision is left to the chief election official.¹¹⁵ The unitary chief election official therefore has direct control over the accessibility of voter registration forms and, in turn, the rate of voter registration within their state.¹¹⁶ The fewer agencies the chief election official designates, the fewer registration opportunities there will be.

Perhaps one of the most controversial powers unitary chief election officials wield is the ability to cancel registration statuses. In many states, cancellation is left to local election officials.¹¹⁷ In others, though, the chief election official plays a more hands-on role. In Georgia, for example, the SOS is tasked with maintaining an “inactive list” of voters, and may cancel a voter’s registration after determining that certain conditions have been met.¹¹⁸ It was under this authority in 2018 that then-Secretary of State Brian Kemp removed over half a million Georgians from the voter rolls prior to Kemp’s own gubernatorial race.¹¹⁹ Other unitary chief election officials hold similar authority.¹²⁰

Yet, this authority is not limitless. Indeed, in some states, unitary chief election officials are statutorily obligated to engage in more of an automatic deregistration process, thereby removing discretion from the equation.¹²¹ Furthermore, under federal law—specifically, the NVRA’s quiet period provision—all states must avoid systemic removal of “ineligible voters from [their] lists of eligible voters” within ninety days of an election.¹²² The degree to which the Supreme Court will enforce this latter limit has, nevertheless, come into question in recent years.¹²³

¹¹⁵ See, e.g., GA. CODE ANN. § 21-2-222(c); ME. STAT. tit. 21-A, § 233(1); MICH. COMP. LAWS § 168.493b(1); NEV. REV. STAT. § 293.504(1)(g); OHIO REV. CODE ANN. § 3501.01(X).

¹¹⁶ Studies indeed indicate that the NVRA’s incorporation of voter registration within DMVs has had a tangible positive effect on voter registration and turnout in the United States. E.g., Benjamin Highton & Raymond E. Wolfinger, *Estimating the Effects of the National Voter Registration Act of 1993*, 20 POL. BEHAV. 79, 87 (1998) (estimating 8.7% increase nationally).

¹¹⁷ See, e.g., ARIZ. DEP’T OF STATE, 2023 ELECTIONS PROCEDURES MANUAL 36 (2023), https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf [<https://perma.cc/M7E8-3XPP>] (“[T]he [SOS] does not directly cancel any registration records”); 25 PA. CONS. STAT. §§ 1506–1512 (2025) (leaving determinations to county commissions). In Minnesota, while county auditors make these determinations, the SOS can hear appeals. MINN. STAT. § 201.195(2) (2025).

¹¹⁸ GA. CODE ANN. § 21-2-235(a)–(b).

¹¹⁹ See Angela Caputo, Geoff Hing & Johnny Kauffman, *After the Purge: How a Massive Voter Purge in Georgia Affected the 2018 Election*, APM REPORTS (Oct. 29, 2019), <https://www.apmreports.org/story/2019/10/29/georgia-voting-registration-records-removed> [<https://perma.cc/925P-E5K3>].

¹²⁰ See, e.g., ME. STAT. tit. 21-A, §§ 161(2-A), 162-A(2) (being able to cancel registration upon determining voter has moved); OHIO REV. CODE ANN. § 3501.05(Q) (mandating SOS to provide rules to local election boards for removing ineligible voters).

¹²¹ See, e.g., MICH. COMP. LAWS § 168.509aa(5) (2025).

¹²² 52 U.S.C. § 20507(c)(2)(A).

¹²³ See, e.g., *Beals v. Va. Coal. for Immigrant Rts.*, No. 24A407, 2024 WL 4608863, at *1 (U.S. Oct. 30, 2024) (mem.) (staying district court order preventing Governor Glenn Youngkin

Moving beyond registration, unitary chief election officials exert substantial influence over the actual voting experience. For one, they can set the tone of a polling place. The SOSs of Ohio and Pennsylvania can, for example, direct law enforcement officers to be present at individual polling places,¹²⁴ an action that can make some voters feel safer while others feel threatened.¹²⁵ Meanwhile, the Arizona SOS has the ability to determine the “maximum allowable wait time” at polling places,¹²⁶ a decision that could potentially discourage voter turnout—especially in poorer and nonwhite precincts¹²⁷—if the allowable time is set too high. And of course, unitary chief election officials hold much sway over voting equipment and ballots, topics that are covered later in this Section.¹²⁸

Unitary chief election officials can also determine *where* someone votes. In numerous states, chief election officials must approve precinct boundaries and can potentially draw the boundaries themselves should local election officials fail to meet certain standards.¹²⁹ The Maine SOS likewise has the authority to approve or reject the consolidation or changing of voting places recommended by municipal officers.¹³⁰ They can also approve the use of additional drop boxes in municipalities,¹³¹ an action that can significantly impact voter turnout.¹³² One step further,

from removing 1,600 voters from Virginia voter rolls within ninety days of election); *see also* Markus Schmidt & Charlotte Rene Woods, *U.S. Supreme Court Grants Stay in Challenge to Youngkin’s Voter Purge Order*, VA. MERCURY (Oct. 30, 2024, at 10:38 ET), <https://virginiamercury.com/2024/10/30/u-s-supreme-court-grants-stay-in-challenge-to-youngkins-voter-purge-order-allowing-removal-of-thousands-from-rolls> [<https://perma.cc/7N5Q-KULH>] (reporting on the Supreme Court’s *Beals* order).

¹²⁴ OHIO REV. CODE ANN. § 3501.34; 25 PA. CONS. STAT. § 1709 (2025).

¹²⁵ *Cf.* Matt Friedman, *New Jersey Democrats Saw Voter Intimidation in ’81. They Say Trump Could Do It Nationwide*, POLITICO (Oct. 8, 2020, at 05:01 ET), <https://www.politico.com/states/new-jersey/story/2020/10/08/new-jersey-democrats-saw-voter-intimidation-in-81-they-say-trump-could-do-it-nationwide-1321983> [<https://perma.cc/AAQ6-FU8L>] (detailing harassment by “Ballot Security Task Force,” a group of off-duty officers deployed to “prevent voter fraud”).

¹²⁶ ARIZ. REV. STAT. ANN. § 16-411(K) (2025).

¹²⁷ *See* Stephen Pettigrew, *The Racial Gap in Wait Times: Why Minority Precincts Are Underserved by Local Election Officials*, 132 POL. SCI. Q. 527, 529–31 (2017) (“While white voters waited an average of 12:02, the average nonwhite voter waited almost twice as long, 21:24.”).

¹²⁸ *See infra* Sections I.B.3–4.

¹²⁹ *See, e.g.*, LA. STAT. ANN. § 18:532.1(C)(2)(a) (2025); MICH. COMP. LAWS § 168.661 (2025); NEV. REV. STAT. § 293.206(2)–(3) (2025).

¹³⁰ ME. STAT. tit. 21-A, § 631-A(2)–(3) (2025).

¹³¹ *Id.* § 752-B(3).

¹³² *See* William McGuire, Benjamin Gonzalez O’Brien, Katherine Baird, Benjamin Corbett & Loren Collingwood, *Does Distance Matter? Evaluating the Impact of Drop Boxes on Voter Turnout*, 101 Soc. Sci. Q. 1789, 1799–802 (2020) (finding a positive relationship between decrease in proximity to drop box and voter turnout).

some unitary chief election officials can review and reject redistricting proposals for ambiguities or perceived legal problems.¹³³

Finally, many unitary chief election officials can investigate, and even punish, individuals for alleged voter fraud. In Florida, for instance, the SOS can “[c]onduct preliminary investigations into any irregularities or fraud involving . . . voting . . . and report his or her findings to the statewide prosecutor or [a] state attorney.”¹³⁴ This discretionary power has the potential to dramatically impact people’s lives. Indeed, in 2022, Florida arrested twenty people for voter fraud, dragging them through stressful criminal proceedings, despite the vast majority believing they had been eligible to vote.¹³⁵ Many other states afford similar discretion to their chief election officials to criminally investigate voters.¹³⁶ And in Nevada, the SOS is permitted to sue election officials who violate the election laws.¹³⁷

At bottom, the unitary chief election official is furnished with immense unilateral authority over voter registration and voting processes. The next two Sections further detail how this authority extends to matters relating to ballots and voting equipment.

3. *Ballots & Ballot Access*

Unitary chief election officials help shape what a voter’s ballot looks like. Sometimes this means simply choosing the color and size of the ballot.¹³⁸ In some states, though, the chief election official has much broader authority to determine the ballot’s overall format.¹³⁹

¹³³ See, e.g., N.H. REV. STAT. ANN. § 662-A:5 (2025); 25 PA. STAT. AND CONS. STAT. ANN. § 2746(c)(2) (West 2025); see also ME. STAT. tit. 21-A, § 1207(1) (empowering SOS to resolve certain geographic ambiguities in district lines).

¹³⁴ FLA. STAT. § 97.012(15) (2025).

¹³⁵ Patrick Berry & Gabriella Sanchez, *Florida Changes Law To Boost Unjust ‘Voter Fraud’ Prosecutions*, BRENNAN CTR. FOR JUST. (Feb. 23, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/florida-changes-law-boost-unjust-voter-fraud-prosecutions> [<https://perma.cc/Q58H-X422>].

¹³⁶ See, e.g., MINN. STAT. §§ 201.061(1)(c), 203B.04(1)(c) (2025); OHIO REV. CODE ANN. § 3501.05(N)(1) (West 2025); 25 PA. CONS. STAT. § 1801(a) (2025). *But see* GA. CODE ANN. § 21-2-31(5) (2025) (requiring state election board approval); N.H. REV. STAT. ANN. §§ 654:2(V)(c), (VI), 654:45(I)(b), (VIII)(b)–(c) (requiring referral by election supervisor and done in tandem with attorney general).

¹³⁷ NEV. REV. STAT. §§ 293.5045(3), 293.505(2) (2025); see also FLA. STAT. § 97.0575(8) (allowing SOS to refer to attorney general any unapproved third-party voter registration organization).

¹³⁸ See, e.g., ME. STAT. tit. 21-A, § 601(4)–(5) (2025).

¹³⁹ See, e.g., GA. CODE ANN. § 21-2-50(a)(9) (giving SOS power “[t]o determine and approve the form of ballots for use in special elections”); ME. STAT. tit. 21-A, § 812(4) (2025) (allowing SOS to determine vertical or horizontal arrangement of ballots); MINN. STAT. §§ 204D.08(1), 204D.11(1) (2025) (stating that SOS “shall adopt rules for the format and preparation” of primary and general election ballots); OHIO REV. CODE ANN. § 3501.05(G) (requiring SOS to

Such decisions can be of major consequence. Take the 2018 U.S. Senate race in Florida, where ballots in Broward County had the Senate race candidates placed inconspicuously in the bottom left corner, under the ballot instructions.¹⁴⁰ Experts believe this poor placement resulted in 25,000 fewer votes cast for Senate than for governor within the county.¹⁴¹ Given that Broward County is Florida's most Democratic county,¹⁴² and that Republican Rick Scott won the Senatorial election by approximately 10,000 votes, the ballot design itself may have handed the election to Scott.¹⁴³ More generally, the ordering of candidate names can have a major biasing effect on results, typically favoring the candidate at the top of the list.¹⁴⁴

This discretion extends not only to ballot design, but ballot *access* too. While laws will vary by jurisdiction, to qualify for a primary ballot (or general ballot as an independent candidate), candidates must typically (1) meet the qualifications for the office,¹⁴⁵ and (2) garner enough signatures to get on the ballot.¹⁴⁶ Similar signature requirements exist for ballot measures and recall elections.¹⁴⁷ Who verifies these signatures? Often, the office of the chief election official.¹⁴⁸ And when

“[d]etermine and prescribe the forms of ballots”). The ordering of candidate names is, on the other hand, typically left out of the discretion of the chief election official. *See, e.g.*, ARIZ. REV. STAT. ANN. § 16-465(A) (2025) (randomized); LA. STAT. ANN. § 18:551 (2025) (alphabetized); ME. STAT. tit. 21-A, § 601(2)(b) (alphabetized); MINN. STAT. § 204D.08(3) (randomized); N.H. REV. STAT. ANN. § 656:5-a (combination of both).

¹⁴⁰ Spenser Mestel, *How Bad Ballot Design Can Sway the Result of an Election*, GUARDIAN (Nov. 19, 2019, at 02:00 ET), <https://www.theguardian.com/us-news/2019/nov/19/bad-ballot-design-2020-democracy-america> [<https://perma.cc/H2JH-C4X9>].

¹⁴¹ Nate Cohn & Kevin Quealy, *A Mysterious ‘Undervote’ Could End Up Settling the Florida Senate Race*, N.Y. TIMES (Nov. 9, 2018), <https://www.nytimes.com/2018/11/09/upshot/florida-senate-race-broward-undercount.html> [<https://perma.cc/KB5W-Z8EF>].

¹⁴² *Id.*

¹⁴³ *See id.* In Florida, it is indeed the SOS who adopts rules for ballot design. FLA. STAT. § 101.151(9)(a) (2025).

¹⁴⁴ Joanne M. Miller & Jon A. Krosnick, *The Impact of Candidate Name Order on Election Outcomes*, 62 POL. OP. Q. 291, 315–16 (1998).

¹⁴⁵ These qualifications are often constitutionally enshrined. *See, e.g.*, U.S. CONST. art. II, § 1, cl. 5 (listing the qualifications for President).

¹⁴⁶ *See Petition Requirements to Run for the State Legislature*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 25, 2025), <https://www.ncsl.org/elections-and-campaigns/petition-requirements-to-run-for-the-state-legislature> [<https://perma.cc/C8CS-H85U>] (“Every state except Alaska has a petition process to get on the ballot.”).

¹⁴⁷ *Signature Requirements for Ballot Measures*, BALLOTEDIA, https://ballotpedia.org/Signature_requirements_for_ballot_measures [<https://perma.cc/H577-KV98>] (last visited Jan. 5, 2026); *Recall of State Officials*, *supra* note 65.

¹⁴⁸ *See, e.g.*, GA. CODE ANN. § 21-2-171(a)(3) (2025); MINN. STAT. § 211C.06 (2025); OHIO REV. CODE ANN. § 3519.16(E)–(F) (West 2025); *see also* FLA. STAT. § 100.371(1)(a), (14) (SOS counts and county election supervisors verify); NEV. REV. STAT. § 293.12795 (2025) (SOS may order reverification of signatures); 25 PA. STAT. AND CONS. STAT. ANN. § 2936 (West 2025) (SOS may review signatures and disregard those deemed not genuine).

the chief election official does not believe a signature threshold has been met, they can exclude a candidate or ballot measure from the ballot. So too can they deny access when they believe a candidate, party, or ballot measure has not met constitutional or statutory qualifications. In Maine, for example, candidates must file a form with the SOS that confirms they meet the “statutory and constitutional requirements of the office sought.”¹⁴⁹ It was under this authority that Maine SOS Shenna Bellows famously, though ultimately unsuccessfully, blocked Donald Trump from being on the state’s 2024 Republican primary ballot for his role in the January 6th U.S. Capitol attack.¹⁵⁰ Unitary chief election officials hold comparable authority in many other states.¹⁵¹

In some circumstances, unitary chief election officials have even more discretion over who is on the ballot. Some get to decide whether to retain or remove candidates who have withdrawn or died. In Georgia, for instance, the SOS *may*—but is not required to—reprint new ballots if a candidate has withdrawn from an election within a certain period of time before it.¹⁵² And in Maine and New Hampshire, the SOS need not remove dead or unqualified candidates from the ballot if death occurs or disqualification is discovered shortly before the election.¹⁵³ If the SOS keeps the ballot as is, voters may unknowingly vote for somebody who in actuality cannot take office. Meanwhile, in Michigan, the SOS can unilaterally decide to place a candidate on a presidential primary ballot upon determining that, well, they belong on the ballot¹⁵⁴—a maximal exercise of chief election official discretion.

Perhaps one of the most significant ways unitary chief election officials influence ballots is through the language used to describe ballot measures. Indeed, in about one-third of the twenty-six states permitting citizen-initiated ballot measures, the unitary chief election official holds sole authority to determine the exact wording that appears on voters’

¹⁴⁹ ME. STAT. tit. 21-A, § 355 (2025).

¹⁵⁰ Secretary Bellows withdrew her decision to bar Trump from the primary ballot after the Supreme Court struck down a similar effort by the Colorado SOS. Emma Davis, *Sec. Bellows Withdraws Decision to Disqualify Trump from Ballot Following U.S. Supreme Court Ruling*, ME. MORNING STAR (Mar. 4, 2024), <https://mainemorningstar.com/2024/03/04/scotus-says-trump-can-stay-on-colorados-ballot-heres-what-that-means-for-maine> [<https://perma.cc/33CA-E9WP>]; see also *Trump v. Anderson*, 144 S. Ct. 662, 671 (2024) (overturning similar decision by Colorado SOS).

¹⁵¹ See, e.g., GA. CODE ANN. § 21-2-5(a)–(c); LA. STAT. ANN. § 18:470(A)(1) (2025); OHIO REV. CODE ANN. § 3517.07; 25 PA. STAT. AND CONS. STAT. ANN. § 2861(a).

¹⁵² GA. CODE ANN. § 21-2-134(a)(1)–(2).

¹⁵³ ME. STAT. tit. 21-A, § 371(5); N.H. REV. STAT. ANN. §§ 655:38, 656:21 (2025).

¹⁵⁴ See MICH. COMP. LAWS §§ 168.614a(1), 168.615a (2025) (“[T]he [SOS] shall issue a list of the individuals generally advocated by the national news media to be potential presidential candidates . . .”).

ballots.¹⁵⁵ Many others meanwhile hold co-authority over the matter with their state's attorney general.¹⁵⁶ In these states, when somebody votes on a ballot measure on election day, the description on which they rely to make an informed choice will have been crafted by merely one or two officeholders.

The magnitude of this power should not be understated. The wording of a ballot measure can quite literally change the outcome of how people vote on it.¹⁵⁷ Take, for example, the following two versions of what ultimately amounts to the same ballot question, whether Ohio should replace its politician-led Ohio Redistricting Commission with an independent Ohio Citizens Redistricting Commission:

Version A: Repeal constitutional protections against gerrymandering approved by nearly three-quarters of Ohio electors participating in the statewide elections of 2015 and 2018, and eliminate the longstanding ability of Ohio citizens to hold their representatives accountable for establishing fair state legislative and congressional districts.

Version B: Amend the Ohio Constitution to change how state legislative and congressional districts are drawn, replacing the current commission of elected officials with a fifteen-member appointed commission, including five members from each major party and five unaffiliated or independent members.¹⁵⁸

While both in theory ask the same question, the former utilizes loaded language that suggests the change would actually exacerbate gerrymandering rather than offer a potentially better solution to it. An unwitting anti-gerrymandering voter might vote “No” to the amendment based on Version A when they would have in fact voted “Yes” if presented with Version B. And it is often up to the unitary chief election official to decide which version goes on the ballot. Indeed,

¹⁵⁵ ELECTION REFORMERS NETWORK, PARTISAN CONTROL OF BALLOT MEASURES: HOW TO STOP MANIPULATION OF CITIZEN INITIATIVES 25–27 (2025), https://cdn.prod.website-files.com/642dcbc53f522476efc85893/67b7435eb1eaf84deca013cf_ERN%20Nat1%20Ballot%20Initiative%20Report-FINAL.pdf [<https://perma.cc/PE3W-WVGX>] (Alaska, Maine, Massachusetts, Michigan, Missouri, New Mexico, and Wyoming).

¹⁵⁶ See *id.* (Arizona, Colorado, Maryland, Nevada, and North Dakota); see also OHIO REV. CODE ANN. §§ 3501.05(I)–(J) (giving SOS power to certify form and wording of state referendum questions/issues and to approve language for any local question/issue).

¹⁵⁷ See Craig M. Burnett & Vladimir Kogan, *When Does Ballot Language Influence Voter Choices? Evidence from a Survey Experiment*, 32 POL. COMMUN 109, 119–21 (2015) (finding that word choice matters “in a close race where just a few percentage points can swing the outcome of the election”).

¹⁵⁸ Version A reflects actual ballot language for a proposed amendment to the Ohio Constitution in 2024. FRANK LAROSE, OHIO SEC’Y OF STATE, PROPOSED AMENDMENT TO THE OHIO CONSTITUTION 1 (2024), <https://www.ohiosos.gov/globalassets/elections/2024/gen/issuereport.pdf> [<https://perma.cc/D2DR-RS9R>].

Version A above reflects actual ballot language adopted by Ohio SOS Frank LaRose in 2024.¹⁵⁹ Perhaps it is unsurprising then that Ohio voters ultimately voted against establishing an independent redistricting commission, as many voters likely interpreted “No” to mean they were voting *against* gerrymandering.¹⁶⁰

Finally, beyond form and language, unitary chief election officials can sometimes determine whether voters can even use certain types of ballots. In Georgia, for example, the SOS can decide whether absentee ballots may be used in municipal elections,¹⁶¹ thus giving the SOS the discretion to make voting easier or harder for certain segments of the population.¹⁶² Likewise, in Pennsylvania, the SOS “may,” but need not, develop electronic systems through which qualified voters may apply for absentee or mail-in ballots (as well as request permanent absentee or mail-in voter status).¹⁶³ In other states, the chief election official has direct influence over the rules governing the conduct of absentee and mail-in voting¹⁶⁴—including instructions to voters, procedures for challenging votes, and procedures for proper handling of ballots—choices that, as we witnessed during the COVID-19 pandemic, can have a substantial impact over which votes ultimately get counted versus rejected.¹⁶⁵

4. *Voting Equipment*

Unitary chief election officials often decide which voting equipment is permitted or not permitted for use on election day. Indeed, when you

¹⁵⁹ See *id.* The full ballot language was hundreds of words long, containing further loaded language such as: “Establish a new taxpayer-funded commission of appointees required to gerrymander the boundaries of state legislative and congressional districts to favor either of the two largest political parties in the state of Ohio.” *Id.* at 1–2.

¹⁶⁰ Susan Tebben, *Ohio Voters Reject Issue 1, Leaving Politicians in Control over Map-Making Process*, OHIO CAPITAL J. (Nov. 5, 2024), <https://ohiocapitaljournal.com/2024/11/05/ohio-voters-reject-issue-1-leaving-politicians-in-control-over-map-making-process-projects> [<https://perma.cc/7G4E-9ZBC>].

¹⁶¹ GA. CODE ANN. § 21-2-384(e)(6) (2025).

¹⁶² See Lisa Schur, Meera Adya & Mason Ameri, *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 14 ELECTION L.J. 60, 65 (2015) (discussing importance of voting by mail for those with visual or mobility impairments).

¹⁶³ 25 PA. STAT. AND CONS. STAT. ANN. §§ 3146.2(k), 3150.12(g)(2) (West 2025).

¹⁶⁴ See, e.g., ME. STAT. tit. 21-A, § 760-B(3) (“The Secretary of State may adopt rules necessary for the inspection of absentee ballot applications and envelopes before they are processed.”); MINN. STAT. § 204B.45(3) (2025) (“The secretary of state shall adopt rules for the conduct of mail balloting . . .”).

¹⁶⁵ See Declan Chin, *A Deep Dive into Absentee Ballot Rejection in the 2020 General Election*, ELECTIONS PERFORMANCE INDEX (Dec. 16, 2021), <https://elections-blog.mit.edu/articles/deep-dive-absentee-ballot-rejection-2020-general-election> [<https://perma.cc/E8AB-CCBQ>] (demonstrating how certain states rejected ballots in 2020 at a much higher rate than others).

go to the polls and vote via a scanned ballot or electronic machine,¹⁶⁶ it was likely your state's chief election official who determined you would, or at least could, vote via that method.¹⁶⁷ This authority can extend not only to voting machines, but also tabulating equipment and software, electronic poll books, and voter registration systems.¹⁶⁸ In some states, like Georgia, the chief election official's decision mandates uniform adoption among all localities.¹⁶⁹ In other states, the chief election official instead certifies equipment that local election officials *may* or may not adopt for use; while certification permits adoption, it does not require it.¹⁷⁰ This certification power is typically accompanied with the power to *decertify* voting equipment too, sometimes on a locality-by-locality basis.¹⁷¹

Statutory grants of certification power often require the chief election official to consult a team of experts before determining whether to approve voting equipment. Yet, the chief election official is rarely beholden to the opinions of such experts. In Louisiana, for instance, the SOS must contract “no fewer than three but no more than five qualified independent experts to assist him in performing the state certification examination” of voting systems.¹⁷² Nothing in the statute, however, mandates the SOS to adhere to these experts' findings. Georgia and Pennsylvania similarly require their respective SOSs to consult one patent law expert and two mechanics experts when examining or reexamining voting machines,¹⁷³ yet ultimately leave the decision to the

¹⁶⁶ For an overview of voting equipment, see *Voting Technology*, MIT ELECTION DATA & SCI. LAB (Apr. 21, 2023), <https://electionlab.mit.edu/research/voting-technology> [<https://perma.cc/6UX3-EQPU>].

¹⁶⁷ See, e.g., ARIZ. REV. STAT. ANN. § 16-442(A) (2025); FLA. STAT. §§ 101.5605–.5606 (2025); GA. CODE ANN. § 21-2-300(a)(1)–(2) (2025); LA. STAT. ANN. §§ 18:1362, 18:1373(A) (2025); NEV. REV. STAT. § 293B.1045(1) (2025); 25 PA. STAT. AND CONS. STAT. ANN. §§ 2621(b), 3004. But see ME. STAT. tit. 21-A, §§ 812(9), 843(7) (requiring attorney general approval); MICH. COMP. LAWS §§ 168.37, 168.795a (2025) (requiring approval by independent accredited testing authority and board of state canvassers); OHIO REV. CODE ANN. § 3506.05(C)(1) (West 2025) (requiring approval by board of voting systems examiners).

¹⁶⁸ For instance, the Arizona SOS's authority over these decisions extends broadly to “machines or devices.” ARIZ. REV. STAT. ANN. § 16-442(A).

¹⁶⁹ See, e.g., GA. CODE ANN. § 21-2-300(a)(1).

¹⁷⁰ See, e.g., NEV. REV. STAT. § 293B.1045(1) (“No mechanical voting system or mechanical recording device *may* be . . . used . . . unless . . . approved by the Secretary of State.” (emphasis added)).

¹⁷¹ See, e.g., Marc Levy & Mark Scoloro, *Pennsylvania Decertifies County's Voting System After Audit*, AP NEWS (July 21, 2021), <https://apnews.com/article/technology-joe-biden-business-government-and-politics-pennsylvania-93c5f0b03167971d4dc5919e68949c51> [<https://perma.cc/2R24-BXA5>] (ascribing decertification action to Acting SOS Veronica Degraffenreid).

¹⁷² LA. STAT. ANN. § 18:1361(C).

¹⁷³ GA. CODE ANN. § 21-2-324(b); 25 PA. STAT. AND CONS. STAT. ANN. § 3006(b) (West 2025).

SOS. Meanwhile, in numerous states, the unitary chief election official can adopt experimental use of new voting systems or devices without having to go through any formal consultation or committee process.¹⁷⁴

While these decisions can seem fairly technical and procedural, they can have major implications for electoral efficiency. Prior to 2000, the majority of the country relied upon analog methods of voting, such as mechanical lever machines, punch cards, and hand-counted paper ballots.¹⁷⁵ This began to change around the turn of the century, when election officials began adopting optical scanners and direct-recording electronic (DRE) machines as the primary methods of voting.¹⁷⁶ This transition proved a net positive for our democracy by making the vote-counting process faster, cheaper, and more accurate.¹⁷⁷ Yet, the use of voting machines is not a given. As shown above, a chief election official could unilaterally decide to decertify all voting machines in many states. Indeed, there is a growing movement among some election officials to return to hand-counting ballots, born out of conspiratorial suspicions against voting machines.¹⁷⁸ For many voters, the efficiency and accuracy of their election results may rest in the hands of one person.

Such influence extends not only to the selection of equipment, but also to the security thereof. One such responsibility includes determining how voting machines and other equipment are stored.¹⁷⁹ Relatedly, some unitary chief election officials can grant people access to voting equipment with seemingly no limitations. Take Georgia, where a person may legally alter, modify, or change “any aspect of . . . voting equipment” if they receive “prior approval of the [SOS].”¹⁸⁰ With such broad authority, a chief election official alone can determine who may

¹⁷⁴ See, e.g., ARIZ. REV. STAT. ANN. § 16-442(F) (2025); GA. CODE ANN. § 21-2-300(4); MINN. STAT. § 206.81(a) (2025).

¹⁷⁵ *Voting Technology*, *supra* note 166.

¹⁷⁶ See *id.* These decisions were driven in no small part by HAVA’s ban on punch cards and lever machines in federal elections. See 52 U.S.C. § 20902(a)(2).

¹⁷⁷ *Hand Counting Ballots*, BRENNAN CTR. FOR JUST. (July 29, 2024), <https://www.brennancenter.org/our-work/research-reports/hand-counting-ballots> [<https://perma.cc/EU79-A8FZ>].

¹⁷⁸ See, e.g., Mike Wendling, *Georgia Elections Board to Require Hand Count of Ballots*, BBC (Sep. 20, 2024), <https://www.bbc.com/news/articles/cz7jewdje17o> [<https://perma.cc/QGB4-GMBM>] (“Many Republicans . . . believe Trump’s oft-repeated but false claims that the voting system is riddled with fraud and has been ‘rigged’ by Democrats.”).

¹⁷⁹ See, e.g., GA. CODE ANN. §§ 21-2-379.9(a), 21-2-379.26(a) (2025); ME. STAT. tit. 21-A, § 737-A (2025); NEV. REV. STAT. §§ 293.3594(1)–(2), 293.3604(1)(b)(2) (2025).

¹⁸⁰ GA. CODE ANN. § 21-2-582.1(b). Georgia seemingly has no administrative rules in place to limit this power. See GA. COMP. P. & REGS. 183-2-11.01 (2025) (“No rules applicable to voting machines have been adopted.”).

alter or handle voting equipment—regardless of background, affiliation, or, perhaps most importantly, intent.¹⁸¹

Beyond certifying and securing voting equipment, unitary chief election officials are usually tasked with supplying various equipment and other election supplies to local election officials and other relevant agencies. This can include—among other things—voting machines and systems,¹⁸² ballots,¹⁸³ ballot containers and seals,¹⁸⁴ ballot drop boxes,¹⁸⁵ and voter registration forms.¹⁸⁶ While such allocative authority is sometimes subject to strict statutory guidelines—including mathematical equations and statistical considerations¹⁸⁷—it is often left to the discretion of the chief election official. In Louisiana, for instance, the SOS “*may* allocate additional voting machines” to parishes that request them.¹⁸⁸ Likewise, the Nevada SOS “*may* purchase” mechanical voting systems and record devices to lease to counties.¹⁸⁹ And in New Hampshire, the SOS furnishes to towns and cities a number of ballots they “*deem sufficient*” for the upcoming election.¹⁹⁰

Discretionary allocation has the potential to cause immense grief on election day. When a polling place runs out of ballots, people have to sit around for supplies to be replenished.¹⁹¹ When it lacks a sufficient number of voting machines, people end up in hours-long lines that wrap around the block.¹⁹² And under such circumstances, people *will*

¹⁸¹ One may recall the numerous election deniers who attempted to access voting machines in the wake of the 2020 presidential election to prove that fraud occurred. *See generally* Emma Brown & Jon Swaine, *Inside the Secretive Effort by Trump Allies to Access Voting Machines*, WASH. POST (Oct. 28, 2022), <https://www.washingtonpost.com/investigations/2022/10/28/coffee-county-georgia-voting-trump/> [<https://perma.cc/M74D-LGYP>].

¹⁸² *See, e.g.*, LA. STAT. ANN. § 18:1363(G) (2025); NEV. REV. STAT. § 293B.122(1).

¹⁸³ *See, e.g.*, N.H. REV. STAT. ANN. §§ 656:19, 656:26–27, 656:33–34 (2025).

¹⁸⁴ *See, e.g.*, ME. STAT. tit. 21-A, § 737-A; MICH. COMP. LAWS §§ 168.666, 168.666a (2025).

¹⁸⁵ *See, e.g.*, MICH. COMP. LAWS § 168.761d(2).

¹⁸⁶ *See, e.g.*, ARIZ. REV. STAT. ANN. § 16-151(B) (2025); OHIO REV. CODE ANN. § 3501.05(T) (West 2025).

¹⁸⁷ In Maine, for example, when determining the number of ballots to provide to each municipality, the SOS must “review the number of votes cast at the last election of that type as well as current registration and enrollment statistics.” ME. STAT. tit. 21-A, § 606(1).

¹⁸⁸ LA. STAT. ANN. § 18:1363(G) (2025) (emphasis added).

¹⁸⁹ NEV. REV. STAT. § 293B.122(1) (2025) (emphasis added).

¹⁹⁰ N.H. REV. STAT. ANN. §§ 656:19, 656:26–27, 656:33–34 (2025).

¹⁹¹ *See, e.g.*, Willoughby Mariano & Zeninor Enwemeka, *At Least 14 Boston Precincts Ran Out of Ballots in November Election, WBUR Analysis Finds*, WBUR (Dec. 5, 2024), <https://www.wbur.org/news/2024/12/05/boston-ballot-shortages-election-investigation> [<https://perma.cc/ZWB3-WB7B>].

¹⁹² *See* CHRISTOPHER FAMIGHETTI, AMANDA MELILLO & MYRNA PÉREZ, *ELECTION DAY LONG LINES: RESOURCE ALLOCATION 2* (2014), https://www.brennancenter.org/media/97/download/Report_ElectionDayLongLines-ResourceAllocation.pdf?inline=1 [<https://perma.cc/SF5Q-JC2L>] (“Precincts with the longest lines had fewer machines, poll workers, or both.”).

leave before they have had the opportunity to vote.¹⁹³ Voting is, after all, a time commitment. Not everybody has hours to spare at the polls, especially those who cannot afford to leave work for half a day. Poorly managed, inequitable resource allocation can disproportionately punish lower-income voters and voters of color,¹⁹⁴ in turn exacerbating the racial and income voting gaps that persist throughout the United States.¹⁹⁵ At bottom, how unitary chief election officials allocate resources can have substantial effects on how fairly and reliably our democratic processes function.

5. *Counting & Certification*

When it comes to actually counting the vote, unitary chief election officials wield a smaller, but not insignificant, degree of authority. The actual process for computing and canvassing returns is typically laid out by statute,¹⁹⁶ providing local election officials and poll workers with detailed guidance working through and reporting their precinct's results. Sometimes, unitary chief election officials have moderate discretion over this process. In Maine, for example, the SOS prescribes "approved counting methods" to election clerks.¹⁹⁷ Likewise, Ohio grants its SOS authority to order different methods for counting and tallying ballots than those provided in its election code.¹⁹⁸ Such powers are not universal, though, and ultimately still leave counting and canvassing in the hands of lower-level officials.

At the same time, many unitary chief election officials have discretion over the challenging of reported results. Indeed, in several states, the chief election official may unilaterally order a recount or recanvass of an election, regardless of the actual margin of victory in said election.¹⁹⁹ In others, the chief election official oversees

¹⁹³ See CHARLES STEWART III & STEPHEN ANSOLABEHRE, U.S. ELECTION ASSISTANCE COMM'N, WAITING IN LINE TO VOTE 2 (2013), <https://www.eac.gov/documents/2017/02/24/waiting-line-vote-white-paper-stewart-ansolabehere> [<https://perma.cc/BQ35-L8LH>] (noting only 41% of voters are willing to wait "as long as it takes" to vote).

¹⁹⁴ See FAMIGHETTI, MELILLO & PÉREZ, *supra* note 192, at 1 ("Voters in precincts with more minorities experienced longer waits.").

¹⁹⁵ See Daniel Laurison, Hana Brown & Ankit Rastogi, *Voting Intersections: Race, Class, and Participation in Presidential Elections in the United States 2008–2016*, 65 SOCIO. PERSPS. 768, 779–82 (2022) (finding Black voters have a higher propensity to participate in elections but that unequal resource distribution correlates with Black voter suppression).

¹⁹⁶ See, e.g., 25 PA. STAT. AND CONS. STAT. ANN. § 3154 (West 2025).

¹⁹⁷ ME. STAT. tit. 21-A, § 695(2) (2025).

¹⁹⁸ See OHIO REV. CODE ANN. § 3505.27 (West 2025) (requiring counting and tallying to be done in accordance with prescribed procedures "[u]nless otherwise ordered by the secretary of state or the board of elections").

¹⁹⁹ See, e.g., GA. CODE ANN. § 21-2-495(c)(1) (2025); MINN. STAT. § 206.88 (2025); 25 PA. STAT. AND CONS. STAT. ANN. § 2621(f.2).

and/or provides instructions for the recount process.²⁰⁰ Meanwhile, in New Hampshire, the SOS reviews appeals of recount determinations made by the state's Ballot Law Commission and renders decisions that are, quite intriguingly, prohibited by statute from being appealed to the judiciary.²⁰¹ Finally, in addition to recounts, some chief election officials have authority to order and prescribe procedures for post-election audits of certain elections.²⁰²

Once the count is settled, chief election officials often have a role to play in certifying the election results.²⁰³ With the rise in election denialism among officeholders,²⁰⁴ this particular "power" has caused many to fear that an overly partisan chief election official could refuse to certify the victories of political rivals.²⁰⁵ Nevertheless, this Article does not consider certification to be an act of discretionary authority. To the contrary, certification is almost always a statutorily commanded duty,²⁰⁶ one that can be compelled via a writ of mandamus if needed.²⁰⁷ Certification is thus not so much an opportunity for unilateral decisionmaking for chief election officials as it is a legal mandate.

6. *Internal Administration*

The unitary chief election official's authority shapes not only the implementation of elections, but also the internal operations of election officials and workers. They are, after all, the chief executive of their state's election administration regime. In nearly every state I examined, for instance, the chief election official plays some role in training those who carry out elections. These responsibilities range from approving

²⁰⁰ See, e.g., ME. STAT. tit. 21-A, § 737-A; MICH. COMP. LAWS § 168.874(2) (2025).

²⁰¹ See N.H. REV. STAT. ANN. § 665:6 to 9-a (2025) ("[N]o court shall have jurisdiction to review such decision.")

²⁰² See, e.g., ME. STAT. tit. 21-A, § 726; MICH. COMP. LAWS § 168.31a; OHIO REV. CODE ANN. § 3505.331(B).

²⁰³ See COUNCIL OF STATE GOV'TS, *supra* note 23, at 154–55.

²⁰⁴ See *infra* notes 265–74 and accompanying text.

²⁰⁵ See, e.g., Kate Hamilton, *State Implementation of the Electoral Count Reform Act and the Mitigation of Election-Subversion Risk in 2024 and Beyond*, 133 YALE L.J.F. 249, 255–56 (2023); Matt Cohen, *What Happens When Election Officials Refuse to Certify Results?*, DEMOCRACY DKT. (Aug. 1, 2024), <https://www.democracydocket.com/analysis/what-happens-when-election-officials-refuse-to-certify-results> [<https://perma.cc/B8WF-H42C>].

²⁰⁶ See LAUREN MILLER KARALUNAS, ELECTION CERTIFICATION: HOW TO STRENGTHEN STATE FRAMEWORKS 10 (2025), https://www.brennancenter.org/media/14032/download/certification_crises_report.pdf?inline=1 [<https://perma.cc/EGK6-YFNS>] (noting that statutes near-uniformly use the commanding "shall" to mandate certification).

²⁰⁷ See Derek T. Muller, *Election Subversion and the Writ of Mandamus*, 65 WM. & MARY L. REV. 327, 347–48 (2023) (arguing that courts can address election subversion by issuing writs of mandamus using a 1983 Ohio case as an illustration).

formal training programs,²⁰⁸ to creating informational materials for workers,²⁰⁹ to actually developing the training curricula themselves.²¹⁰ Accordingly, when local election officials and workers learn how to properly fulfill their responsibilities, they are often learning through the lens of the unitary chief election official's own legal interpretations and administrative priorities.

Many chief election officials are, in fact, able to unilaterally develop what is called “internal administrative law,” internal policies “governing agency functioning that are created within the agency . . . that speak primarily to government personnel.”²¹¹ Internal law can take many forms—manuals, handbooks, directives, policies, guidelines, advisory opinions, and unwritten norms—and ideally serves as a means to adopt uniform, nonarbitrary intra-agency practices in the fulfillment of the agency's statutory duties.²¹² Proper election administration indeed *necessitates* internal law at times, lest ambiguities in a state's election law be resolved inconsistently on a locality-by-locality basis. As Kevin Stack notes, internal law played a crucial role in Pennsylvania during the 2020 election, when many voters submitted mail-in ballots without fully following instructions.²¹³ County officials faced a litany of questions, including:

- (1) are ballots submitted without the secondary secrecy envelope (so-called “naked ballots”) acceptable;
- (2) may county election boards exclude ballots based upon the failure of the signature to match the voter's signatures on file;
- (3) are ballots that are signed and dated but on which the voter has neglected to print her name or address acceptable? . . .
- (4) whether they could create sites for accepting mail-in ballots other than their offices.²¹⁴

²⁰⁸ See, e.g., LA. STAT. ANN. § 18:117 (2025) (approving for registrars and municipal clerks); MINN. STAT. § 203B.05(1)(2) (2025) (approving for clerks using statewide voter registration system); NEV. REV. STAT. §§ 293.875(1), 293.877 (2025) (approving cybersecurity and signature verification training for city and county clerks).

²⁰⁹ See, e.g., LA. STAT. ANN. § 18:421(C).

²¹⁰ See, e.g., GA. CODE ANN. § 21-2-50(a)(11) (2025) (conducting training sessions for registrars and superintendents of elections); MICH. COMP. LAWS § 168.31(1)(j), (m) (2025) (establishing training curriculum for precinct inspectors and local election official accreditation); MINN. STAT. §§ 204B.25(2), 204B.27(10) (establishing training programs for county auditors, local election officials, and election judges); NEV. REV. STAT. § 293.2504(1) (developing training course on elections procedures for city and county clerks); OHIO REV. CODE ANN. § 3501.27(B) (West 2025) (preparing training materials for election officers, though providing local election boards opportunity to add additional materials); 25 PA. STAT. AND CONS. STAT. ANN. § 2621(f.1) (West 2025) (developing in consultation with county boards of elections a voluntary professional certification and poll worker training program).

²¹¹ Gillian E. Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1239, 1249–56 (2017).

²¹² See *id.*; see also Kevin M. Stack, *The Internal Law of Democracy*, 77 VAND. L. REV. 1627, 1629 (2024) (defining internal law).

²¹³ Stack, *supra* note 212, at 1662–63.

²¹⁴ *Id.* at 1663 (footnote omitted).

To avoid chaos, Pennsylvania Secretary of the Commonwealth Kathy Boockvar issued multiple directives to county election boards addressing these questions, thus creating more uniform processing of mail-in ballots during the pandemic.²¹⁵

Suffice to say, unitary chief election officials are presented with numerous opportunities to issue internal law. Sometimes they have express statutory authority to issue directives and guidance to other election officials and workers. For some chief election officials, this statutory authority is broad, allowing them to issue directives and guidance on all election-related matters.²¹⁶ For others, the authority is much more targeted at specific areas of election law.²¹⁷ Creating internal law does not, however, necessarily require statutory permission. To the contrary, a crucial function of internal law in democratic society is to address the unforeseeable questions that naturally arise, yet remain unaddressed by statute or regulation, when administering elections.²¹⁸ Indeed, when Secretary Boockvar issued her directives on mail-in ballots in 2020, no Pennsylvania statute seemingly gave her explicit ability to do so. Rather, the authority was implied by virtue of being chief election official.

Some unitary chief election officials' relationships with lower-level election officials and workers even mirror that of a manager-employee relationship. Take Ohio as an example: In Ohio, the SOS can "compel the observance" of election laws by other election officials,²¹⁹ and

²¹⁵ See *id.*; see also PA. DEP'T OF STATE, GUIDANCE CONCERNING CIVILIAN ABSENTEE AND MAIL-IN BALLOT PROCEDURES (2025), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2025/2025-04-guidance-civilian%20absentee-mail%20ballot%20procedures.pdf> [https://perma.cc/6EZN-48PB] (acting as an updated version of the directives).

²¹⁶ See, e.g., MINN. STAT. § 201.221(2) (2025); OHIO REV. CODE ANN. §§ 3501.05(B), 3501.053(A) (West 2025). Some chief election officials also produce periodic manuals that summarize their interpretation of their state's election code. See, e.g., ARIZ. DEP'T OF STATE, *supra* note 117; N.H. REV. STAT. ANN. § 652:22 (2025) (requiring attorney general approval).

²¹⁷ See, e.g., ME. STAT. tit. 21-A, §§ 693, 696(3), (5) (2025) (providing instructions on handling spoiled ballots, defective ballots, and void ballots); MICH. COMP. LAWS §§ 168.720c, 168.31(1)(b) (2025) (providing guidance on implementation of early voting and methods of conducting elections); OHIO REV. CODE ANN. § 3506.15 (providing local election boards with guidance on voting equipment use); 25 PA. STAT. AND CONS. STAT. ANN. § 3031.5(a) (West 2025) (providing directives and instructions on implementation of electronic voting procedures and operation of electronic voting systems).

²¹⁸ Stack, *supra* note 212, at 1711.

²¹⁹ OHIO REV. CODE ANN. § 3501.05(M). In other states, refusal to adhere to the instructions of the SOS, or the election law more generally, can result in civil or criminal sanctions. See, e.g., FLA. STAT. § 97.012(14) (2025) (granting the SOS the ability "to enforce compliance with a rule of the Department of State"); MICH. COMP. LAWS § 168.931(1)(g) (making it a misdemeanor to willfully disobey or ignore the SOS's orders); 25 PA. CONS. STAT. § 1804(a) (2025) (authorizing the SOS to seek declaratory or injunctive relief).

even remove or suspend local election board members or employees for neglect, malfeasance, or “any other good and sufficient cause.”²²⁰ Then-SOS John Husted, a Republican, invoked this authority in 2012 to dismiss two Democratic members of the Montgomery County Board of Elections for supporting weekend voting.²²¹ The SOS can also require local election boards to discuss any topic pertaining to election administration during their meetings,²²² and moreover resolves internal board disputes by acting as a tiebreaking vote in instances of deadlock,²²³ a power the present Secretary LaRose has invoked at least eighteen times since taking office seven years ago.²²⁴ The Ohio SOS even has say over election worker pay, setting the maximum per diem compensation for precinct election officials,²²⁵ an act that, while seemingly trivial, has the potential to result in worker shortages if set too low.²²⁶

In general, unitary chief election officials have sweeping capabilities to shape the internal aspects of election administration. At the same time, their influence over how people think about election law extends beyond fellow administrators to the public at large.

7. Public Education

The most outward facing role of the unitary chief election official is that of voter educator.²²⁷ In nearly every state, the chief election official possesses some statutory power/obligation to educate the public on voting- and election-related matters. Most are, for example, tasked with providing voters with information on how to register

²²⁰ OHIO REV. CODE ANN. § 3501.16.

²²¹ See Jim Siegel, *Husted Fires Election Officials for Votes that Defied His Directive*, COLUMBUS DISPATCH (Aug. 28, 2012), <https://www.dispatch.com/story/news/politics/2012/08/28/husted-fires-election-officials-for/23926685007> [<https://perma.cc/5J69-DQU9>].

²²² OHIO REV. CODE ANN. § 3501.11(BB)(14) (West 2025).

²²³ *Id.* § 3501.11(X); cf. N.H. REV. STAT. ANN. § 659:9-a (2025) (resolving conflicting interpretations of state and federal laws arising between city clerks and other election officials).

²²⁴ See Andrew Tobias, *Keeping Score on Frank LaRose's Tie-Breaking Votes; Ohio's Closest Congressional Districts*, SIGNAL CLEVELAND (Dec. 5, 2024), <https://signalcleveland.org/keeping-score-on-frank-laros-es-tie-breaking-votes> [<https://perma.cc/B3W3-7T7D>].

²²⁵ OHIO REV. CODE ANN. § 3501.28(C).

²²⁶ See Isabelle Hamilton, *US Is Facing a Poll Worker Shortage—New Campaign Hopes to Recruit Veterans to Fill the Gap*, ABC NEWS (Aug. 12, 2022), <https://abcnews.go.com/Politics/us-facing-poll-worker-shortage-campaign-hopes-recruit/story?id=88243733> [<https://perma.cc/8QQB-YQCQ>] (linking “low pay” to “shortage of poll workers”).

²²⁷ See BENSON, *supra* note 7, at 67–79 (detailing the various ways through which chief election officials have educated the public on voting).

to vote and how to actually vote.²²⁸ Other potential topics include explanatory materials on upcoming ballot measures,²²⁹ information on the voting rights of individuals with felony convictions,²³⁰ and information on election fraud.²³¹

When it comes to voter education, unitary chief election officials can exercise discretion in two distinct ways. First, depending on the provision, they can seemingly pick the means through which to educate voters. Take Georgia's election code, which simply requires the SOS "[t]o prepare and furnish information for citizens on voter registration and voting."²³² Nothing in this provision specifies *how* the Georgia SOS should provide this information. The choice instead seems to be in the hands of the SOS. Indeed, during the rising ubiquity of the internet, we saw multiple chief election officials choose to utilize the internet to make election information more accessible to voters.²³³ Now, with the majority of Americans getting news from social media,²³⁴ it will be up to chief election officials to decide whether they wish to engage with the public via such platforms to widely disseminate information to voters. Some have made efforts

²²⁸ See, e.g., GA. CODE ANN. § 21-2-50(a)(13) (2025) ("To prepare and furnish information for citizens on voter registration and voting."); *id.* §§ 21-2-300(d), 21-2-379.8(a) (developing program for voters on proper use of voting equipment and direct recording electronic (DRE) units); ME. STAT. tit. 21-A, § 605-A(2) to (3) (2025) (providing instructional materials to assist voters with registration, voting, and absentee voting); MICH. COMP. LAWS § 168.31(1)(d) (2025) (publishing pamphlet on election law); NEV. REV. STAT. §§ 293.2502(1), 293.2549(1)(a) (2025) (preparing public elections procedures manual and voters' bill of rights); N.H. REV. STAT. ANN. § 652:23 (providing materials to voters on registration and absentee ballot procedures); OHIO REV. CODE ANN. § 3501.05(Z) (educating voters on identification, absentee ballots, provisional ballots, and other voting requirements); 25 PA. STAT. AND CONS. STAT. ANN. § 2626(a) (West 2025) (preparing and disseminating information to public on proof-of-identification requirements).

²²⁹ See, e.g., GA. CODE ANN. § 21-2-4(a) ("The Secretary of State shall be authorized to include . . . a summary or explanation of any state-wide referendum questions to be voted on . . ."); MICH. COMP. LAWS § 168.708 (ordering the SOS to prepare summaries of proposed amendments and disseminate them through local newspapers); OHIO REV. CODE ANN. § 3501.05(E), (BB) (requiring dissemination "in order to inform the voters as fully as possible concerning each proposed constitutional amendment, proposed law, or referendum").

²³⁰ See, e.g., MINN. STAT. § 201.276 (2025) (ordering the SOS to publish and make available information about the voting rights of those convicted of crimes).

²³¹ See, e.g., FLA. STAT. § 97.012(12) (2025) (charging the SOS with maintaining a voter fraud hotline and providing information on voter fraud).

²³² GA. CODE ANN. § 21-2-50(a)(13).

²³³ See BENSON, *supra* note 7, at 68 (detailing online voter education in California, Michigan, Nevada, and Vermont).

²³⁴ See *Social Media and News Fact Sheet*, PEW RSCH. CTR. (Sep. 25, 2025), <https://www.pewresearch.org/journalism/fact-sheet/social-media-and-news-fact-sheet> [https://perma.cc/W8BS-KL6Y] (showing that in 2025, approximately 53% of U.S. adults get news from social media at least sometimes).

to do so. The Connecticut SOS office, for example, has accounts on TikTok, X, Instagram, and Facebook.²³⁵ Not all unitary chief election officials have taken such strides, however.

Second, some unitary chief election officials can decide *which* information to share with the public. Again, in Georgia, the SOS can include any information “as deemed necessary” on instruction cards provided to voters at polling places.²³⁶ Likewise, in New Hampshire, the SOS can include on posters at polling places any statute or regulation that “in the [SOS’s] judgment, would aid a voter in casting a vote.”²³⁷ In these instances, how informed a voter is at a polling place may very well depend on which information the chief election official chooses to make accessible there.

8. Rulemaking

One final form of decisionmaking exercised by unitary chief election officials is rulemaking. As with many executive officials, chief election officials typically possess authority to promulgate rules and regulations to give effect to their state’s election laws. Unlike internal administrative law described above,²³⁸ rulemaking is generally external in nature, governing “the relations of the administration or of officers with citizens.”²³⁹ Put differently, actions lacking the effect or force of law—for example, the issuance instructions, interpretive statements, guidelines, and informational pamphlets—are typically not considered to fall within the realm of rulemaking.²⁴⁰

Some unitary chief election officials are granted broad rulemaking authority to effectuate the entirety of the election code. In Florida, for example, the SOS can “adopt by rule uniform standards for the proper and equitable interpretation and implementation of [the majority

²³⁵ CT Secretary of State (@ctsots), TikTok, <https://www.tiktok.com/@ctsots> [<https://perma.cc/98JU-72FB>]; Office of the Connecticut Secretary of the State (@CTSotS), X, <https://x.com/ctsots?lang=en> [<https://perma.cc/2572-8PPR>]; Office of the Connecticut Secretary of the State (@ctsots), Instagram, <https://www.instagram.com/ctsots/?hl=en> [<https://perma.cc/M8SW-ZCQH>]; Office of the Connecticut Secretary of the State, Facebook, <https://www.facebook.com/CTSOTS> [<https://perma.cc/SZYM-YY5A>].

²³⁶ GA. CODE ANN. § 21-2-400(a).

²³⁷ N.H. REV. STAT. ANN. § 658:29 (2025).

²³⁸ See *supra* notes 211–18 and accompanying text.

²³⁹ Metzger & Stack, *supra* note 211, at 1250 (quoting BRUCE WYMAN, THE PRINCIPLES OF THE ADMINISTRATIVE LAW GOVERNING THE RELATIONS OF PUBLIC OFFICERS § 2, at 4 (Lawbook Exchange ed. 2014) (1903)).

²⁴⁰ The Supreme Court of Michigan recently confronted this distinction in a challenge to Secretary Benson’s issuance of instructions and guidance to election challengers and poll watchers. See *O’Halloran v. Sec’y of State*, 29 N.W.3d 429, 444–45 (Mich. 2024).

of chapters of] the Election Code.”²⁴¹ Meanwhile, in other states, the authority is much more cabined to certain parts of the election code. In Louisiana, for instance, the SOS can prescribe rules regarding registrars,²⁴² voting systems in early voting,²⁴³ and nonpartisan voter education.²⁴⁴

Rulemaking can be an immensely consequential action. Yet, for this Article’s purposes, extended treatment is unnecessary. For one, rulemaking functions more so as a broad procedural conduit than an express grant of specific, substantive election-related authority. Furthermore, in each state, rulemaking is subject to some form of public notice-and-comment process,²⁴⁵ sometimes requiring approval by the state’s attorney general.²⁴⁶ Rulemaking is therefore not the type of discretionary, unilateral decisionmaking with which this Article is primarily concerned.

The range of authority enjoyed by unitary chief election officials is truly comprehensive. To be sure, the precise scope will vary by state, with some wielding more centralized power than others.²⁴⁷ And this Article does not purport to have illustrated the precise bounds of authority of any particular chief election official. Nor has it exhausted every possible power that a unitary chief election official may possess.²⁴⁸ Rather, this Section has provided a general descriptive account of the wide-ranging unilateral decisionmaking powers which many unitary chief election officials wield in the administration of elections.

²⁴¹ FLA. STAT. § 97.012(1) (2025); *see also* NEV. REV. STAT. § 293.124(2) (2025) (“The [SOS] shall adopt such regulations as are necessary to carry out the provisions of this section.”).

²⁴² LA. STAT. ANN. § 18:18(A)(3) (2025).

²⁴³ *Id.* § 18:18(A)(7).

²⁴⁴ *Id.* § 18:18(A)(8)(a).

²⁴⁵ *See* BRIAN BAUGUS, FELER BOSE & JAMES BROUGHTEL, A 50-STATE REVIEW OF REGULATORY PROCEDURES 18–19 (2022), <https://www.mercatus.org/media/75836/download?attachment> [<https://perma.cc/F4BW-QDMV>] (finding that all but two states have some version of notice and comment).

²⁴⁶ *See, e.g.*, LA. STAT. ANN. § 18:18(A)(3), (7), (8)(a).

²⁴⁷ *See infra* Section III.C.

²⁴⁸ Indeed, there are still twenty-nine other states with unitary chief election officials that this Article has not examined. *See supra* note 71 and accompanying text. A few states, for instance, grant their chief election officials broad “emergency powers” in times of disaster, though no state I observed provided such explicit statutory authority. *See* Michael T. Morley, *Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks*, 67 EMORY L.J. 545, 610–11 (2018) (observing that Iowa and North Carolina grant election officials emergency powers, while other states prescribe specific emergency procedures through statute).

Following this analysis, a natural question arises: Is this bad? That is, is unilateral election administration bad? The short answer is: It depends. As noted earlier, Secretary Benson once called chief election officials “guardians of democracy.”²⁴⁹ But what if the chief election official were not a guardian? What if they were instead incompetent or, worse yet, malicious? Unfortunately, these are not mere suppositions. There are, in fact, decades’ worth of examples of unitary chief election officials engaging in misuse and abuse of the office,²⁵⁰ sometimes on account of ineptitude and sometimes on account of unduly partisan conduct. And with the rise of election denialism in the United States, the threat of antidemocratic subversion in unilateral election administration is ever-growing. The next Section discusses this phenomenon in greater detail.

C. *Misuse, Abuse, & Democratic Harm*

When the unitary chief election official engages in bad practices, democracy itself can suffer. As the previous Section demonstrates, there are countless opportunities for unitary chief election officials to use their *intra vires* powers to substantially affect the democratic process, perhaps even altering the outcome of elections. We have, in fact, had plenty of instances of unitary chief election officials making decisions that, if not overtly partisan, were at the very least ill-considered. And it was voters who bore the consequences.

One of the most notorious examples of this occurred in the lead-up to the 2018 Georgia gubernatorial race, when then-SOS Brian Kemp was the Republican nominee for the governor’s office. Recall that in Georgia, the SOS may cancel a voter’s registration after determining that they have moved or are otherwise inactive.²⁵¹ Invoking this authority, Kemp removed over half a million Georgians from the voter rolls for inactivity or change in residency.²⁵² Reports estimate that this action disproportionately affected Democratic voters and voters of color, thus benefiting Kemp in his gubernatorial race.²⁵³ And watchdogs have concluded that thousands of such voters were improperly removed by Kemp.²⁵⁴

²⁴⁹ BENSON, *supra* note 7, at 12.

²⁵⁰ Malicious abuse of election administration dates at least as far back as Jim Crow times. See Stack, *supra* note 212, at 1650–56 (providing an account of how internal law was used “as a tool to implement the discriminatory aims of Jim Crow legislation and state constitutional amendments”).

²⁵¹ GA. CODE ANN. §§ 21-2-234, 21-2-235(a)–(b) (2025).

²⁵² See Caputo, Hing & Kauffman, *supra* note 119.

²⁵³ See *id.*

²⁵⁴ See Durkin, *supra* note 10 (reporting that 340,134 voters were incorrectly removed from Georgia’s voter rolls on the alleged grounds that they had changed residences).

Kemp drew upon additional authority during that same race to place 53,000 Georgians on a “pending list” because their voter registration forms had minor discrepancies with state or federal records.²⁵⁵ Some were flagged due to data entry errors, an issue entirely outside voters’ control.²⁵⁶ And 70% of those placed on the list were Black, more than twice their share of Georgia’s overall population.²⁵⁷ Kemp went on to support abandoning the use of this “exact match” policy—but only after he won the governorship.²⁵⁸

While voter “purges” are among the most commonly reported of chief election officials’ acts, controversial decisions occur across the spectrum of authority. Take Tennessee, for example, where the SOS recently issued internal policy instructing local election officials to reject voters who had committed a felony but did not provide documentation of their restored voting rights.²⁵⁹ Numerous individuals with felony convictions were unable to vote due to this internal policy. Yet, it turns out the policy partially contravened the actual law in Tennessee, under which many individuals with felony convictions automatically have voting rights restored once a certain amount of time has passed.²⁶⁰ In other words, many individuals with felony convictions were improperly denied the right to vote because of the dubious legal interpretations of one person.

Questionable decisionmaking by unitary chief election officials has occurred in the context of ballot language,²⁶¹ voting machines,²⁶²

²⁵⁵ Renalia Du Bose, *Voter Suppression: A Recent Phenomenon or an American Legacy?*, 50 U. BALT. L. REV. 245, 251 (2021).

²⁵⁶ *Id.*

²⁵⁷ See Paul Gowder, *Reconstituting We the People: Frederick Douglass and Jürgen Habermas in Conversation*, 114 NW. U. L. REV. 335, 370 (2019) (“[A]ccording to the press, 70% of those whose registrations were put on hold were Black, compared to 32% of Georgia’s citizens . . .”).

²⁵⁸ *Georgia Largely Abandons Its Broken “Exact Match” Voter Registration Process*, CAMPAIGN LEGAL CTR. (Apr. 5, 2019), <https://campaignlegal.org/press-releases/georgia-largely-abandons-its-broken-exact-match-voter-registration-process> [<https://perma.cc/33ED-Z548>].

²⁵⁹ See Stack, *supra* note 212, at 1698.

²⁶⁰ *Id.* at 1698–99.

²⁶¹ See, e.g., Daniel Nichanian, *Anti-Gerrymandering Groups Warn that Ohio’s Ballot Language Is Misleading Voters*, OHIO CAP. J. (Oct. 29, 2024), <https://ohiocapitaljournal.com/2024/10/29/anti-gerrymandering-groups-warn-that-ohios-ballot-language-is-misleading-voters> [<https://perma.cc/2ATK-EJUQ>] (declaring Secretary of State LaRose “[t]he official most directly responsible for this language”).

²⁶² See, e.g., Hannah Falcon, *Missouri Secretary of State Welcomes Group Demonstrating Hand Counting Ballots at State Capitol*, WGEM (Apr. 2, 2025), <https://www.wgem.com/2025/04/02/missouri-secretary-state-welcomes-group-demonstrating-hand-counting-ballots-state-capitol> [<https://perma.cc/W75N-BFHQ>] (discussing Secretary of State Denny Hoskins’s plan for “less machine tabulation”).

security,²⁶³ and so on—each imposing burdens on the democratic process. Of course, it is impossible to fully discern the motives that drive these decisions, and I do not purport that they are all the product of malicious partisan hackery. Two responses to this point, though: For one, incompetence is still no excuse for bad election administration. Furthermore, there actually *has* been a clear rise in undue partisanship poisoning election administration in recent years, namely via the growth in election denialism following the 2020 presidential election.²⁶⁴

Indeed, since 2020, multiple election deniers have turned their attention to—and attempted to influence—election administration. Some have done so on the local level,²⁶⁵ whereas others have endeavored for the position of chief election official.²⁶⁶ As one example, Jim Marchant—who has explicitly claimed that Trump won the 2020 presidential election—ran for Nevada SOS in 2022. His platform supported, among other things, eliminating mail-in voting and returning to hand-counting ballots,²⁶⁷ actions that would make voting

²⁶³ See Jonathan Shorman, *DOJ Is Sharing State Voter Roll Lists with Homeland Security*, STATELINE (Sep. 12, 2025), <https://stateline.org/2025/09/12/doj-is-sharing-state-voter-roll-lists-with-homeland-security> [<https://perma.cc/UWQ5-9EWL>] (“Indiana Secretary of State Diego Morales . . . confirmed . . . that he had provided the Justice Department with all voter information requested, including driver’s license and partial Social Security numbers.”).

²⁶⁴ See Kristina M. LaPlant, Keith E. Lee & James T. LaPlant, *Stopping the Steal and Selling the Big Lie: An Analysis of Tweets and Certification Votes Among House Republicans in the Wake of the 2020 Presidential Election*, 52 AM. POL. RSCH. 141, 141–43 (2024) (outlining the origins and increasing adoption, following 2020, of election denialism, as well as the primary claims and phenomena which buttressed that increase).

²⁶⁵ See U.S. ELECTION ASSISTANCE COMM’N, 2024 U.S. FEDERAL ELECTIONS: THE INSIDER THREAT 1–2 (2024), https://www.eac.gov/sites/default/files/2024-06/2024_General_Elections_Insider_Threat.pdf [<https://perma.cc/WCR7-DKGE>] (discussing recent insider threats to election administration). *But see* Ferrer, Geyn & Thompson, *supra* note 22, at 969–70 (“[W]e find that partisan election officials do not typically offer a large advantage to their party.”).

²⁶⁶ See Michael Waldman, *Money Pours into Secretary of State Races*, BRENNAN CTR. FOR JUST. (Feb. 15, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/money-pours-secretary-state-races> [<https://perma.cc/S22S-QT23>] (“The Big Lie is driving donations aimed at politicizing the role of many states’ top election official.”).

²⁶⁷ See Benjamin Swasey, *Election Denier Marchant Is the Republican Nominee for Nevada Secretary of State*, NPR (June 15, 2022), <https://www.npr.org/2022/06/15/1104965309/nevada-secretary-of-state-election-results> [<https://perma.cc/8HMA-XZEA>] (stating that Marchant organized a national coalition which aimed to eliminate mail-in voting and return hand-counting ballots). In Nevada, the SOS can disapprove of the use of any “mechanical voting system or mechanical recording device,” making Marchant’s threats very real. *See* NEV. REV. STAT. § 293B.1045(1) (2025).

less accessible and counting less efficient.²⁶⁸ Marchant came within two points of winning the general election.²⁶⁹

As of 2025, election deniers hold unitary chief election official positions in at least four states,²⁷⁰ with others having held the office in years prior. Their conspiratorial ideology has inspired several problematic decisions. In 2021, for example, Texas Secretary of State John Scott conducted a statewide audit of the presidential election, refusing to call the election “smooth and secure.”²⁷¹ Alabama Secretary of State Wes Allen meanwhile withdrew the state from the Electronic Registration Information Center (ERIC), a data-sharing partnership among states designed to maintain accurate voter rolls.²⁷² His reasoning? ERIC is a “Soros-funded, leftist group.”²⁷³ And just earlier this year, Missouri Secretary of State Denny Hoskins pushed for replacing electronic voting machines with paper ballots.²⁷⁴

The consequences of such disruptions can be substantial. Indeed, unduly partisan election administration, in undermining institutional impartiality, can act as a deliberate vehicle for democratic erosion. As Steven Levitsky and Daniel Ziblatt observe, elected autocrats often subvert democracy by “packing and ‘weaponizing’ . . . neutral agencies,”²⁷⁵ such as the election administration regime: “In democracies, such institutions are designed to serve as neutral arbiters For would-be authoritarians . . . [they] pose both a challenge and an opportunity.”²⁷⁶ Impartial election administration presents a hurdle for partisan actors who wish to gain and retain power without actually having to foster

²⁶⁸ See Paul Gronke, Mindy S. Romero, Enrijeta Shino & Daniel M. Thompson, *Vote-by-Mail in the United States*, 3 J. ELECTION ADMIN. RSCH. & PRAC. (SPECIAL ISSUE) 35, 39 (2025) (“[R]esearch shows that expanded access to mail voting modestly increases participation.”); *Hand Counting Ballots*, *supra* note 177 (noting how voting machines are “more accurate, faster, and cheaper than counting all ballots by hand”).

²⁶⁹ *Silver State 2022: General Election Results*, NEV. SEC’Y OF STATE, <https://www.nvsos.gov/silverstate2022gen/NVOther> [<https://perma.cc/JPA3-MWD2>] (last visited Jan. 3, 2026).

²⁷⁰ See *The Landscape of Election Denial in America*, *supra* note 16 (scroll down to “The STATEWIDE Landscape”; then click “explore the data”; then click the “Secretary of State” tab) (listing Alabama, Indiana, Missouri, and Wyoming).

²⁷¹ Vaillancourt, *supra* note 12.

²⁷² Tom Davies, Christina A. Cassidy & Mead Gruver, *Election Skeptics Slow to Get Sweeping Changes in GOP States*, AP NEWS (Feb. 5, 2023), <https://apnews.com/article/politics-alabama-state-government-indiana-wyoming-2022-midterm-elections-698d704ddb103c36b077d74dcd7e1a55> [<https://perma.cc/VU4P-RV3B>].

²⁷³ *Id.*

²⁷⁴ See Falcon, *supra* note 262.

²⁷⁵ STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* 7–8 (2018).

²⁷⁶ *Id.* at 78; see also PIPPA NORRIS, *WHY ELECTORAL INTEGRITY MATTERS* 111–88 (2014) (discussing how electoral integrity reinforces institutional legitimacy, shapes political participation, reduces conflict, and deters regime change, all of which the author argues are crucial to a well-functioning democracy).

political support among the electorate. By seizing control of the election administration regime, they can more easily ensure victory for their party: remove thousands from the voter rolls when they know those affected are more likely to support the opposing party;²⁷⁷ eliminate voting machines when they know that will create massive logistical headaches in areas that lean more to the other side;²⁷⁸ and craft ballot measure language in a way that tricks voters into choosing the partisan actors' desired outcome.²⁷⁹ The overtly partisan unitary chief election official can accelerate democratic backsliding within their state and, in turn, federally, if they fully take advantage of the authority granted to them.

Yet, even without materially altering the democratic process, a unitary chief election official can still establish enough *doubt* in the integrity of our elections. Take, for example, John Scott's decision to audit the 2020 presidential election in Texas.²⁸⁰ While not problematic on its face—and indeed, auditing can serve many prodemocratic purposes²⁸¹—the election denialism fueling the action provided cause for concern. Specifically, it sowed doubt among the public in two ways: For Democrats, it signaled that their election officials were attempting election subversion. For Republicans, it validated their beliefs that the 2020 election was stolen.²⁸² Thus, citizens on both sides were left with serious questions about the integrity of election administration.²⁸³ And when public confidence in elections is undermined, democracy itself weakens. As Levitsky and Ziblatt note, “when citizens do not trust the electoral process, they often lose faith in democracy itself.”²⁸⁴ And when citizens lose faith in democracy, they modify behavior accordingly. They will, for instance, vote less frequently,²⁸⁵ and potentially even support

²⁷⁷ See *supra* notes 117–21 and accompanying text.

²⁷⁸ See *supra* notes 166–71 and accompanying text.

²⁷⁹ See *supra* notes 155–58 and accompanying text.

²⁸⁰ See *supra* note 271 and accompanying text.

²⁸¹ Primarily, it helps legitimize the outcome of an election if no wrongdoing is found, or conversely provides justification to remedy an election if wrongdoing *is* found.

²⁸² To be sure, Scott's audit ultimately found no discrepancies. See Vaillancourt, *supra* note 12. One may argue that the audit then served a good purpose: It signaled to election deniers that, in actuality, the system had not been compromised. This argument assumes, of course, that the results of the audit were as widely reported (and in turn accepted) as the announcement of the audit.

²⁸³ A significant percentage of both Democrats and Republicans express a lack of confidence in the fairness of our electoral process. See Ladan Nowrasteh, *Polling Spotlight: Americans Losing Confidence in Fairness of National Elections*, STATE POL'Y NETWORK (Jan. 4, 2021), spn.org/polling-spotlight-election-integrity [https://perma.cc/XXN4-MPYU] (reporting that 41% of Republicans and 45% of Democrats were “a little or not at all confident in the integrity of the then upcoming elections”).

²⁸⁴ LEVITSKY & ZIBLATT, *supra* note 275, at 196.

²⁸⁵ See Birch, *supra* note 20, at 1615–17.

non-compliance with election laws.²⁸⁶ In other words, when electoral integrity is lost, democratic participation soon follows.

Needless to say, unilateral election administration plays a precarious role in democratic society. Certainly, concentrating power within the office of chief election official is not in and of itself antidemocratic. To the contrary, “[t]he vast majority of [unitary chief election officials] prosecute elections fairly and with integrity.”²⁸⁷ There may even be good reasons to support a centralized election administration regime over a decentralized one.²⁸⁸ This Article does not seek to be overly alarmist.

At the same time, unduly partisan unitary chief election officials *do* exist and can significantly corrode the democratic process. And their existence raises some important questions: What can be done to stop or slow down unitary chief election officials who abuse their powers? What types of guardrails do we have in place? And are they enough? If not, what types *should* we have instead? The next two Parts tackle these questions in detail.

II ASSESSING ACCOUNTABILITY

Accountability is often described as a prerequisite for democracy. As Mark Warren aptly states, “[D]emocracy could not be conceived, let alone practiced, without complex webs of accountabilities.”²⁸⁹ Without such mechanisms, those in power could act with impunity, free from any practical constraints, and democracy itself would, in turn, crumble.²⁹⁰

Within these “complex webs of accountabilities,” the unitary chief election official must be a top priority, because the unitary chief

²⁸⁶ See Christian Schnaudt, *Perceptions of Electoral Integrity and Election-Related (Non-) Compliance: Evidence from Germany*, 73 POL. STUD. 1292, 1309–11 (2025) (arguing that both political-theoretical and empirical evidence from German elections in 2020 demonstrate that citizens with less faith in the integrity of elections are more likely to believe non-compliance with election-related laws and regulations is justifiable).

²⁸⁷ Green, *Partisan Parity*, *supra* note 21, at 1043.

²⁸⁸ See *infra* Section III.C.

²⁸⁹ Warren, *supra* note 29, at 39; see also Johan P. Olsen, *The Institutional Basis of Democratic Accountability*, 36 W. EUR. POL. 447, 447 (2013) (“Informed consent is the foundation of legitimacy and consent is implemented through the development, and the enforcement, of accountability.”); Stephanopoulos, *supra* note 26, at 996–97 (“[T]he Court wishes to promote accountability because it (justifiably) considers it a vital democratic value.”).

²⁹⁰ See ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 222 (1989) (identifying “control of the agenda” as a criterion for democracy).

election official is not simply one elected representative part of a larger democratic institution. They are, instead, *the* primary caretaker of the very electoral processes that keep the institutions democratic. When a chief election official engages in maladministration, the damage reaches the very machinery of democracy.²⁹¹ It is therefore imperative to ensure that unitary chief election officials are subject to proper mechanisms of accountability.

The following two Parts therefore provide an essential critique of chief election official accountability in the United States, questioning whether existing means of accountability are enough to safeguard the democratic process. This Part begins that analysis by considering the following question: What should accountability for unitary chief election officials ideally look like? Accountability is, as Warren notes, not monolithic.²⁹² It can take place in many different forms at different times in relation to an official's misconduct. The suitability of each form we apply to an official depends heavily on the nature and duties of their office.

To answer this question, this Part first briefly summarizes the different conceptualizations of accountability found in the literature. It then assesses whether accountability is more effective against a unitary chief election official if delivered *ex ante* versus *ex post*. Lastly, it examines and compares which modes of accountability—electoral, legal, or internal—best serve and protect the democratic process from chief election official misuse and abuse.

A. *Defining Accountability*

What is accountability? In the democratic context, theorists have not agreed upon a standard definition.²⁹³ From a high level, many might characterize accountability as “being answerable to somebody else, . . . being obliged to explain and justify (in)action.”²⁹⁴ Yet this definition does not paint a full picture. Certainly, one component of accountability can involve answering to another person. Sometimes, though, accountable decisionmakers answer to abstract concepts, legal norms, and principles.²⁹⁵ A unitary chief election official, for instance, answers to—or at least should answer to—higher principles about what

²⁹¹ See *supra* Section I.C.

²⁹² See Warren, *supra* note 29, at 39.

²⁹³ See Olsen, *supra* note 289, at 449 (overviewing the many factors that play into “[t]heorising accountability”).

²⁹⁴ *Id.* at 449–50. Some might call this a principal-agent form of accountability. See, e.g., Waldron, *supra* note 28, at 2 (calling this conception of accountability “agent-accountability”).

²⁹⁵ See Emilee B. Chapman, *Shared Agency and the Ethics of Democracy*, 18 *Geo. J. L. & Pub. Pol’y* 705, 715 (2020) (“Citizens hold each other and their political leaders accountable to norms that reinforce democracy.”).

constitutes a free, fair, and secure democratic process.²⁹⁶ Furthermore, how accountability manifests varies depending on the degree of misconduct, the nature of the office, and the goals of the democratic system.

Indeed, while we often think about accountability in terms of elections, they are far from the only form of accountability a democracy can have (or should have, for that matter²⁹⁷). For one, we might recognize what this Article calls “quasi-electoral accountability,” where elected officials themselves hold another official accountable—for example, through impeachment.²⁹⁸

Another significant mode is legal accountability—that is, when an official is accountable to legally enshrined mandates and limits.²⁹⁹ Legal accountability is often embodied in constitutions,³⁰⁰ though it is also achievable through statutes, regulations, and internal laws. So long as the official feels some obligation to adhere to the law, they are accountable to the law. In practice, this typically necessitates a judiciary positioned to sanction an official found in violation of the law. Civil suits and criminal proceedings are indeed a common method of attaining legal accountability.³⁰¹ Involving the judiciary is not always needed, though. Anticipation of enforcement, for example, may be enough to hold an official accountable to the law.

A final mode of accountability, at least for this Article’s purposes,³⁰² is internal accountability, where accountability is derived from within the executive. Internal accountability can occur interagency—or “horizontally”—where state agencies themselves “oversee, control, redress, and if need be sanction unlawful actions by other state

²⁹⁶ Chief election officials’ websites will often include vague references to a set of principles. See, e.g., *About Us*, OR. SEC’Y OF STATE, <https://sos.oregon.gov/Pages/aboutus.aspx> [<https://perma.cc/QG23-QWDX>] (last visited Jan. 4, 2026) (“Build trust; make a difference. We do so by . . . [p]roviding equitable access to our democracy.”). For further discussion of the notion that chief election officials answer to higher principles, see *infra* notes 340–50 and accompanying text.

²⁹⁷ See Finlay Malcolm, *The Purpose and Limits of Electoral Accountability*, 24 J. ETHICS & Soc. PHIL. 258, 265–70 (2023) (identifying the limits of electoral accountability); Warren, *supra* note 29, at 46 (“[W]e need to step back and see voting and elections as parts of broader systems of mechanisms that comprise and enable democratic accountability regimes.”).

²⁹⁸ See *infra* Section II.C.2.

²⁹⁹ See Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 YALE L.J. 1836, 1891 (2015) (identifying legal accountability as distinct from electoral accountability).

³⁰⁰ See *id.*; Warren, *supra* note 29, at 46–47.

³⁰¹ See *infra* Section II.C.3.

³⁰² The media is often considered another mechanism through which to hold public officials accountable. See, e.g., Timothy Besley, Robin Burgess & Andrea Prat, *Mass Media and Political Accountability*, in *THE RIGHT TO TELL: THE ROLE OF MASS MEDIA IN ECONOMIC DEVELOPMENT* 45 (Roumeen Islam ed., 2002); Malcolm, *supra* note 297, at 260.

agencies.”³⁰³ When the U.S. Office of Government Ethics monitors federal executive officials’ compliance with ethics commitments, for instance, they are engaging in horizontal accountability.³⁰⁴ Internal accountability can also occur intra-agency, where bureaucrats hold others within their agency accountable,³⁰⁵ and can even involve citizen participation through mechanisms like administrative dispute resolution.³⁰⁶

In addition to taking on many forms, accountability can occur at different stages. On the one hand, accountability can occur *ex ante*, before any misconduct has ensued.³⁰⁷ A confirmation hearing is a form of *ex ante* accountability. On the other hand, accountability can occur *ex post*, after the misconduct has played out.³⁰⁸ Criminal sanctions are a form of *ex post* accountability.

What are the best means through which to hold a unitary chief election official accountable? The remainder of this Part will consider this question, beginning briefly with timing and then turning to an in-depth discussion on modes.

B. *Ex Ante vs. Ex Post Accountability*

As discussed above, accountability mechanisms need not only address wrongdoing by an official *after* it has been done. Rather, *ex ante* accountability mechanisms can mitigate the chances of wrongdoing even occurring. For the unitary chief election official, both are crucial: A state should ensure that the chief election official position is as insulated as possible from opportunities for misuse, while at the same time offer avenues for redress if misuse still arises.

Yet, *ex ante* and *ex post* accountability for unitary chief election officials should not be weighted equally by lawmakers. Instead, given the fundamental democratic stakes involved in election administration,³⁰⁹ *ex ante* modes of accountability should take priority.

³⁰³ Guillermo O’Donnell, *Horizontal Accountability in New Democracies*, 9 J. DEMOCRACY 112, 119 (1998).

³⁰⁴ See *What We Do*, U.S. OFF. OF GOV’T ETHICS, https://www.oge.gov/web/oge.nsf/about_what-we-do [<https://perma.cc/4RRZ-QCE6>] (last visited Jan. 4, 2026). Horizontal accountability by definition occurs within the executive system of a single sovereign. Federal oversight of state executive action would not, for instance, be horizontal accountability.

³⁰⁵ See *infra* notes 430–34 and accompanying text.

³⁰⁶ See *infra* notes 445–47, 495–501 and accompanying text.

³⁰⁷ See Paul M. Secunda, *Cognitive Illiberalism and Institutional Debiasing Strategies*, 49 SAN DIEGO L. REV. 373, 412–13 (2012) (discussing *ex ante* accountability in the context of judges); Rafael I. Pardo, *The Utility of Opacity in Judicial Selection*, 64 N.Y.U. ANN. SURV. AM. L. 633, 635 (2008) (same).

³⁰⁸ See Secunda, *supra* note 307, at 412–13; Pardo, *supra* note 307, at 635–36.

³⁰⁹ See *supra* notes 275–86 and accompanying text.

Indeed, consider again the damage that the unitary chief election official position, if abused, can inflict upon the democratic process. Thousands of voters can wrongly be denied or have their registration revoked. Polling places can be understaffed, underequipped, and underprovided. Ballots can contain confusing formatting or misleading language. Election results can be publicly audited in the name of disproven conspiracy theories. And what happens when a society over-relies upon ex post accountability mechanisms to correct these practices? The damage sits. And elections continue to occur each passing year. All while we wait for redress that may or may not come.

As one example of ex post accountability's limits, let us return to the issue of Tennessee automatically rejecting voter registration applications of individuals with felony convictions unless they provided documentary proof of their voting rights being restored.³¹⁰ Under Tennessee law, certain individuals with felony convictions have retained the right to vote without needing to receive a court-ordered restoration.³¹¹ Accordingly, this policy, which began in 2014,³¹² wrongly led to the rejection of numerous individuals' voter registration applications, thus denying them the ability to vote. It meanwhile took until 2024, a whole decade later, for a court to declare that this policy violated federal law.³¹³ In the meantime, presumably thousands of people with felony convictions—who are disproportionately Black³¹⁴—were erroneously denied their right to vote. The icing on the cake? The U.S. Court of Appeals for the Sixth Circuit reversed this decision in 2025 for lack of standing.³¹⁵ Thus, despite clear legal violations, the harmful policy persists, leaving affected voters improperly disenfranchised.

³¹⁰ In Tennessee, individuals who committed a felony prior to 1973 only lost their voting rights if they committed certain “infamous” crimes, like murder. *See* *Tenn. Conf. of NAACP v. Lee*, 730 F. Supp. 3d 705, 712 (M.D. Tenn. 2024) (providing history of felony voting rights in Tennessee). Meanwhile, people convicted between 1973 and 1981 did not lose their right to vote at all. *See id.* at 712–13. Finally, Tennesseans convicted of a felony post-1981 automatically lost the right to vote and can only have it restored post-incarceration by court order. *See id.* at 713.

³¹¹ *See id.* at 712–13.

³¹² *See id.* at 718.

³¹³ *See id.* at 740.

³¹⁴ *See Felony Voting Rights Restoration in Tennessee*, CAMPAIGN LEGAL CTR. (Sep. 18, 2024), <https://campaignlegal.org/cases-actions/felony-voting-rights-restoration-tennessee> [<https://perma.cc/DG4U-AEZG>] (“The law denies the right to vote to 8.2% of the entire state-wide voting-age population, including more than 21% of the adult black voting-age population.”).

³¹⁵ *Tenn. Conf. of NAACP v. Lee*, 139 F.4th 557, 569–70 (6th Cir. 2025).

This example underscores why ex ante safeguards must be the primary means of checking unitary chief election officials.³¹⁶ When fundamental rights and democratic legitimacy are on the line, the costs of abuse can be too substantial for ex post mechanisms to remedy properly. Meanwhile, ex ante mechanisms can help shape unitary chief election officials' actions to prevent them from abusing their authority in the first place.³¹⁷ States looking to enhance chief election official accountability should therefore focus on options that restrain their discretion on the front end: professional qualification requirements, bipartisan appointment, and judicial or administrative preclearance of certain decisions, among other mechanisms. The next Section will discuss such options in much greater detail.

At the same time, the importance of ex post accountability should not be minimized. No matter how robust an ex ante accountability system may be, poor decisionmaking will fall through the cracks. Partisanship will still influence choices. Maladministration will still be a threat. And when this happens, opportunities must exist to right the wrong. States should accordingly treat ex post mechanisms as an essential secondary means of holding the unitary chief election official to account.³¹⁸ While ex post mechanisms exist in some form today, they can be stronger and more reliable. Again, more thorough treatment of this issue is provided in the following Section.

C. Modes of Accountability

Accountability can take many forms. Which should lawmakers prioritize for the unitary chief election official? This Section provides some guidance. For one, we must deemphasize the use of electoral and quasi-electoral accountability, as chief election officials must be treated less like political actors and more like impartial administrators.³¹⁹ Likewise, we must place less focus on legal accountability, or at least ex post varieties like lawsuits. Indeed, factors such as politicalization,

³¹⁶ Cf. Secunda, *supra* note 307, at 412 (referring to ex ante accountability mechanisms as the “primary controls” for “ensuring judicial accountability”).

³¹⁷ Cf. Monique M.H. Pollmann, Jan Potters & Stefan T. Trautmann, *Risk Taking by Agents: The Role of Ex-Ante and Ex-Post Accountability*, 123 ECON. LETTERS 387, 389 (2014) (noting that people investing other people's money make “more careful and constant investment strategies” when ex ante accountability is in place).

³¹⁸ Cf. Secunda, *supra* note 307, at 412–13 (acknowledging importance of ex post accountability for judges).

³¹⁹ Note that I intentionally say “impartial” rather than “neutral.” I do not believe it is sound or realistic to cast election administrators as “neutral,” because many will naturally have political leanings. And we should not attempt to hide from this reality. Nevertheless, we *should* expect election administrators to behave impartially—that is, in a manner that does not favor the electoral success of any particular candidate or party.

standing issues, and the death of universal injunctions render the lawsuit, in its current form, a weak mode of accountability for unitary chief election officials. On the other hand, more weight and resources should be given to ex ante legal accountability, as well as to internal modes of accountability like auditing, sanctioning, and dispute resolution.

1. *Electoral Accountability*

Electoral accountability is, quite simply, the use of elections to hold officials to account. We often think of electoral accountability in ex post terms, where “members of the electorate are given, through their right to vote, the power to remove rulers from office if the electorate deems those rulers have performed poorly.”³²⁰ Yet, elections can have ex ante effects on an official’s behavior, namely through the *threat* of losing an election. As Finlay Malcolm explains, “winning elections is about retaining power, and so if retaining power is about performing well, then to win elections, rulers need to perform well while in power.”³²¹ In other words, elected officials will tailor their behavior to win popular support among the electorate.

Elections are *not* an appropriate way to hold unitary chief election officials accountable. Perhaps this sounds oxymoronic, to not elect the person who heads election administration. Yet, elections do not guarantee, and in some cases may even discourage, a unitary chief election official from doing their job in a manner that fosters the democratic process.

At a general level, many theorists contend that elections are often not as strong a form of accountability as we may ideally want them to be. Electoral accountability itself is premised upon aggregative democratic principles, the idea being that democratic societies make the best decisions via the aggregation of society’s private interests and preferences, i.e., via voting.³²² The electorate re-elects their chief election official? She must have been doing a good job.

The wrinkle in this theory, though, is that it necessitates a well-informed electorate. When the electorate is not adequately aware of the “state of the world,” they cannot make the best decisions for their society.³²³ So, if voters are unaware of a unitary chief election official’s

³²⁰ Malcolm, *supra* note 297, at 260–61.

³²¹ *Id.* at 261.

³²² See Clarissa Rile Hayward, *What Can Political Freedom Mean in a Multicultural Democracy? On Deliberation, Difference, and Democratic Governance*, 39 POL. THEORY 468, 472–73 (2011); Juan Perote-Peña & Ashley Piggins, *A Model of Deliberative and Aggregative Democracy*, 31 ECON. & PHIL. 93, 93 (2015).

³²³ This concept stems from Condorcet’s jury theorem. See *Jury Theorems*, STAN. ENCYCLOPEDIA OF PHIL. (Nov. 17, 2021), <https://plato.stanford.edu/entries/jury-theorems/#CondJuryTheo>

abusive or inept decisionmaking—or in the case of non-incumbents, their would-be decisionmaking—they may be unable to properly utilize elections as a means of accountability.³²⁴

Voter ignorance is, in fact, a pertinent concern for chief election official races. To begin, a significant number of voters likely do not know who their chief election official is. In one study on state-level civics, 33% of respondents did not know their governor and 81% could not name their state representative.³²⁵ It seems safe to say that an office like SOS may fall somewhere between those percentages. Likewise, most voters likely do not track the decisions their chief election officials make. Most voters, in fact, know little to nothing about *federal* agency activity,³²⁶ let alone state-level activity. In such situations, questions arise about whether elections are a productive means through which to check the officeholder.³²⁷

Indeed, in the context of unitary chief elections officials, voters these days are often not only ignorant, but entirely misinformed. As of 2022, about one-third of American voters truly believe that the 2020 presidential election was rigged to “steal” victory away from Trump.³²⁸ In some states, particularly ones with heavy Republican populations, it is possible a majority of voters believe this.³²⁹ Election officials have routinely taken the brunt of the blame by such election deniers.³³⁰ Meanwhile, a number of Democratic voters have bought into falsehoods about the 2024 presidential election, namely that Elon Musk

[<https://perma.cc/YL6K-MHRW>] (concluding that “majority outcomes are not only increasingly reliable as voters are added, but also infallible in the limit”); see also ROBERT E. GOODIN & KAI SPIEKERMANN, *AN EPISTEMIC THEORY OF DEMOCRACY* 94 (2018) (discussing how misinformed voters become less competent).

³²⁴ See Warren, *supra* note 29, at 45 (arguing that “many voters seem unable to meet” the “relatively low informational” requirements to hold elected officials accountable); Malcolm, *supra* note 297, at 266–67 (discussing the issue of voter myopia).

³²⁵ Bill Lucia, *State Government Civics Survey Leaves Many People Stumped*, ROUTE FIFTY (Dec. 11, 2018), <https://www.route-fifty.com/management/2018/12/knowledge-gaps-state-government/153452> [<https://perma.cc/3LUL-Q7U2>].

³²⁶ Stephanopoulos, *supra* note 26, at 1022–24 (“[M]ost voters know very little about most agency activity.”).

³²⁷ See Andre Leo Rusavuk, *Which Elections? A Dilemma for Proponents of the Duty to Vote*, 30 RES PUBLICA 547, 553 (2024) (“Voting well requires voting better than voting at random, and to satisfy this criterion, voters must acquire a certain satisfactory level of political knowledge.”).

³²⁸ See Jon Greenberg, *Most Republicans Still Falsely Believe Trump’s Stolen Election Claims. Here Are Some Reasons Why.*, POYNTER (June 16, 2022), <https://www.poynter.org/fact-checking/2022/70-percent-republicans-falsely-believe-stolen-election-trump> [<https://perma.cc/ZZE8-AE9N>].

³²⁹ See *id.* (reporting that about 70% of Republicans suspect election fraud).

³³⁰ See Glenn Thrush, Adam Goldman, Alan Feuer & Eileen Sullivan, *Election Officials Face Torrent of Threats as Nov. 5 Looms*, N.Y. TIMES (Oct. 25, 2024), <https://www.nytimes.com/2024/10/25/us/politics/election-officials-workers-threats.html> [<https://>

used Starlink to tamper with voting tabulating machines.³³¹ When such voters go to the polls next election, they bring with them distorted perspectives of how their election officials have performed, unable to truly distinguish good from bad election administration.

Beyond voter knowledge, scholars question whether elections truly serve as *ex ante* incentives for officials to act responsibly. Increasingly, elected officials appear unresponsive to their electorate, a phenomenon experts call “misalignment,” where state policies diverge from public preferences.³³² Misalignment stems from forces including disenfranchisement, closed primaries, donor influence, gerrymandering, and underrepresentation of minorities.³³³ Unitary chief election officials are hardly immune to these forces, particularly closed primaries and money in politics, which have enabled the rise of extremist candidates, including those aligned with the “Stop the Steal” movement.³³⁴ We accordingly cannot expect the threat of election loss to always keep the unitary chief election official in line.

Additional practical reasons exist to, at the very least, not overly rely upon electoral accountability for the unitary chief election official. Elections only happen periodically—once every two or four years—leaving giant gaps of time where other modes of accountability are needed. Worse yet, when the chief election official is themselves on the ballot, they have inherent incentives to shape the electoral process for personal gain—whether to keep their office or pursue higher ones.³³⁵

perma.cc/6AA5-C8TD] (describing election officials as targets of threats, harassment, and intimidation in the post-2020 environment).

³³¹ See *Conspiracy Theory Spreading on Social Media About Starlink Interfering with Election Results*, UNIV. WASH. CTR. FOR INFORMED PUB. (NOV. 18, 2024), <https://www.cip.uw.edu/2024/11/18/conspiracy-theory-starlink-election-results> [<https://perma.cc/S7Y4-CGTM>] (describing left-leaning social media accounts spreading Starlink-tabulator tampering claims).

³³² See NICHOLAS O. STEPHANOPOULOS, *ALIGNING ELECTION LAW* 69–96 (2024) (providing evidence of misaligned America).

³³³ See Nicholas O. Stephanopoulos, *Elections and Alignment*, 115 COLUM. L. REV. 283, 324–56 (2014).

³³⁴ See *supra* notes 267–69 and accompanying text; see also Pablo Amorós, M. Socorro Puy & Ricardo Martínez, *Closed Primaries Versus Top-Two Primaries*, 167 PUB. CHOICE 21, 33–34 (2016) (identifying a link between closed primaries and extreme candidates); Michael S. Kang, *Hyperpartisan Campaign Finance*, 70 EMORY L.J. 1171, 1198–99 (2021) (discussing how deregulation of campaign finance coincided with rise in hyperpolarization among elected officials).

³³⁵ Two current governors previously served as state secretaries of state. *Fast Facts About America's Governors*, CTR. ON THE AM. GOVERNOR, <https://governors.rutgers.edu/fast-facts-about-americas-governors> [<https://perma.cc/Z5XF-F58M>] (last visited Dec. 28, 2025). Other current SOSs are making moves to run for other positions in government. See, e.g., Jon King, *Benson Makes It Official: She's Running for Governor*, MICH. ADVANCE (Jan. 22, 2025), <https://michiganadvance.com/2025/01/22/benson-makes-it-official-shes-running-for-governor> [<https://perma.cc/Q9WA-L8JJ>].

While most would not abuse this power,³³⁶ accountability systems must be designed for the worst cases, not the average.

The above-expressed concerns highlight the procedural weaknesses of relying too heavily on electoral accountability. Yet, there are further substantive reasons why a well-functioning democracy should not treat the chief election official as an elected position. To start, let us consider under which circumstances the need for electoral accountability arises. Warren provides an apt description, stating that “the need for accountability arises from the intersection of social co-dependence and interest divergence.”³³⁷ That is, where the electorate and the elected rely upon each other—the elected needing to win elections and the electorate needing good governance—yet misalign in their goals. Underlying this concept are the assumptions that the acts of elected officials *should* ideally mirror the wishes of their constituents, and that if an elected official’s actions do not mirror them, democracy is all the weakened for it—a view often described as “majoritarianism,” in which legitimacy derives primarily from the will of the electoral majority.³³⁸

With that said, is democracy necessarily undermined if the chief election official’s actions diverge from what the public wants?

No.

To the contrary, a good chief election official must, in some circumstances, be willing to deviate from the public will if needed. Because the chief election official is not, or at least should never be considered, a political office. Unlike a legislator or a governor, they do not serve in a representative capacity in which they are expected to match the ideological preferences of the people who elected them.³³⁹

They instead serve a *process*, the democratic process. And to serve the democratic process, one must be beholden to a set of unwavering principles rather than the changing whims of the people. Indeed, while theorists may disagree over the precise definition of democracy, certain tenets are largely agreed upon. First and foremost, democracy mandates

³³⁶ See Green, *Partisan Parity*, *supra* note 21, at 1043 (“The vast majority of partisan [unitary chief election officials] prosecute elections fairly and with integrity.”).

³³⁷ Warren, *supra* note 29, at 40 (emphases omitted).

³³⁸ See Samuel Issacharoff & Richard H. Pildes, *Majoritarianism and Minoritarianism in the Law of Democracy*, in *THE ENTRENCHMENT OF DEMOCRACY* 29, 31 (Tom Ginsburg, Aziz Z. Huq & Tarunabh Khaitan eds., 2024) (describing early law-of-democracy doctrine and the Voting Rights Act’s “initial thrust” as aiming to ensure elections are “responsive to the majority of all adult citizens”).

³³⁹ See Jane Mansbridge, *A “Selection Model” of Political Representation*, 17 J. POL. PHIL. 369, 372 (2009) (“The simplest mechanism through which constituents can influence a congressman is to select a person initially for office who agrees with their attitudes.”).

at its core that the people are afforded the ability to govern themselves.³⁴⁰ Moreover, a healthy democratic process demands impartial treatment of candidates and parties,³⁴¹ equality among voters,³⁴² and a commitment to the rule of law.³⁴³ Being the top election administrator, vested with the authority and responsibility to maintain a functioning democratic process, the chief election official should be expected to answer to these principles. It seems quite uncontroversial, in fact, to say that when a chief election official partakes in acts that fall outside their legal authority, or deliberately favors a particular political figure or group, they are behaving in a manner antithetical to democracy. Thus, any deviation from these principles—even at the behest of the people—should constitute a failure on the part of the chief election official.

Such a failure could, crucially, lead to a democratic breakdown. For when processes fail, the very foundation of a democratic system begins to crumble. As John Hart Ely explains, when a government implements laws with which we disagree, its actions cannot be described as a malfunction in governance.³⁴⁴ Yet, when the process itself “is undeserving of trust,” such as where certain voters are denied “the protection afforded other groups,” a malfunctioning has indeed occurred.³⁴⁵ In such instances, we should not rely upon “elected representatives” to identify and remedy the situation, but should rather turn to figures who exist outside the political system.³⁴⁶ The unitary chief election official should be such a figure.

³⁴⁰ See DAHL, *supra* note 290, at 222 (defining “[c]ontrol of the agenda” as a prerequisite of democracy); Aziz Z. Huq, *The Counterdemocratic Difficulty*, 117 Nw. U. L. REV. 1099, 1104 (2023) (“I define democracy as a community of equals that engage in an ongoing practice of being ruled and ruling in turn.” (emphasis omitted)).

³⁴¹ See PIERRE ROSANVALLON, *DEMOCRATIC LEGITIMACY: IMPARTIALITY, REFLEXIVITY, PROXIMITY* 87–103 (2011) (discussing importance of impartiality in democratic legitimacy); Kevin Vallier, *Process Democracy*, 17 J. MORAL PHIL. 633, 640–41 (2020) (“If officials are not selected by a system that respects equal rights to influence the political process, then that system cannot be said to respect our considered judgment that citizens have equal rights to vote.”).

³⁴² See Sarah Song, *The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State*, 4 INT’L THEORY 39, 58 (2012) (“Political equality is a constitutive condition of democracy . . .”).

³⁴³ See Guillermo O’Donnell, *The Quality of Democracy: Why the Rule of Law Matters*, 15 J. DEMOCRACY 32, 32–34 (2004) (“The rule of law is among the essential pillars upon which any high-quality democracy rests.”).

³⁴⁴ See JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 103 (1980).

³⁴⁵ *Id.*

³⁴⁶ *Id.* Ely was, of course, talking about the disinterested judge in his work. And there have been many modern critiques of Ely’s conjecture that judges are better able to protect democracy than voters. See, e.g., Ryan D. Doerfler & Samuel Moyn, *The Ghost of John Hart Ely*, 75 VAND. L. REV. 769, 803–20 (2022) (“As a matter of outcomes, the political masses more often correctly identify what democracy requires.”). Given the politicalization of

Indeed, even proponents of majoritarian democracy generally accept that some decisions should not be left to the people. As Jeremy Waldron notes, “[d]emocracy and majority-decision make moral sense only under certain conditions,” such as the existence of robust civil and political rights.³⁴⁷ More recently, Levitsky and Ziblatt have asserted that while the need for countermajoritarian measures may be overblown in the literature, such measures remain crucial in the context of protecting the democratic process.³⁴⁸ Tempering the people’s influence over election administration leadership is therefore not inherently at odds with majoritarianism.

For what it is worth, from a practical standpoint, research indicates that appointed election officials perform their jobs better than elected ones. Specifically, Joshua Ferrer recently found that appointed local election officials enhance voter participation in their respective jurisdictions at substantially higher rates than their elected counterparts.³⁴⁹ These results suggest that, in the context of local election administration, “[e]lections . . . fail to ensure accountability or create adverse accountability effects that have undesirable policy consequences.”³⁵⁰ While focused on local officials, the implications of this research could very well extend to unitary chief election officials too.

At bottom, accountability mechanisms for the unitary chief election official should be designed to hold them accountable to democratic principles, not the people. This will require turning to legal and internal modes of accountability. Before getting there, though, a brief discussion on quasi-electoral accountability is merited.

2. *Quasi-Electoral Accountability*

Another widely practiced form of accountability is what this Article calls “quasi-electoral accountability,” where an official is held accountable not directly by the voters but by elected officials.³⁵¹ Under

the judiciary, I do not necessarily disagree with this criticism. *See infra* notes 391–95 and accompanying text. Still, it is possible to craft chief election official appointment in a way that mitigates partisan capture. *See infra* notes 451–56 and accompanying text.

³⁴⁷ JEREMY WALDRON, *LAW AND DISAGREEMENT* 283 (1999).

³⁴⁸ *See* Steven Levitsky & Daniel Ziblatt, *When Should the Majority Rule?*, 36 *J. DEMOCRACY* 5, 18 (2025) (explaining the importance of countermajoritarian protections in the West).

³⁴⁹ Joshua Ferrer, *To Elect or Appoint? Evidence from Local Election Administration*, 20 *Q. J. POL. SCI.* 369, 400 (2025).

³⁵⁰ *Id.* at 401.

³⁵¹ Other scholars call this “managerial accountability.” *See, e.g.,* Metzger, *supra* note 299, at 1892; Peter M. Shane, *Independent Policymaking and Presidential Power: A Constitutional Analysis*, 57 *GEO. WASH. L. REV.* 596, 614 (1989). I avoid this terminology due to its heavy ties to and usage within the corporate law context.

quasi-electoral accountability, unelected officials are held accountable to the people's will indirectly via the actions of elected representatives.³⁵² Examples on the ex ante front would include confirmation hearings and budget control, whereas ex post examples include removal authority, legislative investigations, and impeachment.

When it comes to chief election officials, quasi-electoral accountability fails for largely the same reasons as electoral accountability: The chief election official ends up answering to the ideological aspirations of political figures rather than the core democratic.³⁵³ This rings especially true in our era of hyper-polarization.³⁵⁴ On a practical level, such polarization renders certain types of quasi-electoral accountability nigh useless; the supermajority thresholds of impeachment processes combined with partisan voting, for instance, have made impeachment a rarely effective option.³⁵⁵ And even if quasi-electoral accountability were functional, would we want to use it? Consider the astounding fact that ten election deniers presently hold governor's offices throughout the United States.³⁵⁶ Do we want unitary chief election officials to answer to them? It was certainly no secret that Secretary John Scott conducted his 2020 election audit in large part due to pressure put on by Governor Greg Abbott³⁵⁷—one example of quasi-electoral accountability gone wrong.

Quasi-electoral accountability is, nevertheless, impossible to fully avoid if a state were to abandon electing their chief election official. Who would appoint them? At some point, elected officials would have to get involved, either through direct appointment or indirectly by creating an unelected body that chooses the chief election official. Be this as it may, one can design an appointment process in a way that

³⁵² See Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2331–32 (2001) (arguing that “[p]residential administration promotes accountability” by “establish[ing] an electoral link between the public and the bureaucracy”).

³⁵³ See *supra* notes 339–46 and accompanying text.

³⁵⁴ See Arbatli & Rosenberg, *supra* note 13, at 299–300 (“Both the elites and the voters are becoming deeply polarized along several important dimensions . . .”).

³⁵⁵ See Mortenson, *supra* note 66, at 223 (“[I]mpeachment of state officials is quite rare.”).

³⁵⁶ See *The Landscape of Election Denial in America*, *supra* note 16 (scroll down to “The STATEWIDE Landscape”; then click “explore the data”; then click the “Governor” tab) (listing Alabama, Alaska, Florida, Indiana, Iowa, Louisiana, Montana, Tennessee, Texas, and West Virginia).

³⁵⁷ See James Barragán & Patrick Svitek, *Gov. Greg Abbott's Pick for Top Texas Election Post Worked with Trump to Fight 2020 Results*, TEX. TRIB. (Oct. 21, 2021), <https://www.texastribune.org/2021/10/21/john-scott-texas-secretary-state-elections-trump> [https://perma.cc/9T9F-BA5B] (describing how Abbott launched the 2020 election audit amid pressure from Trump and Trump supporters, and how Scott was appointed to oversee it).

insulates the appointed office from partisanship creep. Part III discusses this in further detail.³⁵⁸

3. *Legal Accountability*

Whereas electoral accountability assigns voters as the principal to whom an official answers, legal accountability mandates officials to answer to the law. Legal accountability is established through the adoption of constitutional provisions, statutes, and regulations that are subsequently enforced via some mechanism, such as judicial review.³⁵⁹ As Gillian Metzger notes, legal accountability represents a “constitutional commitment to ‘a government of laws, and not of men.’”³⁶⁰ Accordingly, when an official is primarily accountable to the law, they are less susceptible to the pressures of shifting public opinions.

In theory, legal accountability can provide a much more pro-democratic means of holding the unitary chief election official accountable than can electoral accountability. Namely, prerequisites of a healthy democratic process—impartiality, voter equality, and rule of law³⁶¹—can be enshrined within binding legal authority to which the unitary chief election official must adhere. Indeed, the present U.S. Constitution all but guarantees that every adult citizen (other than citizens with felony convictions) be afforded the right to vote.³⁶² Thirty state constitutions meanwhile contain their own form of a right to free and fair elections,³⁶³ which have prevented state officials from engaging in debatably undemocratic practices like partisan gerrymandering.³⁶⁴ And countless statutory provisions on the federal and state levels limit the discretion of unitary chief election officials for the sake of democratic integrity. The NVRA, for example, contains a “quiet period

³⁵⁸ See *infra* Section III.A.

³⁵⁹ See Metzger, *supra* note 299, at 1891 (explaining importance of court enforcement and adherence to governing law); Warren, *supra* note 29, at 46 (describing accountability mechanisms); Todd S. Aagaard, *Agencies, Courts, First Principles, and the Rule of Law*, 70 ADMIN. L. REV. 771, 788–92 (2018) (describing judicial review).

³⁶⁰ Metzger, *supra* note 299, at 1891 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803)).

³⁶¹ See *supra* notes 341–43 and accompanying text.

³⁶² See U.S. CONST. amends. XIV, XV, XIX, XXVI (prohibiting lawmakers from denying suffrage on the bases of race, sex, or age above the age of eighteen). Lawmakers are, nevertheless, constitutionally permitted to place burdens on the right to vote so long as the burden is not too high. See, e.g., *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 203–04 (2008) (plurality opinion) (upholding Indiana’s voter ID law).

³⁶³ See *Free and Equal Election Clauses in State Constitutions*, NAT’L CONF. OF STATE LEGISLATURES (Nov. 4, 2019), <https://www.ncsl.org/redistricting-and-census/free-and-equal-election-clauses-in-state-constitutions> [<https://perma.cc/27KL-3PG8>].

³⁶⁴ See, e.g., *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 802–14 (Pa. 2018) (finding partisan gerrymandering to violate the Pennsylvania state constitution).

provision” that prohibits election officials from conducting any program designed to systematically purge registered voters within ninety days of a primary or general election.³⁶⁵

Legal accountability offers a more reliable means of accountability for unitary chief election officials than elections. By formally codifying laws that foster a fair and impartial democratic process, a society ensures that their unitary chief election official answers to what some scholars call a “thick” rule of law grounded in enduring constitutional constraints.³⁶⁶ In contrast, a thinner “rule by law,” lacking robust legal accountability mechanisms, allows leaders to “make opportunistic use of democratic institutions” to “perpetuat[e] their power.”³⁶⁷ Indeed, constitutions are typically designed to be stable, even if to a fault. The U.S. Constitution has only been amended twenty-seven times in its 236-year history. And while state constitutions have collectively been amended about 7,000 times throughout U.S. history,³⁶⁸ that averages to approximately 140 amendments per state constitution,³⁶⁹ about a few per year depending on the state. Even statutes can entrench democratic principles within a state’s legal system.³⁷⁰ Repealing statutes is, after all,

³⁶⁵ 52 U.S.C. § 20507(c)(2)(A). The NVRA is nevertheless far from a restrictive piece of legislation, at least in the area of voter registration. As the FEC notes, the NVRA still “grant[s] the States considerable latitude in the routine and systematic methods by which they may ensure the accuracy of their voter registration lists by removing the names of those who are no longer eligible.” *The Impact of the National Voter Registration Act of 1993 on the Administration of Federal Elections*, FEC (June 1997), <https://www.fec.gov/about/reports-about-fec/agency-operations/impact-national-voter-registration-act-1993-administration-federal-elections-html> [<https://perma.cc/TRC3-SKYP>].

³⁶⁶ See Vasileios Adamidis, *Democracy, Populism and the Rule of Law: A Reconsideration of Their Interconnectedness*, 44 POLS. 386, 391 (2024) (defining a “thicker substantive” rule of law as formal legality plus democracy and individual rights).

³⁶⁷ *Id.* at 391, 393–95.

³⁶⁸ Jessica Bulman-Pozen & Miriam Seifter, *The Right to Amend State Constitutions*, 133 YALE L.J.F. 191, 194 (2023).

³⁶⁹ There are, moreover, notable outlier states that have disproportionately contributed to that 7,000 amendment statistic. The Alabama Constitution of 1901, for instance, had 977 amendments. Mike Nicholson, *A Dire Need for Reform: How Alabama’s Constitution Is Holding Our State Back*, ALA. ARISE (Sep. 22, 2022), <https://alarise.org/resources/a-dire-need-for-reform-how-alabamas-constitution-is-holding-our-state-back> [<https://perma.cc/2NWK-WRAA>]. Indeed, Southern state constitutions have generally experienced greater change. See Daniel J. Elazar, *The Principles and Traditions Underlying State Constitutions*, 2 PUBLIUS 11, 20–21 (1982). This trend stems in part from requirements imposed upon them to rejoin the Union and the subsequent movement to entrench white supremacy into law. See *id.* (“The Southern states . . . began with a general penchant for changing constitutions [that] was enhanced by the need to do so because of the disruption of constitutional continuity caused by the Civil War.”).

³⁷⁰ See Tarunabh Khaitan, *Political Parties in Constitutional Theory*, in ENTRENCHMENT OF DEMOCRACY, *supra* note 338, at 63, 80 (“Other modes of constitutionalisation include . . . quasi-constitutional statutes . . .”).

not a simple task, often requiring alignment between both chambers of the legislature and the chief executive.³⁷¹

Of course, this can also make *implementing* pro-democratic legal accountability a difficult undertaking. To be sure, once established, stability ensues. But what happens if the legislators or the chief executive are not on board with such an agenda in the first place? This is a fair critique. And I have no delusions that enacting constitutional or statutory checks on the unitary chief election official is itself an act that can be divorced from politics. Yet, my argument in this Article is more about preferability than tenability—what we should strive for rather than what may be realistic in every jurisdiction. With that said, there is scholarship which suggests that state legislatures are, at the very least, not as polarized as Congress has become, with some bodies even depolarizing in recent years.³⁷² Indeed, we have seen states like Virginia—which has a Republican governor and a Democratic legislature—manage to pass very meaningful, bipartisan, pro-democratic legislation over the past couple years.³⁷³ Advocating for further legal accountability is far from a lost cause.

What should legal accountability look like for the unitary chief election official? The answer is, naturally, complex and multifaceted. But let us begin the remainder of this discussion by addressing *ex post* legal accountability first. That is, the method people most likely think about when they hear the term legal accountability: litigation.

Litigation is both a highly important and deeply imperfect means of holding the unitary chief election official accountable. Without providing a means of enforcing a statutory obligation or limitation against a public official, the statute becomes hollow.³⁷⁴ Litigation provides an avenue for private citizens to hold public officials' feet to the fire in instances of perceived unlawful actions. At its best, litigation can serve as a powerful accountability measure. Just last year, for instance,

³⁷¹ Michael D. Shumsky, *Severability, Inseverability, and the Rule of Law*, 41 HARV. J. ON LEGIS. 227, 247 n.97 (2004) (“[E]very state constitution except Nebraska’s contains bicameralism and presentment requirements.”).

³⁷² See Seth Masket, *What Is, and Isn’t, Causing Polarization in Modern State Legislatures*, 52 PS: POL. SCI. & POL. 430, 430 (2019) (“14 chambers have seen polarization hold steady during this time, whereas six actually became less polarized.”).

³⁷³ See Maureen A. Edobor & John J. Martin, *Election Law*, 60 U. RICH. L. REV. 13, 15–25 (2025) (instituting, among other things, mandatory auditing of campaigns and a ban on personal use of campaign funds).

³⁷⁴ As Chief Justice Marshall wrote over two hundred years ago, the rule of law cannot exist “if the laws furnish no remedy for the violation of a vested legal right.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Civil litigation is, of course, not the only means of giving the law teeth. Criminal prosecution and administrative enforcement can also achieve similar results.

a lawsuit against Nebraska Secretary of State Robert Evnen—who in rogue fashion refused to comply with new legislation restoring felons' voting rights upon completion of their sentence—ultimately resulted in a court order compelling him to obey the law.³⁷⁵ As a result, thousands of Nebraskans regained their right to vote.³⁷⁶

At the same time, litigation is an ad-hoc solution with far-from-guaranteed success. For one, you need a willing plaintiff. In some instances, the government may step in to sue a chief election official,³⁷⁷ but resources and administrative priorities will limit how frequently this happens. In all other instances, therefore, you need a private individual or entity with enough time, money, and willpower to take on a state official.

Even with a willing and able plaintiff, the plaintiff will, in many cases, lack standing to sue the chief election official. Being a voter in and of itself is not enough to meet the requirements of standing, which includes suffering a particularized injury in fact.³⁷⁸ In other words, there is typically no generalized voter standing.³⁷⁹ This makes it difficult for organizations—which are more financially equipped than downtrodden voters—to effectively hold unitary chief election officials accountable to the law.³⁸⁰

Indeed, there are instances where it is unclear whether anybody can satisfy the injury-in-fact requirement, especially when constitutional

³⁷⁵ State *ex rel.* Spung v. Evnen, 12 N.W.3d 229, 236–37 (Neb. 2024).

³⁷⁶ See Margery A. Beck, *People with Felony Records Can Now Vote in Nebraska—And It Could Help Tip the Balance in November*, AP NEWS (Oct. 16, 2024), <https://apnews.com/article/felony-voting-rights-nebraska-lawsuit-dfe043a32fb667b4461bf2f2ac4217fe> [<https://perma.cc/U8WN-PMR7>].

³⁷⁷ See, e.g., Press Release, U.S. Dep't of Justice, Justice Department Sues Alabama for Violating Federal Law's Prohibition on Systematic Efforts to Remove Voters Within 90 Days of an Election (Sep. 27, 2024), <https://www.justice.gov/archives/opa/pr/justice-department-sues-alabama-violating-federal-laws-prohibition-systematic-efforts-remove> [<https://perma.cc/4YKN-DF6Q>].

³⁷⁸ Under present federal standing requirements, one cannot bring a case in federal court unless they have, among other things, suffered a concrete and particularized and actual or imminent injury. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). State-court standing requirements typically mirror those of federal courts. See Thomas B. Bennett, *The Paradox of Exclusive State-Court Jurisdiction over Federal Claims*, 105 MINN. L. REV. 1211, 1231–32 (2021).

³⁷⁹ See Equal Vote Am. Corp. v. Cong., 397 F. Supp. 3d 503, 509 (S.D.N.Y. 2019) (“[C]ourts routinely reject claims based on generalized voter standing.”). *But see* McConkey v. Van Hollen, 783 N.W.2d 855, 860 (Wis. 2010) (accepting “general voter standing . . . as a matter of judicial policy”).

³⁸⁰ See, e.g., Tenn. Conf. of the NAACP v. Lee, 139 F.4th 557, 569–70 (6th Cir. 2025) (finding that the NAACP lacked standing to sue on behalf of disenfranchised people with felony convictions).

rights are not implicated.³⁸¹ For example, in Pennsylvania, the SOS must appoint one patent expert and two mechanics experts when reexamining a voting machine.³⁸² What if, hypothetically, the SOS instead appoints his three high school buddies because he just trusts them better? Who could claim a direct enough injury to challenge this action in court? Unlikely a voter.³⁸³ Perhaps in the wake of the recent *Bost v. Illinois State Board of Elections* decision, candidates may assert clear standing in instances of election maladministration.³⁸⁴ Still, this would leave much of ex post legal accountability in the hands of a few individuals (whose primary objective is winning).

Even if you get past standing, there is then the question of whether the court will still provide relief, and if so, how extensive that relief will be. Certainly, the plaintiff would need to succeed on the merits of their claim. Nevertheless, in election law, courts will sometimes not grant relief even if the plaintiff has a solid case purely because the plaintiff came to court too close to an election. Called the *Purcell* principle, federal district courts are instructed to “not enjoin state election laws in the period close to an election.”³⁸⁵ The Supreme Court has increasingly cited this principle during each passing election cycle, justifying it as preventing confusion for both voters and election officials.³⁸⁶ And it

³⁸¹ There are, meanwhile, a few notable instances where the election code clearly states that *no one* has standing. In New Hampshire, for instance, no one is permitted to sue over the majority of decisions made by the Ballot Law Commission, a body heavily involved with resolving candidate/nomination disputes and regulating voting machines. See N.H. REV. STAT. ANN. § 665:6 to :9-a (2025) (“[N]o court shall have jurisdiction to review such decision.”).

³⁸² 25 PA. STAT. AND CONS. STAT. ANN. § 3006(b) (West 2025).

³⁸³ One could possibly remedy such a scenario through a writ of mandamus, where a court orders “a government officer ‘to perform mandatory or purely ministerial duties correctly.’” Muller, *supra* note 207, at 334 (quoting *Mandamus*, BLACK’S LAW DICTIONARY (8th ed. 2004)). Yet, as Derek Muller notes, the key limit on mandamus as applied to election officials rests in its “concededly narrow application: ministerial tasks that election officials must perform under the law.” *Id.* at 344–45. In other words, “all discretionary actions are exempt from mandamus relief.” Jonathan L. Marshfield, *The Writ of Mandamus in State Courts*, STATE CT. REP. (Jan. 9, 2024), <https://statecourtreport.org/our-work/analysis-opinion/writ-mandamus-state-courts> [<https://perma.cc/Q5SC-YNFA>]. Given this Article’s focus on discretionary unitary chief election official powers, mandamus would seem a less relevant form of legal accountability.

³⁸⁴ 146 S. Ct. 513, 519 (2026) (“[A] candidate has a personal stake in the rules that govern the counting of votes in his election.”).

³⁸⁵ *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)).

³⁸⁶ See Casey P. Schmidt, Note, *Disrupting Election Day: Reconsidering the Purcell Principle as a Federalism Doctrine*, 110 VA. L. REV. 1493, 1501–03 tbl. 1, 1522–26 (2024) (showing that, despite *Purcell* being a 2006 case, the majority of Supreme Court cases invoking *Purcell* have occurred 2020 onwards).

has indeed been invoked by courts over the years—both federal and state—to dismiss cases brought against chief election officials.³⁸⁷

Moreover, in the federal court context, the recent *Trump v. CASA* decision calls into question the scope of relief that can be sought against unitary chief election official decisions that affect thousands of voters. In *CASA*, the Supreme Court held that federal courts can only grant equitable relief between “the parties named as plaintiff and defendants.”³⁸⁸ While the Court was specifically dealing with nationwide injunctions in *CASA*,³⁸⁹ the logic of the decision would seem extendable to, say, a lawsuit against a chief election official to enjoin them from burdening the voting rights of people across a given state. Thus, options to protect one’s federal constitutional rights from being violated by a unitary chief election official have become more limited. At best, one could hope to bring a formal class action against the chief election official, though this necessitates meeting the requirements of Federal Rule of Civil Procedure 23.³⁹⁰ At worst, one may need to bring their own individual lawsuit to protect their rights, if they can even afford it.

As a final consideration, some may view the judiciary as too politicized these days to render neutral decisionmaking. Are judges, after all, more able to set aside political ideology than the average person when confronted with election-law cases? Ryan Doerfler and Samuel Moyn have recently argued no, contending that “asking ideological questions necessitates receiving ideological answers, and so, so long as judges are the ones answering, judicial ideology is what we must get.”³⁹¹ By some metrics, in fact, the Supreme Court is more ideologically extreme than the American public.³⁹² Yet, the precise extent to which

³⁸⁷ See, e.g., *Palmer v. Hobbs*, No. 22-5035, 2022 WL 1102196, at *2–4 (W.D. Wash. Apr. 13, 2022); *Pender County v. Bartlett*, 649 S.E.2d 364, 376 (N.C. 2007).

³⁸⁸ *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2552 (2025) (quoting *Scott v. Donald*, 165 U.S. 107, 115–17 (1897)).

³⁸⁹ See *id.* at 2549 (noting that the district courts applied preliminary injunctions to cover “anyone in the country”).

³⁹⁰ See David Marcus, *The Class Action After Trump v. CASA*, 73 UCLA L. REV. DISCOURSE 2, 6–8 (2025) (discussing how the class action may take the place of the universal injunction). Plaintiffs could also potentially ask courts to vacate improper agency decisions, though only if the state’s law provides for such a remedy. See Fred Halbhuber, *A Remedy Inherited: State Law, Universal Vacatur, and the Meaning of “Set Aside,”* 78 STAN. L. REV. ONLINE 121, 126–31 (2025) (overviewing history of state-level vacatur). Moreover, some scholars have argued that states themselves could still potentially pursue statewide injunctions post-*CASA*. See, e.g., Jacob Hamburger, *Statewide Injunctions*, 95 GEO. WASH. L. REV. (forthcoming 2027) (manuscript at 23–27), <https://ssrn.com/abstract=5463935> [<https://perma.cc/EJZ5-Y784>]. This latter option, nevertheless, is unlikely to apply to instances of enjoining unitary chief election officials, as that would essentially require the state to sue one of its own executive officers.

³⁹¹ Doerfler & Moyn, *supra* note 346, at 804.

³⁹² See *Decade-Long Study Shows Supreme Court Is Now Further to the Ideological Right than Most Americans*, ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION (June 6, 2022),

ideology affects judicial decisions on election issues is in dispute. Recall that during Trump's 2020 attempt to overturn the election results, nearly every federal judge Trump argued before ruled against him.³⁹³ Some scholars have even observed Trump-appointed judges to outperform their colleagues when it comes to judicial independence.³⁹⁴ Meanwhile, on the state level, the neutrality of the judge is tied to their method of selection. While appointed state-court judges are better-positioned to behave neutrally, metrics indicate that elected judges indeed succumb to political influence in ways that jeopardize the integrity of their decisionmaking.³⁹⁵

None of this is to say we should write off litigation as a means of attaining legal accountability against unitary chief election officials. Imperfect enforcement is not inconsequential.³⁹⁶ At the same time, legal accountability cannot rest *solely* on the lawsuit. It instead requires a “complex web[]” of mechanisms.³⁹⁷

Sticking with *ex post* accountability, there are instances where subjecting the chief election official to criminal sanctions would seem justifiable. To be sure, criminal law is a blunt instrument that should be reserved for only the most extreme of circumstances.³⁹⁸ Yet, unitary chief election officials are not mere private actors. They are entrusted with immense power,³⁹⁹ and can effect real damage to the democratic process. They should therefore be subject to heightened scrutiny and accountability for actions that directly undercut the integrity of and

<https://ash.harvard.edu/articles/decade-long-study-shows-supreme-court-is-now-further-to-the-ideological-right-than-most-americans> [<https://perma.cc/5MPM-6UKC>].

³⁹³ See *Results of Lawsuits Regarding the 2020 Elections*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/results-lawsuits-regarding-2020-elections> [<https://perma.cc/YHD7-TEL5>] (last visited Feb. 6, 2026) (“Judges heard claims of illegal voting and found they were without merit.”).

³⁹⁴ See Stephen J. Choi & Mitu Gulati, *How Different Are the Trump Judges?*, 78 VAND. L. REV. EN BANC 1, 21–28 (2025).

³⁹⁵ See SANFORD C. GORDON, ELECTED VS. APPOINTED JUDGES: A PRACTICAL RESEARCH GUIDE 8 (2024), <https://blockyapp.s3.eu-west-2.amazonaws.com/store/db1ff8b44b110a0754289f15d7366504.pdf> [<https://perma.cc/RD6Q-CAJQ>] (demonstrating that elected state court judges engage in decisionmaking patterns suggesting political influence, such as upholding death penalty decisions at greater frequencies); Matias Iaryczower, Garrett Lewis & Matthew Shum, *To Elect or to Appoint? Bias, Information, and Responsiveness of Bureaucrats and Politicians*, 97 J. PUB. ECON. 230, 243 (2013) (“[J]ustices that are shielded from voters’ evaluations on average have higher quality of information than justices that face either reelection or retention elections.”).

³⁹⁶ See Joshua Kleinfeld, *Enforcement and the Concept of Law*, 121 YALE L.J. ONLINE 293, 308–09 (2011) (“[T]he law is never perfectly enforced. And yet law exists.”).

³⁹⁷ Warren, *supra* note 29, at 39.

³⁹⁸ See HERBERT L. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 296 (1968) (contending that criminal sanctions should only be used when “[t]here are no reasonable alternatives”).

³⁹⁹ See *supra* Section I.B.

public confidence in our elections. Balance is key here, of course. Criminal sanctions should not be so strict or broad as to dissuade civilians from becoming an election official.⁴⁰⁰ Nevertheless, it is imperative for the state to signal that it takes election integrity seriously, both to preserve public confidence in the process and deter future severe abuses of the office of unitary chief election official.⁴⁰¹ Part III provides further guidance on what criminal sanctions against unitary chief election officials may look like.⁴⁰²

Legal accountability cannot solely be doled out *ex post*, nonetheless. As discussed earlier, *ex post* mechanisms could take years to right a unitary chief election official's wrong, if at all. All the while, voters continue to suffer.⁴⁰³ *Ex ante* mechanisms are therefore essential to mitigate the risk of wrongs occurring in the first place.⁴⁰⁴

One potential option is judicial preclearance, where certain chief election official decisions require prior approval by a court before going into effect. Preclearance is not a novel concept. Section 5 of the Voting Rights Act (VRA) famously required jurisdictions with a history of racial discrimination to run any change to their election laws or practices by either a federal court or the U.S. Attorney General before implementation.⁴⁰⁵ The impact of Section 5 was an immediate success, securing voting rights for millions of Black Americans.⁴⁰⁶ And while the provision ultimately met its demise in the 2013 case of *Shelby County v. Holder*,⁴⁰⁷ preclearance still lives on both on an ad-hoc basis federally⁴⁰⁸ and within certain state-level VRAs.⁴⁰⁹

⁴⁰⁰ Cf. Sean M. Scott, *The Hidden First Amendment Values of Privacy*, 71 WASH. L. REV. 683, 742 (1996) (noting the chilling effects criminal sanctions can have on speech).

⁴⁰¹ See Jessica C. Levy & Paul R. Williams, *Documentation for Accountability*, 52 CASE W. RESV. J. INT'L L. 451, 457 (2020) (“[C]riminal justice works to prevent future atrocities ‘through the assertion of accountability, which thereby generates a deterrent effect; signaling that no one is above the law’”).

⁴⁰² See *infra* notes 468–70 and accompanying text.

⁴⁰³ See *supra* Section II.B.

⁴⁰⁴ The risk of enforcement of laws via civil and criminal proceedings can itself operate as an *ex ante* accountability mechanism, of course, by deterring officials from knowingly engaging in misconduct. See Geraldine Szott Moohr, *Defining Overcriminalization Through Cost-Benefit Analysis: The Example of Criminal Copyright Laws*, 54 AM. U. L. REV. 783, 792 (2005) (“[O]ne effect of criminal enforcement is that it deters the banned conduct.”).

⁴⁰⁵ 52 U.S.C. § 10304(a).

⁴⁰⁶ See Daniel P. Tokaji, *If It's Broke, Fix It: Improving Voting Rights Act Preclearance*, 49 HOW. L.J. 785, 793 (2006) (noting the percentage of registered Black Americans jumped from twenty-nine percent to fifty-two percent in seven covered states).

⁴⁰⁷ 570 U.S. 529, 557 (2013).

⁴⁰⁸ See 52 U.S.C. § 10302(c) (providing courts the ability to retain jurisdiction over changes to voting practices on a case-by-case basis).

⁴⁰⁹ See, e.g., VA. CODE ANN. § 24.2-129 (2025) (applying preclearance to local jurisdictions).

Why not require the unitary chief election official to undergo preclearance? Courts are certainly well positioned to correct a chief election official's ignorance of or disregard for the law⁴¹⁰—at the very least, more well-positioned than most other institutions. Could they not serve a vital role in preventing unlawful democratic harm before it happens?

One argument against the use of preclearance is that it imposes too cumbersome a burden upon the chief election official. These are officials, after all, who routinely need to make quick decisions, especially in times of crisis.⁴¹¹ Preclearance may present too onerous a burden in such circumstances.⁴¹² Yet, preclearance need not be widely used against unitary chief election officials. It can instead be reserved for decisions that potentially implicate the fundamental voting rights of a large quantity of individuals. Removing 100,000 people from the voter rolls? Preclearance required. Changing the ballot font from Arial to Verdana? No preclearance necessary.⁴¹³

If one wishes to avoid preclearance altogether, a similar effect can be achieved through temporal limitations on chief election official actions. Think back, for instance, to the NVRA's quiet period provision that forbids chief election officials from purging voters within ninety days of an election.⁴¹⁴ Statutory limits of this variety strike a balance between administrative discretion and rights protection, preventing the chief election official from disrupting the democratic process at a time when incentives to manipulate the process are at their strongest and the risk of voter confusion is greatest. Likewise, a state can impose conflict-of-interest limitations on the unitary chief election official that wholly prohibit them from exercising authority in certain circumstances. In Arizona, for instance, the SOS is not allowed to supervise the recount of an SOS race.⁴¹⁵

⁴¹⁰ See *supra* notes 310–14, 375–76 and accompanying text.

⁴¹¹ See, e.g., *Secretary Merrill Releases Connecticut's Election Plan in the Face of COVID-19*, OFF. OF THE SEC'Y OF THE STATE CONN. (May 4, 2020), <https://portal.ct.gov/sots/press-releases/previous-years/2020-press-releases/secretary-merrill-releases-connecticuts-election-plan-in-the-face-of-covid19> [<https://perma.cc/J2HT-QDA5>].

⁴¹² See Warren, *supra* note 29, at 44 (warning against making the costs of accountability too high).

⁴¹³ Given the *Shelby County* decision, some may also question whether preclearance is even possible. The answer is yes, at least on the state level. For one, the *Shelby County* Court's decision was driven by federalism concerns that do not arise under state-level VRAs. See *Shelby County v. Holder*, 570 U.S. 529, 540 (2013). Moreover, the Court found that Congress relied upon outdated justifications when renewing the VRA in 2006. See *id.* at 547. A state legislature seeking to implement its own VRA may avoid this issue by citing modern problems as justification.

⁴¹⁴ 52 U.S.C. § 20507(c)(2)(A).

⁴¹⁵ ARIZ. REV. STAT. ANN. § 16-664(B) (2025).

Finally, states could establish *ex ante* legal accountability mechanisms that minimize the chances of a subversive actor ever entering the office of chief election official in the first place. We can call this *ab initio* accountability, where laws define a level of qualifications we expect from the officeholder. *Ab initio* accountability makes sense for offices that demand special expertise. For instance, over half of states require their attorney general to hold a law degree.⁴¹⁶ No state meanwhile requires any comparable standards to serve as chief election official. Indeed, between 2000 and 2020, only one quarter of unitary chief election officials had prior election experience,⁴¹⁷ despite election administration being a highly technical field with high stakes. Putting in place some degree of qualification requirements—whether that be having experience as a local election official or simply having earned a certificate⁴¹⁸—could help further shield the office from partisan capture.

There are other forms of *ab initio* accountability that, on the other hand, seem less conducive to securing a pro-democratic unitary chief election official. Take term limits. Currently, seventeen unitary chief election officials are subject to some form of term limits.⁴¹⁹ Do such limits lead to better chief election officials? Certainly, when it comes to elected representatives, there are strong arguments in favor of term limits, such as enhancing responsiveness to the people.⁴²⁰ Yet, as I argued above, the chief election official must answer to principles first and foremost.⁴²¹ They should, moreover, be treated as career professionals—experts with specialized skills—rather than simply politicians using statewide offices as stepping-stones to higher positions.⁴²² The utility of term limits is therefore debatable.

With all this said, we need not only rely on external legal mechanisms to hold unitary chief election officials accountable. Accountability from within the executive branch itself can also act as a powerful and effective

⁴¹⁶ *Attorney General Office Comparison*, BALLOTPEdia, https://ballotpedia.org/Attorney_General_office_comparison [<https://perma.cc/W6CB-22CA>] (last visited Jan. 7, 2026).

⁴¹⁷ ELECTION REFORMERS NETWORK, SECRETARY OF STATE REFORM OPTIONS 3 (2025), <https://www.electionreformers.org/articles/five-secretary-of-state-reform-options> [<https://perma.cc/RK2R-EULW>].

⁴¹⁸ See *infra* notes 480–82 and accompanying text.

⁴¹⁹ *Secretary of State Office Comparison*, BALLOTPEdia, https://ballotpedia.org/Secretary_of_State_office_comparison [<https://perma.cc/YEB7-QXAM>] (last visited Jan. 7, 2026); *Lieutenant Governor Office Comparison*, BALLOTPEdia, https://ballotpedia.org/Lieutenant_Governor_office_comparison [<https://perma.cc/9D8W-KWAC>] (last visited Jan. 7, 2026).

⁴²⁰ See R. SAM GARRETT & L. PAIGE WHITAKER, CONG. RSCH. SERV., IF12343, TERM LIMITS FOR MEMBERS OF CONGRESS: POLICY AND LEGAL OVERVIEW 1 (2023), https://www.congress.gov/crs_external_products/IF/PDF/IF12343/IF12343.1.pdf [<https://perma.cc/KE4D-NSJ7>].

⁴²¹ See *supra* Section II.C.1.

⁴²² See ELECTION REFORMERS NETWORK, *supra* note 417, at 3, 7; cf. Deepa Das Acevedo, *A Tale of Two Courts*, 105 CORN. L. REV. ONLINE 67, 70 (2020) (“[T]erm limits [for Supreme Court justices] would likely transform the Court into a stepping stone to some later position.”).

tool against abuse of the office. The final Section below examines this form of accountability, known in the literature as internal accountability.

4. *Internal Accountability*

Internal accountability is accountability triggered by one bureaucrat against another. In other words, the executive branch polices itself. On an interagency level, this dynamic entails, as Guillermo O'Donnell describes, "state[] agencies . . . authorized and willing to oversee, control, redress, and if need be sanction unlawful actions by other state agencies."⁴²³ By way of example, when the New Hampshire SOS needs the state attorney general's approval before lowering the number of voting booths at polling places,⁴²⁴ the SOS is being subjected to interagency, or "horizontal," accountability. Yet, internal accountability can also occur between principal and agent—between chief election official and lower-level election official.⁴²⁵

In the context of unilateral election administration, internal accountability offers distinct advantages that are not easily replicated by electoral or legal mechanisms. For one, it provides greater opportunity for continuous oversight: Whereas elections are held only periodically,⁴²⁶ and legal enforcement typically occurs case by case, internal bodies can monitor the actions of unitary chief election officials on an ongoing basis. For example, Minnesota has a nonpartisan Office of the Legislative Auditor that can review the actions of the Minnesota SOS at any time to determine whether they "have complied with legal requirements."⁴²⁷ Such flexible practices are not as available in the realms of electoral and legal accountability.

Internal accountability also allows the monitoring of chief election officials to be steered by expertise. Election administration, after all, requires technical knowledge on a range of topics, from voting machines to canvassing procedures to constitutional and statutory rights. Who, therefore, are in the best position to assess when a unitary chief election official has overstepped their bounds? The answer would seem to be other election officials, or at least officials who possess a familiarity with election-related issues.⁴²⁸ To be sure, other persons, such as judges, can

⁴²³ O'Donnell, *supra* note 303, at 119.

⁴²⁴ See N.H. REV. STAT. ANN. § 658:9(V)(b)(1) (2025).

⁴²⁵ See *infra* notes 489–91 and accompanying text.

⁴²⁶ See O'Donnell, *supra* note 303, at 113.

⁴²⁷ MINN. STAT. § 3.971(6)–(8a) (2025). Many states have such auditors. See *infra* note 484 and accompanying text.

⁴²⁸ See Thomas Schillemans, *Accountability in the Shadow of Hierarchy: The Horizontal Accountability of Agencies*, 8 PUB. ORG. REV. 175, 189 (2008) ("[T]he agency can demonstrate that it possesses skills and expertise that no other agency or political actor can provide.").

possess enough competence to acquaint themselves with the technical details when the need arises.⁴²⁹ Yet, to attain accountability guided by years' worth of election expertise, turning inward is the best option.

Lastly, internal accountability incorporates unique incentive structures not seen in other modes—namely, that bureaucrats almost always want their agency to succeed. As Jon Michaels notes, the “civil service has institutional, cultural, and legal incentives to insist that agency leaders follow the law . . . and refrain from partisan excesses. . . . [They] have reason to ‘choose’ to hold agency leaders accountable.”⁴³⁰ Local election officials are no different. They, in fact, take their roles very seriously.⁴³¹ Rarely do they abuse their office for partisan gain.⁴³² And they certainly are not doing their job solely for the salary, which is often low-paying for the demands of the role.⁴³³ To the contrary, many seek out and continue to work in the election administration space because they genuinely support the democratic process.⁴³⁴ In turn, few would tolerate a unitary chief election official disrupting the integrity of said process if they had the power to do something about it.

It is less clear, nevertheless, whether this logic transfers to cases of horizontal accountability. Take, for example, instances where the unitary chief election official needs attorney general approval before making a consequential decision. What happens if, as Guy Peters posits, “both are corrupt or abusive?”⁴³⁵ As the vast majority of attorneys

⁴²⁹ See, e.g., NAT'L JUD. COLL., A JUDGE'S BENCH GUIDE TO ADJUDICATING FAST-PACED, HIGH-PROFILE ELECTION CASES (2024), <https://www.pacourts.us/Storage/media/pdfs/20240823/172605-njelectioncasebenchguide2024.pdf> [<https://perma.cc/U55W-MXTA>].

⁴³⁰ Jon D. Michaels, *An Enduring, Evolving Separation of Powers*, 115 COLUM. L. REV. 515, 543 (2015); see also Gillian E. Metzger, *The Interdependent Relationship Between Internal and External Separation of Powers*, 59 EMORY L.J. 423, 444–45 (2009) (noting that certain “personnel within the Executive Branch . . . are committed to enforcing the governing statutory regime”).

⁴³¹ Some will even sacrifice their position to avoid engaging in bad practices assigned to them by higher-ups. See, e.g., Summer Hom, *Resignation of Cochise County Elections Director Becomes Final*, AZPM (Feb. 23, 2024), <https://news.azpm.org/s/96133-resignation-of-cochise-county-elections-director-becomes-final> [<https://perma.cc/7J8V-35FA>] (discussing how an Arizonan elections director resigned after refusing to obey potentially illegal orders).

⁴³² See Ferrer, Geyn & Thompson, *supra* note 22, at 966–69 (examining empirical support for notion that local election officials do not advantage their party).

⁴³³ See Sam Levine, *Exodus of Election Officials in One County Rings Alarm for US Democracy*, GUARDIAN (Dec. 2, 2023), <https://www.theguardian.com/us-news/2023/dec/02/pennsylvania-county-exodus-election-officials-alarm-us-democracy> [<https://perma.cc/S6LT-ATDC>] (“You’re making \$65,000 and you’re going to work and people are publicly abusing you?”).

⁴³⁴ For a book that overviews the incentives and opinions of local election officials, see LOCAL ELECTION ADMINISTRATORS IN THE UNITED STATES, *supra* note 22.

⁴³⁵ B. Guy Peters, *Accountability in Public Administration*, in THE OXFORD HANDBOOK OF PUBLIC ACCOUNTABILITY, *supra* note 29, at 211, 218.

general are elected,⁴³⁶ misaligned incentives may exist. Peters quells this concern by claiming that, in general, “people are less likely to act illegally or immorally if they are with others, especially their peers.”⁴³⁷ Maybe so. At the same time, even if well-meaning actors fill these positions, partisanship can still get in the way of accountability. As Miriam Seifter observes, if two elected officials within the executive branch share the same party affiliation, neither are likely to constrain the other.⁴³⁸ The safer route, accordingly, would seem to simply leave horizontal accountability in the hands of more neutral parties, such as a designated auditor.⁴³⁹

Internal accountability also creates a potential problem of democratic legitimacy.⁴⁴⁰ Some may ask, why should the head of the election administration apparatus be held accountable primarily by unelected officials? To begin, internal accountability need not necessarily come from an unelected official. Indeed, many local election officials are elected,⁴⁴¹ as are many heads of state agencies.⁴⁴² But even if unelected officials can wield power to check the authority of their chief election official, is this anti-democratic? I am personally unconvinced. For one, as I have already argued, I do not believe a well-functioning democracy requires the chief election official to answer directly or indirectly to the people—in fact, electoral responsiveness may actually *harm* democracy.⁴⁴³ Even if you do not buy this argument, though, being unelected does not automatically mean one is unaccountable to the people. As Anya Bernstein and Cristina Rodríguez have recently presented through a series of interviews, unelected bureaucrats frequently modify their behavior in reaction to public opinion.⁴⁴⁴ Providing such officials with tools of internal accountability does not necessarily cut out influence by the people themselves.

⁴³⁶ See *Attorney General Office Comparison*, *supra* note 416 (forty-three out of fifty).

⁴³⁷ Peters, *supra* note 435, at 218.

⁴³⁸ Miriam Seifter, *Gubernatorial Administration*, 131 HARV. L. REV. 483, 526–28 (2017).

⁴³⁹ See *supra* note 427 and accompanying text.

⁴⁴⁰ See Peters, *supra* note 435, at 211 (“Reconciling the permanence and expertise of the public bureaucracy with political control is a persistent problem for any political system.”).

⁴⁴¹ See, e.g., Sasha Hupka & Helen Rummel, *Republican Justin Heap Declares Victory in Maricopa County Recorder’s Race*, AZ CENTRAL (Nov. 6, 2024), <https://www.azcentral.com/story/news/local/phoenix/2024/11/05/maricopa-county-recorder-election-results/75978040007> [<https://perma.cc/95SF-9PPT>].

⁴⁴² See, e.g., *supra* note 436 and accompanying text (noting that state attorneys general are often elected).

⁴⁴³ See *supra* notes 339–46 and accompanying text.

⁴⁴⁴ See Anya Bernstein & Cristina Rodríguez, *The Accountable Bureaucrat*, 132 YALE L.J. 1600, 1655–62 (2023).

Furthermore, internal accountability need not necessarily exclude public participation. To the contrary, providing voters with opportunities to directly hold their unitary chief election official to account can bolster the webs of accountability. The executive can, for example, offer an administrative election dispute resolution process, under which any citizen can file a complaint should they believe their chief election official has violated their duties.⁴⁴⁵ Once the complaint is received, the relevant agency—for instance, the department of state—can provide an arbitration or mediation process to resolve the citizen's concerns.⁴⁴⁶ By directly involving the citizen, such a process can enhance the democratic legitimacy of internal accountability—perhaps even offering citizens a more direct means of influencing their chief election official's behavior than elections can offer.⁴⁴⁷

Like legal accountability, internal accountability can be applied both *ex ante* and *ex post*. *Ex ante* methods could include ethics training, codes of conduct, internal preclearance (either intra-agency or interagency), and potentially even the involvement of local election officials in choosing the chief election official. *Ex post* methods, meanwhile, could include audits, investigations, whistleblowing, and administrative sanctions. Part III provides more detailed suggestions on which internal mechanisms states may wish to adopt to hold their unitary chief election officials to account.

To recap, unitary chief election officials wield great discretion over many aspects of election administration. And there are numerous ways to hold them accountable should they misuse or abuse their powers for personal or partisan gain. Part II has contended that legal and internal accountability mechanisms—especially *ex ante* ones—provide better, more pro-democratic means of checking the unitary chief election official than electoral or quasi-electoral modes of accountability. The question now becomes: How do we attain robust accountability in practice? Part III offers some insight.

⁴⁴⁵ See Green, *Election Disputes*, *supra* note 39 (manuscript at 2) (introducing the concept of administrative election dispute resolution).

⁴⁴⁶ See *id.* (manuscript at 23–28).

⁴⁴⁷ Some may question whether, by virtue of citizen involvement, administrative election dispute resolution falls under the umbrella of internal accountability. I concede that one could plausibly put it in its own category. Nevertheless, because the process involves the facilitation of executive officials, I include it under internal accountability here.

III REALIZING ACCOUNTABILITY

Having now considered which modes of accountability do and do not work well for unitary chief election officials, this Part presents guidance on how lawmakers can better regulate the position going forward. I refrain from providing overly specific remedies, as each state's election administration regime is unique in structure and, in turn, demands individualized treatment. At a high level, though, my recommendations emphasize *ex ante* legal and internal modes of accountability, while deemphasizing electoral and quasi-electoral modes. Following this discussion, I briefly touch upon three additional considerations that, while outside the scope of this Article, relate close enough to chief election official accountability that they deserve some attention. Specifically, I consider merits of (1) making the chief election official a nonpartisan office, (2) decentralizing chief election official authority to other officials, and (3) entrusting the authority in a position that focuses solely on administering elections, rather than in a multipurposed office like the SOS or lieutenant governor.

A. *A Rough Blueprint*

Moving toward a more robust accountability regime for unitary chief election officials first requires deprioritizing, if not outright abandoning, electoral accountability. Recall that every single unitary chief election official is presently chosen through some political process, with the majority elected directly by the people.⁴⁴⁸ Even those appointed are still chosen through a partisan process, where the party in control of either the governor's office or legislature gets to decide who the chief election official is.⁴⁴⁹ Shifting away from these practices toward more neutral selection is crucial to ensuring the chief election official is held accountable to impartial democratic principles rather than political whims.⁴⁵⁰

Neutral selection need not, however, entirely exclude elected officials. There are, in fact, strong justifications for including them in the process, such as maintaining democratic legitimacy over the choice—retaining “an electoral link between the public and the bureaucracy.”⁴⁵¹ The key is simply to avoid the opportunity for

⁴⁴⁸ See *supra* Section I.A, Figure 2.

⁴⁴⁹ See *supra* Section I.A, Figure 2.

⁴⁵⁰ Cf. Katherine Shaw, *Partisanship Creep*, 118 Nw. U. L. REV. 1563, 1629 (2024) (“[A] nonpartisan government workforce is not only of instrumental value in providing government services on an evenhanded basis: it is, rather, inextricably linked to that goal.”).

⁴⁵¹ Kagan, *supra* note 352, at 2331–32.

any one party to dominate the selection process.⁴⁵² The Wisconsin Election Commission's appointment process serves as an example. Under Wisconsin law, the majority and minority leaders of both state legislature chambers each choose one commissioner.⁴⁵³ The governor then chooses two additional members, one from a list of candidates provided by Republican leadership and another from a list provided by Democratic leadership.⁴⁵⁴ The result is an even-numbered election commission with equalized partisan influence, an outcome that experts have noted makes it more difficult "to commit election malfeasance."⁴⁵⁵ States⁴⁵⁶ could adopt a similar process for unitary chief election officials, where an equal number of Democratic and Republican officials come together to choose one, in turn mitigating the risk of the role being filled by an unduly partisan figure.

An alternative option would be to have local election officials choose the unitary chief election official. Such a process would blend electoral accountability with internal accountability, allowing for institutional incentives and expertise to drive the decision.⁴⁵⁷ The plausibility and preferability of such a system would depend, nevertheless, on the state, as each structures local election administration differently.⁴⁵⁸ In some states, for instance, the unitary chief election official is the one who appoints the local election officials.⁴⁵⁹ In those states, the democratic legitimacy of the chief election official appointment process may suffer if the current chief election official gets to essentially handpick a conclave that will vote on the chief election official's reappointment or successor.

Moving on to legal accountability, some weaknesses of ex post mechanisms, namely lawsuits, are either impossible or infeasible to remedy via legislation. Lawmakers cannot, for instance, easily undo

⁴⁵² Doing so is crucial to avoiding the political influence that defines quasi-electoral accountability. *See supra* Section II.C.2.

⁴⁵³ WIS. STAT. § 15.61(1)(a)(1)–(4) (2025).

⁴⁵⁴ *Id.* § 15.61(1)(a)(5).

⁴⁵⁵ R. Michael Alvarez, Thad E. Hall & Morgan Llewellyn, *Who Should Run Elections in the United States?*, 36 POL'Y STUD. J. 325, 333 (2008).

⁴⁵⁶ I recognize that Congress can, and has, implemented laws regulating the conducting of state election officials. The reason I frame this conversation in terms of state legislative action is because, first, I operate from a present-day reality that Congress will not enact election legislation anytime soon and, second, Congress's regulatory powers are limited to the "Times, Places and Manner" of holding congressional elections, thus limiting the legislative solutions the body could pass. *See* U.S. CONST. art. I, § 4, cl. 1.

⁴⁵⁷ *See supra* notes 428–34 and accompanying text.

⁴⁵⁸ *See Election Administration at State and Local Levels*, NAT'L CONF. OF STATE LEGISLATURES (Oct. 1, 2025), <https://www.ncsl.org/elections-and-campaigns/election-administration-at-state-and-local-levels> [<https://perma.cc/KR4N-W96J>].

⁴⁵⁹ *See, e.g.*, OHIO REV. CODE ANN. §§ 3501.05(A), 3501.06(A) (West 2025).

the *Purcell* principle.⁴⁶⁰ What they *can* do, however, is make standing clearer and more readily available in instances where the unitary chief election official may shirk their responsibilities. Indeed, just because a chief election official's dubious decision does not clearly implicate constitutional rights does not mean it is not worth remedying in court. For example, when a county election official allowed election deniers to access voting equipment in Coffee County, Georgia,⁴⁶¹ thus causing a major security breach, Secretary of State Brad Raffensperger failed to decertify said equipment despite an arguable duty to do so.⁴⁶² Yet, there was no clear means to sue Raffensperger to compel him to decertify the tampered-with equipment.⁴⁶³ To cure this issue, states should consider enacting private rights of action that clearly grant citizens the ability to check their chief election official in court.⁴⁶⁴

Lawmakers should refrain, of course, from too liberally granting such rights of action. The unitary chief election official may otherwise feel frozen if every decision could lead to a lawsuit. Indeed, there is typically more than one valid choice a chief election official can make in a given circumstance. The purpose of the lawsuit should not be to second-guess Valid Choice 1 simply because the plaintiff would have preferred Valid Choice 2.⁴⁶⁵ Instead, only decisionmaking that clearly neglects an express duty of the unitary chief election official, and thus has the potential to disrupt the democratic process, should be open to judicial challenges by the public. Even then, concerns may linger about burdening the judiciary with an increasing docket of election-law cases. Lawmakers may alternatively consider allowing citizens to file complaints to an administrative board that oversees the conduct of the unitary chief election official. While many states have inspectors general,⁴⁶⁶ a more targeted board can look beyond fraud and corruption,

⁴⁶⁰ See *supra* notes 385–87 and accompanying text.

⁴⁶¹ See Emma Brown & Amy Gardner, *Georgia County Under Scrutiny After Claim of Post-Election Breach*, WASH. POST (May 13, 2022), <https://www.washingtonpost.com/investigations/2022/05/13/coffee-county-misty-hampton-election> [<https://perma.cc/N6YJ-53S3>].

⁴⁶² See GA. COMP. R. & REGS. 183-1-12.14(b) (2025) (stating that the SOS oversees the process if a voting system component experiences any malfunction or problem).

⁴⁶³ A federal judge, in fact, more recently dismissed a lawsuit against Raffensperger more broadly challenging the constitutionality of Georgia's DRE system for lack of standing, referring to the plaintiffs' arguments as "mere policy disagreements." *Curling v. Raffensperger*, 776 F. Supp. 3d 1191, 1209 (N.D. Ga. 2025).

⁴⁶⁴ Statutory grants of private rights of action typically give a plaintiff "statutory standing." See Radha A. Pathak, *Statutory Standing and the Tyranny of Labels*, 62 OKLA. L. REV. 89, 94 (2009).

⁴⁶⁵ See ELY, *supra* note 344, at 103 (contending that just because a government implements laws with which one disagrees does not itself render the government's actions as malfeasance).

⁴⁶⁶ See, e.g., *Office of the Inspector General*, N.Y. STATE, <https://ig.ny.gov/offices/inspectorgeneral> [<https://perma.cc/M35F-P97S>] (last visited Jan. 2, 2026).

focusing more so on whether the unitary chief election official is engaging in impartial work within the obligations and limits of their statutory authority.⁴⁶⁷

States may also benefit from adopting criminal sanctions for abuse of the chief election official position. As of now, few states appear to subject their unitary chief election officials to any unique criminal sanctions.⁴⁶⁸ Pennsylvania is in fact the only state out of the eleven I examined in which the chief election official can face real criminal charges for a wide range of abuses. Specifically, in Pennsylvania:

Any Secretary . . . who shall wilfully neglect or refuse to perform his duty, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars, or to undergo an imprisonment of not more than two (2) years, or both, in the discretion of the court.⁴⁶⁹

Should comparable provisions be enacted in other states?

Maybe. On the one hand, treating abuse of an office entrusted with safeguarding our democratic process as a felony acts as a major deterrent and sends signals to the public that the state takes such malfeasance seriously. Yet, depending on how we define “neglect,” it seems many actions could be subject to criminal sanctions that could be better remedied through alternative means. Many criminal law scholars indeed contend that criminal sanctions should be reserved for when “[t]here are no reasonable alternatives.”⁴⁷⁰ Some argue they are never justified.⁴⁷¹ At the very least, if a state were to criminalize chief election official abuse, it could limit sanctions to instances of abuse of power done knowingly or purposely to favor a candidate or political party—instances where the chief election official is unequivocally attempting to thwart the democratic process.

There is greater room for progress, meanwhile, on the ex ante front of legal accountability. States should, for one, consider subjecting certain actions of unitary chief election officials to some form of preclearance. As noted, numerous states have enacted VRAs in the

⁴⁶⁷ Crucial to this board would be sanctioning authority. *See infra* note 494 and accompanying text.

⁴⁶⁸ The chief election official is surely subject to more general criminal sanctions in many states, such as prohibitions on bribery.

⁴⁶⁹ 25 PA. STAT. AND CONS. STAT. § 3548 (West 2025).

⁴⁷⁰ PACKER, *supra* note 398, at 296.

⁴⁷¹ *See* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1172–207 (2015) (overviewing prison abolition).

wake of *Shelby County v. Holder*.⁴⁷² Those state-level VRAs that have preclearance typically impose the process solely on the election practices of localities rather than statewide actions.⁴⁷³ In Connecticut, the chief election official is in fact the official tasked with preclearing the policies of covered jurisdictions within the state.⁴⁷⁴ But if the unitary chief election official is routinely rendering decisions that implicate the fundamental voting rights of thousands of voters simultaneously, should they not too undergo preclearance review? Why not have a jurist—whether they be a judge or the state attorney general—address constitutional concerns from the get-go rather than leaving it to plaintiffs and the courts to figure out after voters may have already been harmed? Concerns may arise about burdening the unitary chief election official, but preclearance need not apply to all their actions. It should, in fact, be reserved for actions of the highest stakes, where fundamental rights are at greatest risk (for example, when X number of voters are removed from the rolls). Finer details can be parsed out on a state-by-state basis.

States should also put in place conflict-of-interest laws that limit unitary chief election officials' authority in instances where incentives for misconduct are highest. Of the eleven states I surveyed, few conflict-of-interest statutes were on the books. The most common type were laws that forbade unitary chief election officials from having pecuniary interests in voting equipment.⁴⁷⁵ Two states—Georgia and Ohio—also prohibit their chief election officials from serving in a fiduciary capacity for campaigns in elections they certify.⁴⁷⁶ And only Arizona prohibits its chief election official from supervising a recount of their own race.⁴⁷⁷ Shockingly, none appeared to prohibit the chief election official from overseeing electoral races in which they themselves are candidates. This is a problem, both because of the actual conflicts that arise in such instances⁴⁷⁸ and the appearance of conflict that undermines the

⁴⁷² See *States Voting Rights Acts*, NAT'L CONF. OF STATE LEGISLATURES (June 4, 2025), <https://www.ncsl.org/elections-and-campaigns/state-voting-rights-acts> [<https://perma.cc/ZN3P-CEJA>].

⁴⁷³ See, e.g., CONN. GEN. STAT. § 9-368m(c)(1) (2025); N.Y. ELEC. LAW § 17-210(3) (McKinney 2025); VA. CODE ANN. § 24.2-129 (2025).

⁴⁷⁴ See CONN. GEN. STAT. § 9-368m(a) (in tandem with superior courts).

⁴⁷⁵ See, e.g., FLA. STAT. § 101.5605(2)(c) (2025); GA. CODE ANN. §§ 21-2-324(g), 21-2-368(g), 21-2-379.2(g), 21-2-379.24(f) (2025); NEV. REV. STAT. § 293B.1045(8) (2025); OHIO REV. CODE ANN. § 3506.05(C)(5) (West 2025); 25 PA. STAT. AND CONS. STAT. ANN. §§ 3006(e), 3031.5(e) (West 2025).

⁴⁷⁶ GA. CODE ANN. § 21-2-50(b); OHIO REV. CODE ANN. § 3501.052.

⁴⁷⁷ ARIZ. REV. STAT. ANN. § 16-664(B) (2025).

⁴⁷⁸ See *supra* notes 251–58 and accompanying text (discussing when then-Secretary of State Kemp oversaw his gubernatorial race).

public's faith in the democratic process.⁴⁷⁹ A quick fix would be simply to require unitary chief election officials to fully recuse themselves from any decisions that specifically impact their race.

As a final legal accountability mechanism, states should strongly consider implementing qualifications for holding the office of chief election official. As noted, we typically expect our attorneys general to have relevant professional qualifications.⁴⁸⁰ Why not our chief election officials? Several countries, in fact, require their respective chief election officials to meet certain prerequisites.⁴⁸¹ In Wisconsin, meanwhile, two out of the election commission's six members must have "formerly served as county or municipal clerks."⁴⁸² Yet, no unitary chief election official in the United States is required to have relevant qualifications or experience for the role. Why set such low standards for the head election administrator? The bar need not be prohibitively high or exclusive. Serving as a lower-level election official, or even a poll worker, could be enough. Or maybe we require the incoming chief election official to receive certification through a training course. There are plenty of jobs in society that we do not allow just anybody to perform—doctor, accountant, lawyer, electrician, etc. The "guardians of democracy" should be treated no differently.

Lastly, states should either use existing avenues of internal accountability and/or create new ones. First, the unitary chief election official should be subject to audits that assess whether they are acting within the bounds of the law. Studies indicate that audits do indeed enhance quality of governance because the threat of having wrongdoing discovered acts as an *ex ante* means of preventing it from ever happening.⁴⁸³ Presently, though, audits are underutilized against

⁴⁷⁹ See ELECTION REFORMERS NETWORK, DESIGNING GUIDELINES FOR RECUSAL BY ELECTION OFFICIALS 2–3 (2024), https://cdn.prod.website-files.com/642dcbc53f522476efc85893/66a170d58ad243401dc33fe4_Recusal%20Guidelines07.24.24V.2.pdf [<https://perma.cc/PU4S-8AFM>] ("60% of likely voters said that election officials should not oversee decisions that could impact their own candidacy.").

⁴⁸⁰ See *supra* note 416 and accompanying text.

⁴⁸¹ As one example, Guyana requires its chief election officer to have a relevant post-graduate degree and "specific training and verifiable experience in managing election systems along with at least ten (10) years experience in a senior management position overseeing and directing diverse operations aimed at achieving targets within specific deadlines." GUY. ELECTION COMM'N, VACANCIES 1 (2021), https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/inline/AD_GECOM%20Vacancies_30th%20September%202021.pdf [<https://perma.cc/P273-XYAF>].

⁴⁸² WIS. STAT. § 15.61(1)(a)(5) (2025); see also OHIO REV. CODE ANN. § 3517.14(A)(2)(a)(ii) (requiring members of state campaign finance board to have "at least four years of work experience in election administration").

⁴⁸³ See Eric Avis, Claudio Ferraz & Frederico Finan, *Do Government Audits Reduce Corruption? Estimating the Impacts of Exposing Politicians*, 126 J. POL. ECON. 1912, 1961–62

unitary chief election officials. Certainly, every state has some form of a state auditor tasked with reviewing the financials and legality of decisionmaking within the executive.⁴⁸⁴ And there have been occasional instances of state auditors focusing on election administration. In Maryland, for example, the Office of Legislative Audits recently audited the Maryland Board of Elections, ultimately finding that the board failed to timely report instances of election fraud in 2020.⁴⁸⁵ Perhaps state auditors can exercise greater focus on unitary chief election officials. Alternatively, states can mandate *routine* audits of chief election officials, thus guaranteeing that audits will happen during their tenures.

Moreover, states should implement internal checks that leave certain decisionmaking not entirely within the discretion of the unitary chief election official—a sort of internal preclearance. As noted earlier, a few states I examined do have internal preclearance for certain matters,⁴⁸⁶ though they typically rely on the state’s attorney general as the “check.”⁴⁸⁷ While the attorney general may serve as a logical check for decisions that implicate legal questions, internal preclearance can, and sometimes should, fall on other officials too. It may be preferable, for instance, to grant preclearance authority to more impartial actors, lest a partisan official let political biases influence whether they approve a unitary chief election official’s actions.⁴⁸⁸

The Michigan Board of State Canvassers offers a great example of this arrangement. Specifically, the board is composed of four members: two Democrats and two Republicans, appointed by the governor with the advice and consent of the state senate.⁴⁸⁹ While the Michigan SOS, serving as chief election official, wields much discretion over election administration, the Board of State Canvassers is tasked with approving a number of SOS decisions. The Board, for example, must approve any

(2018) (finding a statistically significant negative correlation between municipal audits and corruption).

⁴⁸⁴ See *State Auditors*, BOOK OF THE STATES, <https://bookofthestates.org/tables/2023-4-27> [<https://perma.cc/ZTG5-K2EH>] (last visited Jan. 2, 2026).

⁴⁸⁵ See Tommy Tucker, *Elections Board Audit Finds Ineligible Voters, Security Issues*, CAP NEWS SERV. (Nov. 3, 2023), <https://cnsmaryland.org/2023/11/03/elections-board-audit-finds-ineligible-voters-security-issues> [<https://perma.cc/75W4-NUDE>].

⁴⁸⁶ See *supra* note 424 and accompanying text.

⁴⁸⁷ See, e.g., ARIZ. REV. STAT. ANN. § 19-125(C)–(F) (2025) (requiring attorney general to approve ballot measure descriptions); LA. STAT. ANN. § 18:1306(A)–(B) (2025) (requiring attorney general to approve absentee and early voting ballots); MINN. STAT. § 204D.15(1) (2025) (requiring attorney general to approve ballot measure titles).

⁴⁸⁸ See Seifter, *supra* note 438, at 526–28 (observing that two executive officials from the same political party are less likely to check each other’s behavior).

⁴⁸⁹ *Board of State Canvassers*, MICH. DEP’T OF STATE, <https://www.michigan.gov/sos/elections/bsc> [<https://perma.cc/BKA4-C4WY>] (last visited Jan. 2, 2026).

electronic voting systems selected by the SOS.⁴⁹⁰ It must also approve instructions issued by the SOS on how to count stray ballot marks during the recount process.⁴⁹¹ In these instances, the Board does not fully usurp the SOS's discretionary authority, but rather ensures the SOS's actions are sound.

The Ohio Board of Voting Systems Examiners, meanwhile, serves as an example of an *imperfect* arrangement. In theory, the Board prevents decisions on voting equipment from resting solely within the SOS's hands. Yet, the SOS directly appoints two of its four members.⁴⁹² And the SOS acts as the tiebreaking vote in instances of two-two deadlocks for the board.⁴⁹³ The Board is accordingly not a truly neutral check on chief election official decisionmaking.

Of course, internal preclearance is not an effective mode of accountability if it creates too many barriers for the unitary chief election official to engage in efficient administration. There are, in fact, instances where democracy benefits from quick, decisive action, especially in the face of emergencies (such as times of pandemic). Furthermore, if too many instances of discretion are subject to internal review, the chief election official could feel inhibited from fulfilling their responsibilities, a situation that itself would harm democracy. Lawmakers should therefore reserve internal preclearance for decisions that will have far-reaching substantive effects on the electoral process, such as ballot measure language, voting equipment certification and decertification, voter registration revocation, and so on. So too should lawmakers refrain from implementing review procedures that render it difficult for the chief election official to make time-sensitive decisions. Perhaps within a certain time period before an election, for instance, the preclearance process should be expedited.

To give these *ex ante* mechanisms teeth, lawmakers should also establish administrative sanctioning procedures that can hold the unitary chief election official accountable if, say, internal review finds that they have misused or abused their role. Doing so would, for one, allow for a method of sanctioning led predominately by individuals with expertise in election administration. Moreover, administrative sanctions offer unique societal benefits—namely that, when compared to the retributionist nature of criminal sanctions, administrative sanctions provide leeway for more flexible and corrective justice in situations where imprisonment or fines would be disproportionate punishment

⁴⁹⁰ MICH. COMP. LAWS § 168.795a(1) (2025).

⁴⁹¹ *Id.* §§ 168.799a(3), 168.803(2).

⁴⁹² OHIO REV. CODE ANN. § 3506.05(C)(2)(a)(i) (West 2025).

⁴⁹³ *Id.* § 3506.05(C)(3).

to the misconduct that occurred.⁴⁹⁴ Say, for instance, a unitary chief election official creates a training program for local election officials that inadvertently contains false information. Should the chief election official face jail time? Absolutely not. But would democratic society benefit if an administrative board ordered the chief election official to correct the information in the training program? Absolutely yes.

Finally, as discussed in Part II,⁴⁹⁵ states should provide processes for administrative election dispute resolution under which citizens can (1) file complaints when they perceive wrongdoing from the unitary chief election official and (2) subsequently arbitrate or mediate the dispute to a resolution. Such procedures are not, in fact, unprecedented. As Rebecca Green has recently highlighted, HAVA requires all states to implement a complaint process for instances in which a citizen believes they have witnessed a violation (or imminent violation) of HAVA's Title III, which imposes certain voting systems standards for states.⁴⁹⁶ Once a complaint is filed, the state must resolve it within sixty days via some form of alternative dispute resolution (with the intricacies of the dispute resolution process being left to the state to design).⁴⁹⁷ While the scope of HAVA's administrative dispute resolution mandate is limited, records indicate that complainants have indeed taken advantage of it since its enactment, engaging in mediation or arbitration to resolve their respective complaints.⁴⁹⁸

States should likewise offer opportunities for citizens to dispute a broader range of unitary chief election official conduct. By way of one example, Arizona provides citizens the ability to file civil complaints with the Arizona Attorney General's Office whenever one wishes to allege that an election official is not complying with the state's election code.⁴⁹⁹ Scope need not necessarily be *that* broad, of course; more targeted treatment focusing on the most critical chief election official powers could suffice.

Of course, in designing such procedures, impartiality must take precedent. Chief election officials should not, for instance, have any say in who will ultimately arbitrate or mediate the dispute, as many

⁴⁹⁴ Cf. Eithan Y. Kidron, *Understanding Administrative Sanctioning as Corrective Justice*, 51 U. MICH. J. L. REFORM 313, 346 (2018) (describing the New York SAFE Act's system of firearm-related administrative sanctions based on assessed risk to public safety).

⁴⁹⁵ See *supra* notes 445–47 and accompanying text.

⁴⁹⁶ See Green, *Election Disputes*, *supra* note 39 (manuscript at 20–22).

⁴⁹⁷ See *id.* (manuscript at 22–23).

⁴⁹⁸ See *id.* (manuscript at 28–32).

⁴⁹⁹ See *Election Complaint*, ARIZ. ATT'Y GEN., <https://www.azag.gov/complaints/election> [<https://perma.cc/KNJ2-3ZH8>] (last visited Jan. 2, 2026).

unfortunately presently do in instances of HAVA complaints.⁵⁰⁰ Moreover, administrative election dispute resolution should offer both *ex ante* and *ex post* avenues for resolution. As noted, HAVA mandates its process for situations where a person believes a Title III violation “has occurred, is occurring, or *is about to occur*.”⁵⁰¹ Future dispute resolution implementations should provide similar flexibility so that citizens’ ability to seek resolution is not limited to after harm has been incurred.

B. *Partisan vs. Nonpartisan*

After all this discussion, some may ask: Why not simply make the unitary chief election official nonpartisan? On this question, I remain fairly neutral. At the very least, I do not believe that forcing a chief election official to relinquish partisan affiliation gets to the heart of the issue addressed in this Article—that, ultimately, we need a framework that better guarantees impartiality in election administration.

Nonpartisan is *not* synonymous with impartial.⁵⁰² Simply removing an R or D next to someone’s name does not suddenly change their political beliefs; it does not cleanse them of their biases and the decisionmaking that those biases may influence. Meanwhile, partisan election administration does not necessarily result in *partial* election administration. Some scholars have actually argued that partisanship can help enforce neutrality. As Green has explained, adversarialism within election administration can, if done correctly, cause both major parties to act as checks on each other.⁵⁰³ Take, for instance, election boards that are evenly split Democrat and Republican.⁵⁰⁴ On such boards, the partisans are forced to behave neutrally or otherwise face gridlock. Meanwhile, if all members were nonpartisan, it might be harder to guarantee that balance.

The strongest argument for nonpartisan chief election officials might be that partisan election administration, even if not inherently damaging in outcomes, can still reduce citizens’ confidence that elections

⁵⁰⁰ See Green, *Election Disputes*, *supra* note 39 (manuscript at 24–25) (“Some states give sole discretion to the state’s chief election official to appoint a Phase 2 arbitrator (or panel of arbitrators).”).

⁵⁰¹ *Id.* (manuscript at 17) (emphasis added) (citing 52 U.S.C. § 21112).

⁵⁰² See Daniel P. Tokaji, *Comparative Election Administration: A Legal Perspective on Electoral Institutions*, in *COMPARATIVE ELECTION LAW* 436, 451 (James A. Gardner ed., 2022) (differentiating between the two concepts).

⁵⁰³ See Green, *Adversarial*, *supra* note 22, at 1123–24.

⁵⁰⁴ See *supra* notes 453–55 and accompanying text.

are run fairly.⁵⁰⁵ Lack of confidence in the electoral process is certainly an important concern. It can result in, among other things, reduced participation and heightened polarization.⁵⁰⁶ Still, it is difficult to fully quantify exactly how partisan versus nonpartisan election administration may impact voter perceptions. One could imagine, for example, that some citizens may become wary of their election administrators if none expressed any partisan affiliation: “Are they hiding something? Who do they *really* support? And why is nobody from my political party involved in governing our elections?” Ultimately, I leave this conversation for another paper.

C. *Centralized vs. Decentralized*

Some may also question whether problems caused by unilateral election administration can simply be resolved by removing the “unilateral” component. If we are so concerned with the sway that one election official carries, why not decentralize election administration so that no one figure holds so much power? To begin, it is important to reiterate that my Article casts no judgment one way or another on the merits of unilateral election administration. That is not its purpose. It could very well be the case that decentralized election administration does a better job achieving impartiality than centralized election administration. That question is, nevertheless, outside the scope of this Article.

Still, I offer two counterarguments to chew on. First, that unilateral election administration may offer a couple particular benefits that a decentralized regime could not. For one, as noted earlier, having a single unitary chief election official may actually boost accountability by concentrating where blame should fall when something wrong happens.⁵⁰⁷ If, on the other hand, election administration is dispersed, it becomes more difficult to know who precisely to hold accountable. Furthermore, leaving decisions in the hands of one person may foster greater efficiency in decisionmaking.⁵⁰⁸ When one person is in charge, there is no gridlock or factionalism with which to contend. Of course,

⁵⁰⁵ See DANIEL M. THOMPSON, *NONPARTISAN ELECTION ADMINISTRATION 4* (2024), <https://blockyapp.s3.eu-west-2.amazonaws.com/store/e65110cc450c9aec561dd75ca6a7d23f.pdf> [<https://perma.cc/MA2S-DRGE>].

⁵⁰⁶ See *supra* note 284 and accompanying text.

⁵⁰⁷ Cf. Kagan, *supra* note 352, at 2331–32 (arguing that “[p]residential administration promotes accountability” by “establish[ing] an electoral link between the public and the bureaucracy”); Lawrence Lessig & Cass R. Sunstein, *The President and the Administration*, 94 COLUM. L. REV. 1, 94 (1994) (“[T]he President remains accountable for the actions of government officers.”).

⁵⁰⁸ Cf. Lessig & Sunstein, *supra* note 507, at 94 (arguing that efficiency “justifies [presidential] unitariness”).

the flip side to this argument is that the risk of bad decisionmaking increases dramatically when the wrong person is in office. But when a neutral, competent actor acts as chief election official, we may appreciate the efficiency that comes with unilateralism.

Second, while centralized election administration can be weaponized for partisan purposes, so too can decentralization. Take Georgia, for instance, where Secretary Raffensperger gained national attention for refusing to help Trump manipulate the state's 2020 presidential election results.⁵⁰⁹ Since then, the Georgia General Assembly has rewarded Raffensperger's good deeds by first revoking the SOS's role as chair and voting member of the State Board of Elections,⁵¹⁰ and subsequently by removing the SOS from the Board altogether.⁵¹¹ An example of decentralization gone awry.

D. *Generalist vs. Specialist*

One final consideration is whether the position of unitary chief election official should be treated as its own distinct office, rather than delegated to existing offices like SOSs and lieutenant governors. Indeed, part of the problem with deemphasizing electoral accountability for unitary chief election officials, as I have recommended,⁵¹² is that each of them also performs a range of other duties that may justify them being elected officials. The California SOS, for example, not only administers elections, but also maintains business filings, commissions notaries public, operates a confidential address program, safeguards the State Archives, and serves as a trustee of the California Museum, among other things.⁵¹³ Lieutenant governors are, meanwhile, next in line to be their state's chief executive. Converting these offices to unelected positions consequently seems like a nonstarter.

As such, the unitary chief election official may be better conceived as a narrowly tailored standalone office. Not only because it avoids the

⁵⁰⁹ See Michael D. Shear & Stephanie Saul, *Trump, in Taped Call, Pressured Georgia Official to 'Find' Votes to Overturn Election*, N.Y. TIMES (Jan. 3, 2021), <https://www.nytimes.com/2021/01/03/us/politics/trump-raffensperger-call-georgia.html> [<https://perma.cc/FA7F-DSEB>].

⁵¹⁰ See Zack Beauchamp, *Georgia's Restrictive New Voting Law, Explained*, VOX (Mar. 26, 2021), <https://www.vox.com/22352112/georgia-voting-sb-202-explained> [<https://perma.cc/8TTD-KRSY>].

⁵¹¹ See Sam Sachs, *New Law Removes Secretary of State from Elections Board, Adds Voter Challenge Options*, WSB-TV (May 8, 2024), <https://www.wsbtv.com/news/local/atlanta/new-law-removes-secretary-state-elections-board-adds-voter-challenge-options/2QLHAKO4K5ENHFJV6T7VPL7ISY> [<https://perma.cc/RKB5-B33A>].

⁵¹² See *supra* notes 448–50 and accompanying text.

⁵¹³ See *About the Agency*, CAL. SEC'Y OF STATE, <https://www.sos.ca.gov/administration/about-agency> [<https://perma.cc/37AW-FWH4>] (last visited Jan. 1, 2026).

electoral issues that arise with tying the role to a broader executive office, but also because it further incentivizes only individuals with a specific goal and history of administering elections to seek the office. Ultimately, though, I reserve further discussion of this question for another time.

CONCLUSION

Unitary chief election officials wield sweeping discretionary powers, often with limited checks. Existing reliance on electoral and *ex post* modes of accountability is insufficient to constrain them. By contrast, *ex ante* legal measures and robust internal oversight can better insulate the office from partisan capture while ensuring continuous, expertise-driven scrutiny of election administration. Reframing accountability in this way does not mean abandoning the safeguards we already have, but rather reordering priorities toward those mechanisms most likely to prevent misconduct before it corrodes democratic processes. Looking ahead, states that embrace this recalibration will not only mitigate the risks posed by election denialism and partisan manipulation, but will also lay the groundwork for an election administration regime capable of sustaining public trust in democracy for years to come.