UCI Law
Fair Elections and
Free Speech Center

Election Subversion: Is American Democracy in Danger?
September 24, 2021

[The following is a transcript of a September 24 event held at the UCI Law Fair Elections and Free Speech Center, "Election Subversion: Is American Democracy in Danger?" A video of the event is posted at: https://youtu.be/YGsK0HrIbeM. The biographies of the speakers appear at: https://www.law.uci.edu/centers/fefs/events/election-subversion-conference.html. This transcript has been lightly edited for clarity.]

Howard Gillman: Good day, everyone. My name is Howard Gillman, I am the Chancellor of the University of California Irvine, and it is my great pleasure and great honor to welcome all of you to this very important event.

No one doubts that research universities have an obligation to explore pressing challenges and generate knowledge that advances the well-being of society. We take this for granted when we're faced with something like a global pandemic and our communities spring into action with patient care, with developing effective treatments, and mobilizing the basic science and knowledge that'll help us better understand and overcome such threats.

There is little doubt that one of the most important challenges facing our society at this time is the threat to democracy itself posed by concerted efforts to subvert our elections. This is why it's a matter of great significance that we've created a new Fair Elections and Free Speech Center here at UCI Law, co-directed by two outstanding faculty members, Rick Hasen and David Kaye. The Center will be looking at issues of democracy, fair elections, and free speech, both in the United States and around the world, and I can't think of a more important time than now, and two better suited experts in their respective fields to launch and lead this urgent and timely Center.

This conference is one of the very first events hosted by the Center. As will be typical of the activities of the Center, it brings together a wide range of interdisciplinary experts who can shed light on these very real threats to democracy from a variety of perspectives, and it also brings academics into contact with real world decision makers and leaders.

I have no doubt that the very future of American democracy is at stake, something that became abundantly clear in the wake of the 2020 Presidential election, the January 6th attack on the Capitol which was designed to disrupt the certification of that election, and the subsequent efforts in too many state legislatures to undermine

the fragile safeguards that allowed, just barely, for a successful transfer of power. Whether we can hold a successful Presidential election in 2024, I think, will depend entirely on what we do now and in the coming months and years.

And so, let me extend my gratitude to all of our guests for sharing your experience and allowing us to learn from you, and to all of you for being here so that you can engage with these issues. And now, it is my distinct pleasure to hand the floor over to one of the co-directors of the UCI Law Fair Elections and Free Speech Center, Chancellor's Professor of Law Rick Hasen. Rick?

Rick Hasen: Thank you so much, Chancellor Gillman. Thank you for the kind words, for your strong leadership on free speech issues, and for your unwavering support for our new Center and for our Law School.

I'm Rick Hasen, Professor of Law, and Co-director with my great colleague, David Kaye, of the new Fair Elections and Free Speech Center here at UC Irvine's School of Law. Established in 2021 after the contentious 2020 U.S. Presidential election, which culminated in the dangerous January 6th, 2021 insurrection at the United States Capitol, the Fair Elections and Free Speech Center at UCI Law is unique among U.S. and global institutions in that it's dedicated solely to advancing an understanding of an offering a means to counter threats to the stability and legitimacy of democratic governments, exacerbated by the unregulated growth of digital media and other technological changes in mass communications.

Today's event, "Election Subversion: Is American Democracy in Danger?" would not have been possible without the support of many at the law school, including our former Dean, Song Richardson; our current Dean, Bryant Garth; and our staff, including Colleen Taricani, Rabie Kadri, Erin Hiebert, Anna Iliff, Josh Larsen, Mary Ann Soden, and Kristine McGuire. Thanks as well to the Jack W. Peltason Center for the Study of Democracy for co-sponsoring today's event.

Why a conference on election subversion? The United States faces a serious risk that the 2024 Presidential election and other future U.S. elections will not be conducted fairly and that the candidates taking office will not reflect the free choices made by eligible voters under previously announced election rules. Until recently, it would have been absurd to raise the possibility of election subversion or a stolen election in the United States. Few cases have emerged in the last 50 years in the United States of actual attempted election subversion by election officials, leading to a loser of an election being declared a winner. Despite other unique pathologies of American election administration, including its vast decentralization—we conduct elections, 10,000

simultaneous elections for President when we hold our elections every 4 years.

The conduct of former President Donald J. Trump in repeatedly and falsely claiming that the 2020 election was stolen has markedly increased the potential for a stolen election in the United States. Millions of his supporters now believe the false claim of a stolen election, and some have pursued bogus, sham audits and taken other steps that undermine voter confidence in the fairness of the process. Threats of violence and intimidation have led to unprecedented attrition among election administrators, and some exiting officials are being replaced by those who may not have allegiance to the integrity of the process.

Those Republican elected officials who stood up to Trump in 2020 and helped save the United States from a potential Constitutional and political crisis have been censured, stripped of power, and challenged for office by those embracing the big lie. Elected officials, election officials, and others believing or purporting to believe the false claim that the 2020 Presidential election was stolen may seek to justify subverting future election results in response to earlier purported fraud.

This conference asks how big a problem election subversion may be in the United States and what we can do about it. It will begin with my conversation with two election officials—one state, one local; one Republican, one Democrat—on what we experienced in the 2020 election and what we face going forward.

The second panel will include leading social scientists who have studied how some democracies have moved towards authoritarianism and what can be done to prevent that move in the United States.

The third panel asks what politically may be done in Congress and in the states to fix these problems, and especially what is feasible, given the current state of polarization in the United States.

The final panel asks leading legal scholars whether law can make a difference in protecting fair vote counting in American democracy.

It's a packed day, and we're so glad you're joining us. A few ground rules. Given how much we're packing in, the moderators of each panel will not take time to read the impressive biographies of all the speakers. I am just in awe of the brain power that we've assembled here today and if we spent time reading everyone's biographies, the entire conference would be over. So, instead, I direct you to the conference webpage on the Fair Elections and Free Speech website, law.uci.edu/fefs, and you can find the biographies of our distinguished speakers.

Each panel is only 45 minutes, and so, I've asked the panelists not to make opening statements. We're going to get right into moderator questions. If you're watching live on the Zoom, you may use the Q&A function to pose your questions you would like the moderator to ask the panelists. We regret that with a conference of this size, we will not be able to get to all of the questions.

And with that, let me welcome the panelists for our first panel, who will be interviewed by me. Brad Raffensperger is Georgia's Secretary of State, and Isabel Longoria is Administrator of Elections in Harris County, Texas. Welcome to you both, thank you.

Brad Raffensperger: Good morning.

Rick Hasen: So, let me start with looking back at the past. The 2020 election was, in so many ways, unprecedented. We conducted an election in the midst of a pandemic, in the midst of financial constraints on running elections because of the pandemic, and in the midst of an election where great doubts were cast over the fairness of the election. And pressure was on election administrators, both state and local, in probably a way that we have not seen before. It's already so difficult to run an election—it's a huge undertaking, but 2020 has got to have been unique.

And I want to ask each of you, starting with Secretary Raffensperger, if you could just reflect on what it was like to be involved in running elections under this kind of pressure and if you felt that your ability to run a fair election was undermined by all of these external pressures that you were facing. Secretary?

Brad Raffensperger: Well, good morning. Well, last year, every day going up to January 5th when we finished our runoff election, we were fighting election misinformation and disinformation. But through it all, even when we received threats—my family received threats and we received political attacks from people from all over the country, the decision was easy, because I leaned into my integrity. I knew that we had to follow the law, follow the State Constitution, and that's what we did.

There were a lot of people, obviously the President in particular, who did whatever they could to overturn or undermine the integrity of Georgia's elections in November, okay? Senator Lindsey Graham, he called me in November and asked me questions that I felt were inappropriate, that if you went down that path of reasoning, it could actually lead to throwing out thousands of legitimately cast absentee ballots.

As everyone knows, the President called and asked me to find 12,000 votes to overturn the results. There weren't 12,000 votes to find, because we had counted those ballots three times, we had gone through every single process, and we knew that our numbers were correct.

Really, what happened is, after the June primaries, it was in the middle of the pandemic, we did have some long lines, and then people started talking, the Democrats and major media outlets were starting to talk about how Republicans were going to try and steal the election. We made sure that we stood up any potential areas, we had an Absentee Ballot Fraud Task Force, we wanted to make sure that everyone understood that we had a secure election.

And so, Georgia has been under this attack. Many people don't want to talk about this if they're from the other side of the aisle, but when Stacey Abrams ran in 2018, she said she lost due to voter suppression, that the machine had flipped votes. And in fact, she actually had a lawsuit against the Lieutenant Governor's race and said there were lost votes. Rolling into 2020, then we had the other side, which was voter fraud. They're really the same side of that coin, which destroys voter confidence. And that's what we need to restore is vote confidence in the process.

We have to understand that we run elections, we have 159 counties, we have a lot of counties, second to Texas, but our County Election Directors, they run the elections, they run them with integrity and hard work. And so, we made sure that we leaned into the law at all times.

Rick Hasen: If I could just follow up with you before I turn to Administrator Longoria, you and your family faced some threats of violence, both during the election counting period and afterwards. Could you just recount a little bit of what you've faced, just so we can all understand kind of what the atmosphere is like out there right now?

Brad Raffensperger: Well, when President Trump said I was an enemy of the people, then all of a sudden, we were getting texts all over the place. My personal cell phone was doxxed and it was out there, so it was—my phone was blowing up with verbal abuse and verbal, you know, I guess you'd call them threats. And then obviously, when that filled up, then I started getting just text messages, my wife started getting sexualized texts. And then my daughter-in-law's house was—you know, someone came into the house, moved things around, and it just got to be a very dangerous and chaotic situation, ended up with Georgia State Patrol as a security detail.

And we also had not just us, much as that was shocking, particularly from my daughter-in-law, but we also had election

people, we had in one county, Bartow County went 75 percent for President Trump, and the poll workers were followed home by people and were threatened. And it just, that's the kind of stuff that was going on, and no one should ever be threatened, a poll worker particularly. Many of those are volunteer positions, they're doing this out of their civic responsibility, and we need to make sure, coming into 2022, that we have safe, secure elections and people aren't threatened with their lives.

Rick Hasen: Administrator Longoria, can you talk about your experiences as—and just so that everyone who's watching can be clear, Secretary Raffensperger is the Secretary of State for the state of Georgia. Most of the nitty-gritty of running elections is happening at the local level and you're a local Election Administrator in one of Texas' largest counties, Harris County.

Isabel Longoria: Correct, yeah, Harris County, which encompasses Houston, Texas, and the metro area, and is the third largest county in the United States. And, on top of a pandemic, on top of this, really, just conspiracy theories abound even before we started voting on elections, we, too, were going through a change in that we used to be run by a county clerk for elections and voter registration under the tax office, and it was at that time that the Commissioner's Court voted to think about creating the Elections Administration Office.

So, I, in my capacity in November, was there as a Senior Advisor working on mail ballots, our drive-thru innovations, our 24-hour innovations and getting even more into the nitty-gritty. And so, what I experienced at the level of carrying out the elections is similar to what Secretary Raffensperger was mentioning is just this complete escalation in tension that had never been there before. Where every move, from how we were setting up a phone line for voters to report any issues that they saw at the poll, that that was assumed to be partisan. That because, by definition of having our office do it, that even though we were trying to collect any reports to investigate those reports with our County Attorney and officers where appropriate, in going out and holding people accountable regardless of their party—just the mere assumption that we were trying to do our job was under question.

We were able to breed those innovations and even during this time of extreme kind of chaos, right, and conspiracy, we were able to offer drive-thru voting to keep folks safe, a method of voting that started because of the pandemic and then we found actually supported black, Hispanic, and Asian voters. Women were more likely to use drive-thru voting versus other forms of in-person early voting. Same with 24-hour voting—we saw that, from 7 p.m. to 7 a.m., the most likely cohort of users of that voting were young, Millennial Latinos who were coming off of different shifts, as well

as medical workers who didn't want to expose people in the public, right, potentially to this deadly pandemic.

And so, for us, we had two tracks—one, incredibly proud to offer these innovations, to work through them, to make sure that they were held and executed to the same integrity and standards of all our voting methods, and then fighting time and time again these conspiracy theories, you know? "Why do you have a signature verification committee?" Because the law dictates that we have one. *[Laughter]* You know, "Why are you doing these audits? Why do you have chains of custody? Who's creating or manufacturing the label that you put on the machine?" I mean, down to the level of, you know, "Who's creating the plastic seal that you put on the machine, and are you sure that they aren't in the supply chain manufacturing these, that they fall off of boxes?"

I mean, it wasn't just about the results, and that's what I want to get at. Campaigns, elections—there's always a loser, the loser's always upset, there's always going to be a question of, "Did I really win?" et cetera. But the difference is that it's now getting into how we conduct the elections, who is conducting the elections? And these conspiracy theories that you can only cook up in movies about the level that people will go through when what we really know is that, other than human error from judges here and there, no one is mounting some big conspiracy theory to sway an election other than campaigns who campaign to bias people in order to vote for them.

But that's it. There is no large fraud, there's no Russia, there's no China coming in with special ninjas to break into our machines. It is just our undoing and our own conspiracy theories, and I think a long time trend that we've seen, too, that government is to be suspected for everything going on instead of seeing us as we truly are—and I'm an elections nerd—a public servant who can think of nothing greater in the world than to support free and fair elections through democracy.

Rick Hasen: Let me stick with you and move from the past to the future. Do you see this moment in time and the kind of undermining that Donald Trump engaged in of the integrity of the election as a one-off, something that's going to pass, or do you see things getting progressively worse as we look forward to 2022 and 2024?

Isabel Longoria: I think it'll get—it's interesting. Two things. One, hanging chads, right? Again, there's always been questions on elections. There's always been questions on results. That is completely natural. And what I want to shift is, you know, in the hanging chad era, it's always, we know there's human error, we want to double-check the results, we want to double-check the counts, we want to double-check, especially before the time, really, of electronic

machines, that the counts truly came out as the counts were supposed to come out. Completely fair question for accountability.

And now what we're seeing is, again, you know, even before voting, we had poll watchers, we had attorneys from the Republican Party and Trump campaigns coming and asking us who's working, what are they working on, questioning our integrity before there was even a problem to question. And I think that will continue.

Interestingly enough, the December runoff elections, the direct offshoot of those November elections—not a peep. I hadn't heard a word from a single person, not a single poll watcher questioning the same, exact methods and the same, exact voting. Same for the May elections, our local elections. We had—we actually doubled our turnout to 7.4 percent. Historic doubling of turnout in local elections through encouraging mail ballots, by sending out mail ballot applications, by doing drive-thru voting, by doing 24-hour voting, by opening access—not a single peep, from a single poll watchers from those same campaigns. Not a single word, I can barely get the press to cover it so that voters know to come out, and yet we're still talking about last November. I have an election this November, and we're still talking about last November. We have primaries in March and we're still talking about last November.

So, I don't know that these conspiracy theories will still be applied to future elections. I think that, at some point, we're going to spin out and tire out and the fuel will be lost on talking about last November. And all those who believe in conspiracy theories will continue to believe them, but only about last November. And my question is—if you really think elections are being conducted inappropriately, you would think that they're being conducted inappropriately for every election, but apparently, it only matters for the November, 2020 Presidential.

Rick Hasen: Secretary Raffensperger, turning the same question to you—do you see, how do you see 2020 in relation to the future, in terms of where things are going?

Brad Raffensperger: I think that January 6th was probably a hinge point. I think when we saw the video of what happened up in the Capitol, I think in many respects, that was almost when we saw what happened on 09/11. That was a hinge point in our history, also.

And I think that many people, after looking at January 6th, said, "This has gone too far." And so, you have a strong pullback and people understand that we need to make sure that we have fair and honest elections, that everyone knows what the rules are, but also, at the end of the day, we have to move on from the election and we can't be questioning results all the time.

You know, our place to really decide who the next elected official will be is prior to that election. When people show up, the election officials are doing their job, they just want to do their job, put their head down, and make sure that they tabulate everything, they have a process, it's a very detailed process. And as was just said, people weren't questioning the process before, but there was a huge misinformation, disinformation campaign which really destabilized many segments of American society.

I think the challenge that we have as Republicans is that right now our party is really fractured, that many people are looking in the past. And a lot of other folks are looking at the future, and that's not helpful for us. The other side is probably laughing with glee as we fight amongst ourselves and have this Hatfield/McCoy struggle.

So, I think we need to look forward. I think that we need to really restore character at all levels, I think that's very important, and I think we also need to restore more courage of elected officials. I think if they stand up and say, "No, that was a fair and honest election, and I'm sorry that our side lost, but we need to figure out how we can build a coalition that we can win the next one."

Rick Hasen: I want to stick with you and ask you just in the context, you're an elected official and I think over 30 states have their Secretaries of State elected in a partisan office. You're going to have to run in a primary. One of the people you're running against in a primary is Jody Hice, who's a Congressman who has endorsed Trump's false claims that the election was stolen.

How do you win a Republican primary? It seems like you have to tack to the right in order to win that primary. And I can't tell you how many angry e-mails I've received for including you on a panel on election integrity, despite the fact that you heroically stood up to Trump, you know, is maybe the most famous incident in the 2020 election. Because people have said that you have embraced subversion itself by endorsing the SB 202, the Georgia law that is going to make it easier to have takeovers of Democratic counties like Fulton County.

And so, how do we understand kind of the pressures you're under and how do we know when, for example, someone is acting out of a desire to deal with election incompetence versus trying to get partisan gain when all of our elections for Secretary of State are partisan to begin with?

Brad Raffensperger: Well, there was a lot of questions packed into that little segment, there. But first off, Senate Bill 202, which is our election reform measure of 2021, we've actually increased the number of days of early voting, mandated that all 159 counties will have 17 days—3

weeks plus two Saturdays—of early voting. And any county that wants to can have Sunday voting, which is two additional days—that's 19 days; I'll stack that up against New York, New Jersey, Delaware, or a lot of other states. So, we really stand on the forefront of that.

What we also did is, we moved away from signature match. And what people need to understand is that we've been sued by both the Democrat Party and the Republican Party on signature match. They said it was subjective. And yes it is, but when I ran in 2018, I said, "We need to move away from signature match and move to photo ID using a driver's license." That's what they've been using in Minnesota for over 10 years. So, if Minnesota's been using it for 10 years and we're going to use it, Texas is going to be using it, more states are going that way. It's a red state/blue state, it's a nonpartisan way of doing your identification of your absentee ballot holders.

The one thing that we did is, we do have an accountability measure, finally, for the first time, that if you have a county that can't run an election—and in Fulton County, we have reports going all the way back to the 1990s that have all this mismanagement and dysfunction. And so, if they can't run an election properly, then the state election board can come alongside them. They can replace it, and that would be a strong measure, but the all could say, "What is your program that you're actually going to improve this, finally, for the people of Fulton County?" Because Fulton County represents 10 percent of the people, it really impacts the entire state. Everyone is tired of Fulton County's mismanagement and dysfunction. And so, there's an accountability measure, but it will be used thoughtfully with the rule of law, with due process. They'll have a review panel that consists of one Democrat, one Republican, and our General Counsel.

So, the State Election Board doesn't want to take over the county, but they do want things to be improved. So, I think it's a very balanced, measured approach, and I believe that people should understand that's what we want in Georgia is balanced, measured, we want to be thoughtful, we want to make sure that we count every legal vote.

So, that, I think, answers most of your questions there, but if I missed one, shoot it back at me and I'll—

Rick Hasen: Well let me just push you a little more on this running as a Republican in a primary against someone who's claiming that—and if you looked at the polling, if not a majority, at least close to a majority of Republicans believe the false statement that the 2020 election was stolen. And so, I just saw a column calling you the underdog, which is unusual for—it's unusual or a Secretary of

State's race to get any coverage nationally, but calling you the underdog in this race against someone who is embracing the lies.

So, how do you run an election like that without having to embrace the same kinds of claims that were being made by Trump?

Brad Raffensperger: Well, it's very interesting that the Congressman that I'm running against, he certified his own race with those same ballots, and yet somehow, he did not certify the President's race. And that's a double-minded person, and as a pastor, he should know better than that.

But I'm going to stand on the truth. I understand that eventually it all will come out in the wash, it already has. There's a report that's coming out in Maricopa County that says that, if anything, Joe Biden actually got more votes than Donald Trump in Maricopa County, after all the months that they've spent on that. But even when you hit people right across the side of the head or the front of the nose, they don't want to believe the truth, and that is that President Trump did not carry the state of Georgia.

As a Republican, I was disappointed, but those are the facts. A person of integrity expects to be believed, and when they're not, they let time prove them right.

Rick Hasen: Turning back to you, Administrator Longoria, you're in a kind of different position, you're a Democratic elected official in a blue city in a red state. And one of the main things that the recent Texas law that was passed to deal with elections did is strip you of your power to do things like run 24-hour drive-thru voting.

Can you talk about your ability to run a fair election when it seems like the state is taking steps that are interfering with how you would normally run an election to increase enfranchisement? And also, just breaking news from last night, right after Donald Trump said that there should be a, quote, forensic audit, whatever that means, of elections in Texas, it was announced by someone, since your state doesn't have a Secretary of State right now, that Harris County is one of four counties—I believe they're all Democratic counties—that are going to be subject to this audit.

So, can you kind of give us the picture in Texas and how you think that that potentially affects election integrity?

Isabel Longoria: So, I'll be remiss, I'll make one distinction, Professor—an Elections Administrator is a nonpartisan by law position. So, I can't make any endorsements, I can't donate to any campaigns. So, whatever my personal beliefs might be, I execute the office in a nonpartisan manner. So, just, the County Attorney would be mad if I didn't make that distinction.

You know, innovation is a way of thinking. It's a belief in a system, it's a belief in improving the system. Famously, one of the new mottos of our office, since the Elections Administration Office, I was appointed in this position November 18th, so, just after the November, 2020. We're creating a completely new office that combines functions that the whole point is innovating, the whole point is to make it more efficient, make it more transparent and accountable, et cetera.

That way of thinking, of innovating, of jumping through hoops of voters don't have to is not going anywhere. It's sad that the Texas legislature, that is dominated by one party, could never give me a reason as to why drive-thru voting was bad for the November election. Again, we hosted it in five elections, and no one had a question until the November Presidential. Famously, I would go testify in front of the legislature, and even the authors of the bill did not know that we continued to use drive-thru voting for multiple elections, not just November. Same with the expanded hours, same with sending out mail ballot applications. I, as an official, have the duty to let people know, to educate voters on their rights and eligibilities for voting, including mail ballot voting.

So, now, moving forward, you know, we have engaged in this lawsuit, I can tell people about early voting, about curbside voting, I can tell people about their rights in registering to vote—but I magically am not allowed, now, to talk about mail ballot voting, and I'm not allowed to send you a letter with a blank application I you are a senior. And when you turn 65, you don't turn less than 65 tomorrow. And so, it's this really odd carving out that is oddly specific, again, to the Interim County Clerk, Chris Hollins and what his innovation started and that we continue in this office.

Listen, they knocked down three things that voters love. I think the voters are going to be really upset come next December, we'll still have them for this November for the primaries, for the Gubernatorial elections coming up, that they don't have those methods of voting that made it easy, fair, and accessible. But we've got other things up our sleeve. There's other ways to promote access.

And so, the idea that—it's almost like playing, what's it, the smash the gopher with a hammer, right? Okay, so you stopped drive-thru voting—incredibly popular and accessible way of voting. We have other things that we're working on. We're working on voter registration, we're working on making mail ballots easier to use for voters.

One of the things, since you're an election nerd, that I'm proudest of in our innovations that has not gotten stopped—hopefully, I won't get stopped by speaking of it today—is that on our mail ballots, we used to have, basically, a 13 to 15 percent rejection

rate average because people would put the wrong envelope. So, you put your carrier envelope and your mailer envelope, you would sign it incorrectly, because it was all three white envelopes that differed only be a fourth of an inch with small black text. One of the innovations I worked on last July was adding colored barcodes—blue, green, purple. You put your mail ballot in the green, you seal it, put that in the purple, sign the purple envelope, put that in the blue envelope, send it back to us. Our rejection rate and our calls for, "How do I fill out my mail ballot application?" went down to fractions of 1 percent. That is a 10 percent difference. We were able to accept, and because of improvements in our signature verification process, we took on a cure process for voters that, with SB 1, the state is now mandating for the rest of the state. They don't give Harris County credit for that, that's okay. We moved our rejection rate to 0.3 percent—0.3 percent, as we increased the use of mail ballot voting.

So, you want to get rid of the big, flashy stuff, that's fine, but I'm an election nerd who's in it to take care of the details as much as the big, flashy stuff. So, I guess, in summation—come and take it, because I've got a lot more where that came from.

Rick Hasen: Let me stick with you and move away from the minutiae and to the kind of 30,000 foot level. I love minutiae, you know, or I wouldn't be an election law person, but 30,000 foot level—if we're trying to protect the integrity of American elections so that the results that are announced are that of a free and fair election without intimidation, without interference, how do you think power should be divided across the local, state, and federal level? Whose job is it—or is it everyone's job and how—to assure election integrity? I'll ask you first and then I'll ask the same question to Secretary Raffensperger.

We have this super divided, weird system, right? So, most other advanced democracies, when you hold an election, a national election, it's conducted by a national body. But we don't do that here, so, we have new challenges about diffusion of authority. So, do you have some views on that bigger question?

Isabel Longoria: It's good to have checks and balances in a democracy, right? You know, at the local, we have the check of the state, the state has the check of the federal, the legislature has the check of the Judicial ad the Executive, there's good checks and balances.

I struggle with this question. I know you pitched it to us because even if we had one federal organizing entity and they were in charge of hosting all elections, you would still, by definition of having such a large country, have to divide it into smaller regions, right, that are executed at a local level by different people. So, even though the rules might be the same, you still have to depend

on the integrity of any one individual. And I think that's what makes this a difficult question.

So, I think Secretary Raffensperger might join me in that we have to promote ourselves, get to know who your election officials are. Not just us—get to know them in the smallest counties, and make sure that you believe in their integrity that the people voted in, that ethics and integrity is one of the main questions you ask, not just, to your point, the nerds who like to get into the minutiae. And it's that question, again, of not just returning the concept of ethics and integrity to public service in elections, but can you trust that us, as election officials, as public servants, are here to perform the duties on behalf of you all as the public and as the voters?

So, it's a tough question. Yes, you could have equal laws. You know, famously, I've gone on record for petitioning for that, that I think Texas has gone way in one direction, way in one extreme direction, and we do need intervention now at the federal level to say, "We get you get a checks and balance, but you have gone way outside the metes and bounds of what is average, even for the rest of the country." And so, I do believe in checks and balances. Does it always go my way? No, but I respect that we need checks and balances throughout the system.

Rick Hasen: Secretary Raffensperger, same question to you about the proper mix of local, state, and federal rules for running elections and assuring that the results are fair and accurate and that we can hold a fair election?

Brad Raffensperger: Well, people need to understand that America's system is unique, and it's really been—it's worked well over the years. It's very diffused, and that's a good thing. When it's all centralized, then you really need to be even more concerned about if you had an issue with hacking from some foreign actor. But because it's pushed out of Georgia and our 159 counties, Texas probably has 200 plus counties, but all the other states, it's a very diffuse process done really, sometimes, at the township level or the county level in Georgia; it's 159 separate elections. In the Constitution, it was very clear about that.

But here's what people need to understand also about the rest of the world, the Western democracies. When they have, in a national election for their, quote, Prime Minister or their President, then you're just voting for that one office. Take a look at our ballot in Georgia—you have the President, then you have, obviously, some U.S. Senators, some Congressmen, and it goes all the way down to your County Commissioners that will be on the ballot, your local County Sheriffs, the Water and Sewer Board. All those—you have probably 20 different races on that single ballot. And so, it really is more of a local election, and then we just

through the Presidential race every four years kind of on the top. And that's what really makes the most sense, that it's done locally.

In fact, what we'd like to see from the feds, we'd like to see them work in a bipartisan nature. So, some of the biggest impediments we have is really being able to update our voter rolls during the election year. And that goes back to the 1993 National Voting Rights Act of '93 that was signed into law that, during an election year like 2020, we in effect were blocked out from updating our voter rolls because 90 days before an election, we can't update our voter rolls.

So, I think the present system that we have works. I think at the end of the day, our probably, really, has to get down to the integrity of the people running for office, because I know that our election officials have personal integrity, and I know will continue to fight hard to have fair and honest elections in Georgia.

Rick Hasen: I want to follow up with that point, because both you and Administrator Longoria mentioned integrity, right? So, you know, I think, what rules can we put in place, you know? What laws can we pass to assure election integrity, but so much of what assured that we had a fair election in 2020 was that we had people of integrity running the election.

And now, we're facing a situation where, because of the difficult conditions, including threats, we're having this attrition of election officials. So, starting with you, Secretary Raffensperger, what can we do to assure that we continue to have people of integrity wanting to work in elections? It's kind of a thankless job right now, and in some places, it could be a scary job. So, what is the solution to the problem of losing local even poll workers to those who might not have the integrity of the system in their heart when they're running these elections?

Brad Raffensperger: Well, I know our County Election Officials, and they worked tirelessly last year to have this election during a pandemic. In fact, they felt that they ran a really good, solid, super election, and then we had what happened and they felt really beat up.

And so, my mission for the next four years is to make sure we can restore election confidence. Voters need to have confidence in their local officials. They need to understand that the person that is the poll worker, when they show up to vote, that's probably someone that they met them when their kids are out there on the soccer field, they met them at Kiwanis, they met them at Rotary, maybe perhaps at church or some other organization, PTA. That these are your neighbors that are volunteering to be your poll workers, and people trust their friends and neighbors, and so that's who's really running these elections. It bubbles up to your County Election Official. Those are people in your community.

This is not done, something in Washington, D.C., 2,000 miles away, this is done at the county level. And so, you really should feel comfortable about that.

But if your people do something that doesn't meet those high standards, then we need to move them out. We need to make sure that when you take that oath, you do not bring your political leanings, left or right, that you're going to do your job, look down that straight line. You know, that's really important is when you walk the line of integrity, we can trust the election. So, my mission will be to restore voter confidence in the election process.

Rick Hasen: Turning to you, Administrator Longoria—what do you think, how do you assure that people with integrity run American elections?

Isabel Longoria: Again, you know, whether it be elected or appointed, find out who your Election Official is. Find out if you like them, if you like what they're doing, meet with them, et cetera. But an excellent point by Secretary Raffensperger is, it's all run by people—essentially paid volunteers, not technically volunteers, right? But we had about 11,000 people in Harris County run—be it election workers or election judges for the November election.

I am actually pretty ruthless of going through, since I've been appointed of going through our election judges specific ally and saying, "I get old Miss Betty has been there for 30 years and she used to be the primary teacher at whatever school and everyone loves her, but Miss Betty has been filling out her forms incorrectly, has been creating errors that we have to catch when we do our second and third checks, and maybe it's time for Miss Betty to move on." And so, it's having us, not only the courage to stand up, again, at the national level where it's big and sexy, but have us stand up even to our local precinct judges and presiding judges and say, you know, "I know we might be of similar political affiliations or opposite, but if you're not carrying out the elections, you gotta go."

Same with our staff, right, holding ourselves to the accountability of—one of my famous, now, sayings in the office is, "We find problems to fix them, not hide them." And we need to be honest about those small things that come up and be honest with people about the small things that come up and how we fix them so that when bigger things come up, they trust that we have kind of built that trust over time instead of saying, "Nothing to see here, everything's fine. There's zero errors, there's zero mistakes, there's zero anything." That doesn't breed trust, that just breeds more questions.

So, there's nothing we can do legislatively to mandate someone's ethics, but there are things we can do in accountability in how we host the elections every single day at the local level to make sure

that we are taking the stands we need to make sure that who we select around those elections is beyond impeachment, and if we need to remove them, we remove them.

Rick Hasen: I want to turn to some questions that have been submitted, but before I do that, just a quick follow up on this to ask each of you if you support the aspect of proposed federal legislation and the Freedom to Vote Act that would give federal courts the ability to protect elections by assuring that election results are legitimate—basically, create a federal cause of action, turn any election contest potentially into a federal lawsuit.

Good idea, bad idea? Starting with you, Administrator Longoria?

Isabel Longoria: It's one of those that if I certify it at the local level, I've gotta stand by the results of those elections. If something were to trip all the way to the federal level, then so be it. You know, my elections are certified and I stand by them at the local level and whatever accountability there is higher up, I stand by that accountability.

Rick Hasen: Secretary Raffensperger?

Brad Raffensperger: Our county's run the elections, they certify at the county level, we certify at the state level, and I'd be concerned about, really, federal oversight. It starts in many small ways, but eventually, though, there'd be just, I'd believe, I'd be concerned about additional rules and regulations they put into place.

I think what we have right now works. The challenge that we have is that we've been fighting this election misinformation and disinformation, and I think this season will soon pass. As the truth comes out and people realize that the election results were accurate and fairly cast.

Rick Hasen: So, you're optimistic that the problem of disinformation is going to decrease? Because I'm quite pessimistic about that going forward. I feel like you look at what's happened with, say, the response to COVID and you see that disinformation just seems to be a major problem that's exacerbated by its spread on social media. And, you know, of course, we had lots of disinformation about the election, as you mentioned. Why are you optimistic that the truth will come out?

Brad Raffensperger: I think that the American people are good people. I think that the American people are aspirational people, and I understand that we are living in polarized times, and that's when we brought in our new voting machines with a verifiable paper ballot. I said I understand that half the people will be happy and the other half will be sad, but when 100 percent of the people have confidence in the results, then at some point, you have to just accept the results and move on and to figure out, how do I build a bigger

coalition for my side? How did Ronald Reagan build that huge coalition that then we ended up with both Bush Presidencies coming out of that? The Democrats can think about their philosophy. I don't care, I'm looking at my side of the aisle as a, when I look and take off my SoS hat and I put on my Republican hat.

So, we have to build a bigger coalition, we have to be happy warriors with a positive, uplifting message that broadens our base. When we do that, we'll do just fine. But it has to be backed on integrity.

Rick Hasen: Alright, we have a little under 10 minutes left, and I wanted to turn to some questions. Let me start with you, Administrator Longoria. There's a question about risk-limiting audits. What are they, and do you think it's a good idea to mandate them everywhere?

Isabel Longoria: They've been mandating in Texas and here in Harris County, we have joined the voluntary pilot to be one of the first counties doing those risk-limiting audits.

It is a little redundant. We do risk-limiting audits not kind of in that technical definition in the post, but we do logic and accuracy testing three tests before. We do pre-logic and accuracy and pre-pre-logic and accuracy to make sure that what we're coming up with is true. We do partial manual counts dictated for every single election afterwards. We have our staff checking all reports that come back from election sites to make sure that judges didn't transpose numbers or whatever it may be.

So, you want to add a risk-limiting audit which says, post-election, you go through and select a sample, essentially, of machines and mail ballots to count by hand a representative sample? We already do that, we're happy to do it again if that's what gives people kind of comfort.

So, it's not that we'd have to do another process, it's, can we all agree, then, if it's risk-limiting audit, whatever we want to call it, do you agree, then, that if that comes out and says we did our job, that we did our job? But if it's going to be, "No matter what you do, I'm always going to think it's wrong," you know, those people, I'm never going to be able to please, no matter what functions we take on.

Rick Hasen: I have to say that I think that, turning to Secretary Raffensperger, that the hand count of all of the Presidential ballots was probably one of the most important things that you did to assure at least most people that the election was fairly counted in Georgia. And yet, just a few years ago, there were parts of Georgia and there's still, I think, parts of Texas that have machines that are completely electronic, where there is no piece of paper.

And I wonder if, Secretary Raffensperger, if you think that those machines should be illegal, that there should be a requirement that there's paper in order to—whether it's a BMD machine like you have in Georgia where it's an electronic machine that prints out ballot or it's hand marked paper ballots, which some people think is kind of the gold standard in terms of assuring the integrity of the counting process?

Brad Raffensperger: Well, when we passed our bill a few years ago, House Bill 316, it gave us the verifiable paper ballot. And that turned out to be a tremendous godsend, because now, we actually had something to recount. Before, it would've been, like you said, press the button electronically and you would've gotten the same result.

And instead of doing a 90 percent risk-limit audit, which would've been counting 2.5 million ballots, I raised it to count all 5,000,000, and I said, "And we're going to go one step further. We're going to count 'em by hand instead of running them through the machines." And the reason I did that is because they were saying that the machines were flipping votes. And so, we did a hand recount. That verified that the machines were not flipping votes. It also verified the total count, and I think that was very important.

I also could've chosen any statewide race. I chose the President's race because, obviously, it was the most important. I've asked, and I will be asking the General Assembly coming into the 2022 session that we'd like to have mandated by law additional risk-limiting audits for other races just so that we could get a better check to help build that, restore that voter confidence for other races, not just the folks at the top of the ticket, but also the State Representative and State Senate seat. We think that would really help people understand that we are checking all the numbers, checking the county's work via risk-limiting.

It's a great way to build confidence. We have several County Election Directors that are already doing something like that above and beyond what's required by state law, and I think that's tremendous.

Rick Hasen: Sticking with you, as I'm looking through the questions, the vast majority of the questions that have been submitted so far relate specifically to Fulton County. And so, I already asked you about this, but let me just go back for a minute to this. This new state law, SB 202, allows—which I think you're no longer on the board that makes the decisions, but allows the election board to investigate and consider a takeover of local counties in the event that they're engaged in incompetence in election administration.

You've already said that you think that Fulton County has a history of incompetence, but there are a lot of Democrats and a lot of

election integrity advocates who think that you're doing this for political reasons. How do you assure people that when, say, a Republican Secretary of State wants to have a potential state takeover of the largest Democratic county, that you're not doing this for political reasons, either to help you win an election or to manipulate the results in a local county?

Brad Raffensperger: Well, the Secretary of State's Office does not have the authority to begin that review, and the review is done by a bipartisan panel, it has one Republican and one Democrat board member on the election board of other counties, coming together with our general counsel. They'll do a deep dive interview and get information. What exactly is your remedial action plan to improve the Fulton County elections? Do a deep dive on that, and then they'll come back and report to the State Election Board and then they'll consider—are these actions sufficient for us to feel that they can continue on? They recognize that it's critical that they finally fix what they've been doing and fix all that mismanagement. But if they say, "This is a deficient plan, you're just going to get more of the same," then they may make another decision.

But that is the State Election Board, and I don't chair that any more. It is the attempt to make sure that it doesn't appear to be bipartisan one way or the other, but you have to have accountability in there. If you find people aren't doing their job right and you can't hold them accountable, then you'll still get the same thing that you've always been getting. And in Fulton County, this has been going on for at least 30 years now, and it's time that someone holds them to a measure.

We passed another accountability measure that says lines have to be shorter than one hour. Well, in the fall election, lines were shorter than one hour, but now there's an accountability measure that if lines go over one hour, you'll have to bust a precinct in half, or you'll have to go ahead and add additional machines in the next election cycle. I think that's a good thing. Voters want to make sure that there's accountability, that there's a process that elections are really a pleasing customer experience, just like when you drive to your favorite chicken sandwich place that has that drive-thru that you just have, it's a great experience, it doesn't take an hour to do that. You also want to know that when you place your order for your fast food restaurant, the order is accurate. It's very similar. It's just like you have in the private sector—you want to know that your results are accurate and you can trust it. And so, building in accountability is a good thing.

Rick Hasen: Alright, well, we're almost out of time, so I'm going to end by asking each of you, starting with Administrator Longoria, if you were the elections czar and you could make one or two changes that you think would help assure election integrity in the United

States—I know, it's a surprise trick end question—what would you do?

Isabel Longoria: Exactly what I plan to do in my five-year plan being here is open up the process so that citizen groups can come in, learn everything about logic and accuracy testing and Signature Verification Committee and how we program our machines and essentially bring sunlight into the process, right? But if you have questions, be prepared to learn the minutiae, as you said, Professor, and really understand. But if you're speculating from the outside, if you're being a backseat quarterback, you're never going to be able to delve in and truly believe us.

So, if I'm czar, I open it up to citizen kind of cohorts like leadership classes, et cetera, to get people more involved in the process.

Rick Hasen: If I could just quickly follow up before I turn to give Secretary Raffensperger the last word—some have argued that too much transparency is actually a bad thing, because it allows for people to start asking these really arcane questions that lead you down the path of conspiracy theories and not truth. Like, you were talking about the plastic band that's keeping things closed on the election machines. Do you think too much transparency can be a bad thing?

Isabel Longoria: I'll always stand on the side of, again, transparency and ethics is not just about our actions, but the perception of our actions as well. And so, if I can bring more people in, if I can show them the process, if I can answer their questions—and to your point, if you're a conspiracy theorist who's just there to break own every step of the process, then you're not coming in with an open mind.

But I think the vast majority of folks I talk to, when I get a chance to sit down with them to explain to them, to answer their questions, they feel more comforted by the fact that someone is willing to open the doors and shed light and answer the questions that they hear thrown about in the media and others. So, I'm always going to err that more information is good and, quite frankly, if we didn't believe that, we wouldn't believe in education.

Rick Hasen: Secretary Raffensperger, last word to you—if you were elections czar, what one or two changes would you make to best assure election integrity?

Brad Raffensperger: I think that we need to make sure that our counties have the resources to do their job well. And so that, typically, over the years, the counties have not had the resources to make sure that they had poll workers and poll worker training, so I think that's very important.

I also think it's tremendous that we're now going to make sure that monitors of both political parties when they're there, they can have resources like going through poll worker training to understand the process. So, when they are looking at what's happening, that they can have, then, the confidence and the knowledge that they're following the process. I think that's very good. I think transparency, I don't believe that you can ever have enough transparency. So, whenever we can have transparency without—making sure that we don't release people's private information on the voter database, but to make sure that there's transparency, I think that's very good.

I think our mission should also be to make sure that we can restore voter confidence wherever it's been damaged by election misinformation and disinformation that we've gotten from both sides of the aisle in the last several years here in Georgia. And then federal review of the National Voting Rights Act to make sure we can update our voter rolls. People don't understand how dynamic our nation is. With people moving, we have about 11 percent of all Americans move every year and it doesn't take long before your list really becomes out of date. And so, we need to be able to update that objectively. That is very important.

I think objectivity is very important, instead of subjectivity. So, whatever we can add and put in the system objectivity, I think that's good, because people can't argue with facts, figures, processes that are objective based. When it's subjective based, that's when they say, "Oh, you are doing something that may favor one side or the other." So, objectivity will be a very good thing, also.

And also, at the end of the day, this is really an issue for society, that we need to become more civil, more respectful, and we also need to make sure that we lean back into those traditional values of character, integrity, and honesty.

Rick Hasen: Well, thanks to you both. It's been, really, an illuminating discussion, and it's good to start with the real world.

And now, we'll move from the real world to our next panel. Our next panel is called, "The View of Those Who Study Democracy and Authoritarianism" and it is being moderated by Julia Azari, who is of Marquette University and the website FiveThirtyEight. Julia, I'm going to turn it over to you. Thanks.

Julia Azari: Okay, great, thank you, and thank you so much for having me. I'm looking forward to moderating this panel.

We've got a really fantastic and distinguished panel. We've got Larry Diamond, who is a Senior Fellow at Stanford University and the Hoover Institute, author of the book, *Ill Winds*. We've got

Gretchen Helmke, Professor of Political Science at the University of Rochester and the Co-founder of Bright Line Watch. And we've got Steven Levitsky, Professor of Government at Harvard University and co-author of the recent book, *How Democracies Die*.

So, I want to begin this panel by posing a question to the group in general to kind of take the temperature. How concerned are you about election subversion in the 2022 and 2024 national elections? I'll just go alphabetically, so we'll start with Larry.

Larry Diamond: Thank you, Julia, and I just have to offer, first, a word of thanks, not only to Rick and David and the Chancellor, but to Secretary of State Raffensperger and Election Administrator Longoria. I learned so much from the last panel, and I think these are two such incredibly admirable individuals. I just, when I listen to them, I'm proud to be an American and proud to live in what is still a democracy in the United States.

But to answer your question, I think there's about a 30 percent chance that we will have a breakdown of democracy in the United States by November of 2024. I think any illusion we had that the problem was going to go away if the authoritarian incumbent President we had left office has been shattered by the post-election crisis, and by the fact that there are people challenging people like Secretary Raffensperger, as was referred to in the Republican primary, and the primary for Secretary of State, I believe, in Michigan and other states who don't just have different political inclinations or loyalties, but I think have made clear that they want to use and abuse the process to impose a certain outcome.

We have a substantial portion of Mr. Raffensperger's party that has now clearly and unambiguously, in my view, defected from democratic norms and would be willing to use their power to a considerable extent, and we don't know how far, to distort election integrity and subvert the electoral process to try and impose an outcome or, to put it more telegraphically, find 11,700 votes or whatever it is.

And when you have not only a significant portion of one of the two major political parties that no longer is committed to democratic norms or to the principals of mutual forbearance and mutual respect that Steve Levitsky highlighted in his co-authored book—that is a profound threat to our democracy.

I'll just close, Julia, this round, for myself by saying—this is why (a) I don't think Brad Raffensperger should be running for Secretary of State. I think an independent panel of citizens in Georgia should appoint him Secretary of State, and it should be maybe a term job like the GAO, the head of the Government

Accountability Office, as a neutrally appointed 10-year term. It would be perverse to have the head of the GAO in the United States running as a partisan electoral official.

And finally, just a slight departure from what Isabel Longoria said—I don't want people to know too much about who our election officials are. I certainly don't want them to know their address, their telephone number, or other matters. These should be professional, neutral, career administration functions. And the fact that it's being increasingly politicized, I think, represents a grave threat to the future of American democracy.

Julia Azari: Thanks. Gretchen?

Gretchen Helmke: I just want to second Larry in thanking Rick so much for organizing this conference, and I thought the first panel was really terrific.

Up until five years ago or so, my research was focused entirely on Latin America and the problems of weakly institutionalized democracies. In trying to understand some of those problems, I often drew on theories and models of American politics, often as a foil for what I was talking about. But I couldn't imagine that I would be taking some of the lessons from Latin America to analyze the dangers of authoritarianism in American politics, but that's where we are.

So, with respect to your specific question about the significance of subversion and elections, I think the most obvious problem coming out of the 2020 election is that it revealed the soft points in our electoral system, and many of those are unique to the United States, right? Rick mentioned some of those in the beginning, how decentralized it is and of course, the arcane nature of the Electoral College, that really doesn't have any parallels with other systems around the world.

I think what this has done is that it's set the stage for those who are interested in subverting the election to basically shift their tactics and potentially be much more effective in 2024, which is really concerning. I also think, though, in a kind of 30,000 mile above view, I think it's fundamentally shifted both citizens' and elites' beliefs and expectations about the sort of behavior that is tolerated in a democracy and the sort of behavior that constitutes a fundamental transgression against the rule of law.

So, in a sense, I wonder if, in hindsight, we'll see the 2020 election as a sort of antithesis of something like the Glorious Revolution, which scholars have long touted as a kind of key event that convinced both citizens and leaders alike that there were certain bright lines that leaders could not cross without being punished by citizens.

So if, on the one hand, the Glorious Revolution established the bright lines that formed the basis of liberal democracy going forward. Is it the case that 2020 has threatened to basically erase those bright lines for democracy in America? Now, of course, Trump was not ultimately successful in what he sought to do in 2020, and in terms of elites, I would argue that the bright lines actually held, right? Courts struck down the administration's claims of fraud as frivolous. Local officials, Brad Raffensperger being the foremost well-known of those, upheld the law. Election officials and administrators did their jobs, and ultimately Congress and Vice President Pence certified the election. Yet, it's also shocking how many Congresspersons still objected to the certification after—immediately after—the insurrection, and how many of those who did certify the election have been or are being targeted.

So, in terms of key events being crucial for actors sort of seeing what the basis of democracy is, I fear that the broader signal is that those who stand up against autocracy are being punished, and this is obviously a deeply toxic and troubling lesson of the 2020 election.

Julia Azari: Great. Steve?

Steven Levitsky: Let me also thank Rick and the organizers of this conference and also putting me on a panel with two old friends and two of the smartest people I know, who have said most of what I would have said. But let me agree with Gretchen and Larry that I am greatly concerned about the 2024 election.

I think there is—one thing that both Larry and Gretchen pointed out is that our electoral system is pretty vulnerable to abuse. Gretchen mentioned soft points—it's very easy to politicize our election system if a particular party has the will to do so. So, fortunately, the stakes of U.S. elections were, for most of the last century, were not sufficiently high that one party or another had the will to steal an election. But if a party has the will to steal an election, the capacity is there to politicize and to effectively use Constitutional hardball, to use the letter of the law to subvert the spirit of a free election. I think that's become very, very clear in the last nine months.

What's really shocking for me and what's really changed for me is that it's now—much more so than when we wrote, *How Democracies Die*—it is very clear to me that the Republican Party as a whole has the will to subvert democracy. When we wrote book *How Democracies Die*, Daniel and I were actually fairly optimistic about the Republican Party. We assigned the Republican Party great responsibility for having dropped the ball and nominated Trump and supporting Trump. But we expected that there would be at least a significant faction of the Republican

Party that would be able and willing to constrain Trump, that would actively defend those bright lines that Gretchen was talking about.

And that has, I think, it was made very clear, not before, but the two months between the election and January, 2021 made it very, very clear that the bulk of the Republican Party was willing to engage in anti-democratic behavior. Juan Linz who is, I think, still a scholar of authoritarianism and democratic breakdown in the 20th Century was probably clearest in delineating what democratic behavior is. And he described, he argued that in order for us to consider a party or a politician to be a fully democratic actor, a loyal Democrat, they've got to make it unambiguously clear that they accept elections as the only route to democracy, they need to unambiguously and under all circumstances reject and eschew violence, and they need to unambiguously and under all circumstances break with anti-democratic extremists. The Republican Party leadership ceased doing all three of those things in November, 2020, December, 2020, and January, 2021. And as long as that's the case, as long as the Republican Party is not committed not just to democratic norms but to democracy, our elections are going to be crisis-ridden.

Julia Azari: Alright. Well, this is a very sobering round of discussion, and it sounds like although our panelists are focused on different things, that everyone is really concerned about 2024 specifically. And that's maybe a subject for another panel is this focus on the Presidential election and its potential for subversion and maybe the linkage to the political will that Steve talked about.

Since all of you re scholars of comparative politics, I wanted to s shift over to that and ask what the United States can learn from other examples, successful and unsuccessful, in addressing democratic backsliding. So, Gretchen, we'll start with you.

Gretchen Helmke: Sure.

So, I think generally, looking at cases beyond the U.S. has been really helpful for scholars of American politics. Certainly, I think there were voices out there warning about how dysfunctional our system was prior to 2016, but in some sense, maybe much like the Kremlinologists who studied Russia, I think the field of American politics didn't see the U.S. as being quite as vulnerable to backsliding as it was.

And I just want to say, you know, Steve Levitsky's and Dan Ziblatt's work on this really set the agenda for simply identifying and labeling the U.S. as a case that was in danger of, and indeed undergoing, democratic backsliding. And a huge part of their enterprise was informed by analyzing comparative cases like Chile in the 1970s, Germany in the 1930s, Fujimori in Peru, et cetera.

At a more general level, though, I think the value of comparative politics and the value of comparative cases is to begin to identify common mechanisms. So, I want to borrow a distinction made by the political scientist and philosopher, Jon Elster, who basically talks about the goal of social scientists to look more for homologies, which are equivalent triggers that foster the same dynamics, rather than loose analogies, which may have surface similarities, but might even obscure deeper differences.

So, for example, in a lot of my previous research on Latin America, I had been really focused on how presidentialism can raise the stakes of politics and contribute to all sorts of problems of democratic stability, including the routine use of Constitution hardball and the erosion of checks and balances.

Now, in the United States, presidentialism is relatively weak, right? What's raising the temperature and the stakes of politics is more polarization, right? But this common mechanism of having dynamic where it is simply unacceptable for the opposition to be out of power really breaks down the self-enforcing equilibrium.

So, I have other thoughts on how literature on counter-majoritarian institutions can also be informed by lessons of comparative politics, but I'll stop there and give others a chance to weigh in, too.

Julia Azari: Steve?

Steven Levitsky: Thanks. Let me, I guess, make two points that I would draw from comparative cases. One is that it's not just the crazies who kill democracy. It's not just the people who stormed the Capitol on January 6th, it's not just generals or armed insurrectionists. It is the politicians, the mainstream politicians who enable them.

If I can draw upon Linz one more time, he used the concept of semi-local democratic behavior, which I think is absolutely essential. These are politicians who nominally play by the democratic game, who profess commitment to democracy, who are presumably mainstream politicians—who are mainstream politicians—but who condone or remain silent, sometimes protect, and often cooperate with extremist political actors.

And so, the great danger is not so much the folks who stormed the Capitol or even the folks who tried to steal the election in 2020, but what worries me the most is watching the bulk of the Republican Party not take action against, remain silent about January 6th, remain silent about Donald Trump's open effort to steal an election, to overturn an election, and to remain silent about the behavior of politicians like Marjorie Taylor Greene while taking punitive action against politicians like Liz Cheney. It is the

mainstream Republican Party not breaking with anti-democratic extremists that is most dangerous at this moment.

Secondly, not unrelated, is that it is critical, it is absolutely critical to me to build and retain a very broad small-D democratic coalition to isolate authoritarian extremists. That coalition must range from the left wing of the Democratic Party to this category of even conservative never-Trumpists, if authoritarians are going to be stopped. And this is something that, both, it's very important that Republicans who have remained silent thus far essentially defect from Trumpism, that they break cleanly and publicly from Trumpism, but it's also really important that progressive Democrats embrace these defectors, that progressive Democrats not reject coalitions with conservative small-D democrats who break with Trumpism. I'm going to stop there.

Julia Azari: Okay, and Larry?

Larry Diamond: So, I'll just hit, I've got five points, so I'll have to be brief. The first is that I think we learned from the work that Tom Ginsburg and Aziz Huq have been doing, including the article in the *Journal of Democracy*, which I highly recommend as relevant or this, "Democracy's Near Misses," that the state infrastructure is actually very important to the non-, or the ideally nonpartisan dimensions of the state infrastructure. And literally, so, electoral administration and preserving its neutrality, other elements of the state bureaucracy, and very crucially, as we heard perhaps from Gretchen or Steve or you, the judiciary and the way it held in 2020. And so, preserving these elements, and now we're hearing, I don't want to throw a hand grenade into this, but the roll that the Chairman of the Joint Chiefs of Staff played in trying to contain the potential for misuse of the military.

Secondly, I want to echo what Steve said. I think the real lesson of containing potential democratic backsliding or reversing it is that the peak authoritarian option must be defeated in an election. And for me to elaborate on that would sound partisan in a conference that must remain nonpartisan, but the point has to be made, and I'll just make it generally then, and echo what Steve said. I think we are facing an existential challenge to American democracy. And if progressives in the Democratic Party don't realize that the imperative in a moment of existential challenge is the defense of democracy over all else, they'll not be serving their interests or democracy's interests.

Third, as I hope will be further appreciated when we publish Rachel Kleinfeld's article in the next *Journal of Democracy* or if people read the work of Lily Mason and Nathan Kalmoe, we're facing an alarming and nearly unprecedented challenge in terms of violence seeping into our politics, and the potential for January 6th to be repeated in multiple ways and on an even larger scale.

And we must mobilize the effective authority of law enforcement and the elements, again, of the state bureaucracy to defend against that.

Fourth, we must meet the challenge of pernicious polarization. I want to call out the work of Jennifer McCoy and Murat Somer, and we've gotta look at social media and our individual relations with one another and how we feed pernicious polarization.

And finally, Julia, I know this is an issue you've been involved in discussions about—I think our electoral system of first past the post in single member districts is the worst possible electoral system we could have to lay on top a context that I think we're going to be stuck with for a long time of pernicious polarization. And so, when Gretchen says we've gotta now reverse the view and see what America can learn, the U.S. of America, from other cases, I think one thing we need to learn is, we've got to get past this. And I think the fastest and easiest, and it's not going to be easy way, we can ta least get to a less polarization inducing and rejection reducing formula would be to get as fast as possible and as many states as possible ranked choice voting.

Julia Azari: Alright. Great. A lot to think about, there. We've got a lot of great questions in the chat, so I'm going to actually turn to those. And one, I'm going to pose this for kind of whoever on the panel wants to take it, so one to three of you.

One of our audience members asks, are there cases where a country has turned around democratic backsliding and if so, what are the lessons learned for turning this trend around? Any positive cases we can look at?

Larry Diamond: Well, I mean, we saw—I'll just give you, you know, one example where they haven't completely reversed it, it's a tough thing to do, but they did make gains in Turkey where it's now deepened to authoritarianism, so, the analogy is not fully accurate. But if you look at what the opposition did to unify around this campaign of radical love—and here, I'm sorry to keep pushing *Journal of Democracy* articles, but the one we published on this about a year ago and the other articles we published on how to defeat polarizing authoritarian populism, they all point to this point Steve Levitsky made that you need a broad coalition, and it's very important not to demonize people who have supported the other side.

I mean, okay, Brad Raffensperger told us he's a Republican, his preference in 2020 was Donald Trump. Well, I don't want to demonize him for that, he still had the democratic principles. So, on the side of the party that I think is defecting from democratic principles are still a lot of people who are not defecting. And we

can't push all of them away and say, "Because you're affiliated with that party, we're not going to work with you."

So, broad coalition, bias for hope, practical cooperation with people who are still willing to work together. Lots of Republicans in Congress who didn't vote to certify the last election. So, think broad—that's the lesson.

Gretchen Helmke: If I could jump in, I think to call another attention to *Journal of Democracy*, there's a recent issue on Latin America and a great article, I'm forgetting the lead author, but maybe Larry can remember it. But it basically looks at how leaders have tried to subvert democracy in Latin America, and many of them succeeded in starting that project, but very few of them have then succeeded in building a competitive authoritarian regime which, of course, also refers to Steve Levitsky's work with Lucan Way.

So, they draw distinction between something like Chavez and Maduro in Venezuela that were really successful in establishing an autocracy versus cases like Morales in Bolivia—Morales was ultimately defeated at the ballot box as well as Ecuador. So, again, there's a danger of going too far into these analogies, but there are certainly cases where—and I think Trump falls into this as well—where, you know, he failed as a democratic leader, but he also failed as an autocrat, too.

Steven Levitsky: Very quickly, there are cases, there are a number of cases—India in 1975 to '77 is one case of relatively brief backsliding; Slovakia in the 1990s; Croatia in the late 1990s. I think, getting back to what Larry said, one lesson is that you can reverse democratic backsliding through elections. It doesn't necessarily require picking up arms or a massive popular revolution, you can do it at the ballot box, it almost always requires the kind of broad electoral coalition that Larry just mentioned.

But a word of warning that most backsliding cases actually take a while to reverse. India was a year and a half—that was exceptional. Most cases where we lose a democracy, you can get it back, but it often takes 10, 15, 20 years. And so, better to prevent backsliding than to try to reverse it.

Julia Azari: Okay. I think that's a good action item to move to the next question. Another one of our audience members asks, "Does pending federal legislation include any provisions that will address some of the things that you all are the most concerned about?" So, we've got the For the People Act, the John Lewis Voting Rights Act. Will these kinds of legislation make a difference?

Larry Diamond: Well, I think the best person to ask about this is Rick Hasen, if we could bring him back in.

I think that the John Lewis Voting Rights Act is really essential. We desperately need it to defend voting rights. But if you were listening carefully to Isabel and her work in Texas, I think you realize the point that Rick made in his seminal piece in *The New York Times* earlier this year, that the existential challenge is really probably not to voting rights, although we've got to fight hard for that, it's to the administration of elections and the provisions to decertify them.

So, I think some of the provisions in the larger bill that Rick could speak to—and if you could bring them in, I think it'd really be great—are even more important. Because if we can't defend against outright efforts to change the result of elections and subvert them, we're in very deep trouble. And I would like to call out the imperative, because it's so arcane that I think it's at really serious risk of being just overlooked and sidelined, the imperative of revising the Electoral Count Act of, what is it, the 1880s that creates a trapdoor vulnerability in the certification of the Presidential election.

Rick Hasen: Since I heard my name mentioned, let me just say that the last panel on legal changes is going to be addressing this.

Larry Diamond: Good.

Rick Hasen: And so, there will be—and most of the stuff is now in the new Freedom to Vote Act, as opposed to in the John Lewis or the earlier For the People Act, which had a provision on paper ballots, but otherwise didn't address issues of election subversion.

Larry Diamond: Great.

Steven Levitsky: Very quickly, I agree with Larry and with Rick that the greatest danger, by far, at this point, or at least the most immediate one is electoral subversion rather than voter suppression. And legislators have been running to sort of catch up with very, very rapidly moving politics and a rapidly moving Republican Party, unfortunately. But this latest iteration of the bill—it's good to hear that that at least addresses this issue of subversion.

Very quickly, you asked, Julia, to draw lessons from comparative cases. I think we can also draw lessons from U.S. history, which I'm not an expert on, I should say. But I've been looking a bit recently at the failure of the 1890 Lodge Act. This was a time when there was a lot of concern about both voter suppression and fraud and violence in elections, particularly the U.S. South, and it was an effort to establish much greater federal oversight and federal protection of elections.

That failed—it failed due to a filibuster and the Republican Party. The Republican Party in this case was arguably defending

democratic institutions, the failure of the Republican Party to remain united and to prioritize the defense of democracy. A faction of Republicans who were more concerned about other issues—in this case, tariff legislation—kind of broke away and abandoned the fight for this law. The law eventually, even though it passed the house and had a majority in the Senate, failed. There was no legislation, there was no federal protection of elections established, and it's basically after that that the South completely disenfranchised African-Americans and sunk into seven years of authoritarianism.

Larry Diamond: Can I just add, Julia, because I was searching in my mind for that, Rick, thank you. I won't get into the details, since the panel is going to address them, but I do recall when Klobuchar and Manchin and others agreed on this thing, if I'm remembering it correctly, the bill that Rick was referring to, a few days ago, the Freedom to Vote Act, I just thought—wow. And I was looking for a summary of it, and apparently—well, not apparently, I will say The Brennan Center has now produced a very useful one.

I just think, you know, if you want to defend democracy, we should put a lot of our chips on this bill. And my principal prayer now, aside—if I can make a substantive point—aside from the hope that we can get some kind of compromise to repair our physical and human infrastructure in the United States is that we can get Senator Manchin to agree to just accept a small little carve out to defend democracy and suspend the filibuster and get this Act. Because I think it's our best bet to defend democracy in 2024.

Gretchen Helmke: And if I could just add something, I mean, I think the voting rights legislation is hugely important, but I think there's a more fundamental problem that's hard wired into our Constitution, and that really lies with these counter-majoritarian institutions that have existed forever, but just increasingly, because of demographic shifts, have come to advantage the GOP. And that's created all sorts of distorted incentives for the party. It doesn't necessarily have to moderate its message and capture the median voter, right? The policies that the GOP is touting are often hugely unpopular with voters.

The second thing, though, is that I think that the disadvantaged party, so the Democrats, also become less wedded to the system and see institutions as less legitimate. And so, earlier, Larry had mentioned the fact that the courts played a role in upholding the election results in 2020. Well, we're starting to see a huge dip in the legitimacy for the Supreme Court. There's a poll that just came out yesterday that was reported in *The Washington Post*, particularly among Democrats, right? And if we know anything from other cases, we know that once the legitimacy of things like courts and judicial institutions is gone, it's almost impossible to rebuild that.

So, I think there are kind of fundamental problems in the Constitution that are accruing now to the benefit of the Republicans that are just having ripple effects throughout the system.

Julia Azari: Okay. Amazing. So, I want to pivot a little bit to a question about norms. We've talked a little about the formal institutional structure in the United States, and everyone on this panel has written pretty extensively about informal elements of democracy and democratic beliefs and values.

What is the role of norms and norm violations? And Gretchen, I'll start with you since you've written on this.

Gretchen Helmke: Sure. I mean, I think, you know, norms are fundamental to a democracy. Steve and I wrote about this, I don't know, it feels like 100 years ago now, and certainly, that was front and center of that *How Democracies Die*, those two master norms of forbearance and mutual toleration.

I think what ended up happening is, Trump violated hundreds of norms, maybe thousands of norms throughout his Presidency, I would say in addition to the norm of mutual toleration and the norm of forbearance. The other sort of master norm that he violated and got away with over and over again was truth telling, right? Basically, telling falsehoods that were publicly verifiable, and there's a fascinating article, the lead author is Hahl, in *The Annual Review of Sociology*, that talks about how this could actually appeal to voters. That voters could see a politician who is telling falsehoods that are publicly verifiable as a kind of way of distancing themselves from the elites, right, and kind of appearing as a more authentic kind of politician, and I think Trump was really a master of doing that.

Now, the biggest lie that he told was the big lie, right, the 2020 election. And I think this just violates democracy on so many levels. I mean, it violates the thinnest definition of democracy, which is that elections must be fundamentally, the outcome must be fundamentally uncertain before they're run. Months, if not years before that, he basically said, "The only way that I could lose is if there's fraud," right? And we saw in our polling of Bright Line Watch, prior to the 2020 election, both sides thought that if their candidate didn't win that the election was fraudulent. So, the groundwork was really laid well in advance of the 2020 election for this breakdown of this essential norm.

Julia Azari: Steve, I'll move to you, and I want to sort of pose a specific follow up here, which you can pick up on if you want, or answer the more general question. One of the things that I was thinking of as I was putting my questions together was the difference between norm

violations in speech and norm violations in deed. And now that we've kind of had some space from the Trump administration and some time has passed, I wonder if you have any thoughts on the differential impacts of those different kinds of norm violations.

Steven Levitsky: Let me try to tackle that very briefly and move on to the broader question.

I think initially there was a pretty widespread belief that it's really the deeds that matter and we shouldn't take Trump's speech so seriously. I think a lot of comparativists, those who've studied the sorts of populists that Gretchen referred to realize that words have really powerful consequences among voters, among activists, and that it's not so easy to separate norm violations in words from norm violations in deeds, particularly when it comes to eroding mutual toleration.

Mutual toleration is a really difficult norm to build. It has not emerged in all societies in the world. It took a long time, even in the United States, to build it among a very narrow political community in the early 19th Century, and I think one of the things we've learned is that it doesn't take that much to blow it apart, to blow up the norm of mutual toleration to basically undermine, among your followers, to undermine the legitimacy of the other side. And once that's shot, I think all sorts of norms and practices, democratic norms and practices come into question.

I think, in fact, in the four years since Daniel and I wrote *How Democracies Die*, in some sense, I've become less interested in the preservation of our pre-existing democratic norms. Because I think the normative regime that we saw crumbing when we wrote the book in 2017 has collapsed. I mean, I think that—and the norms that are threatened now are so much more fundamental that I couldn't have imagined them being threatened four years ago. Four years ago, when we were writing *How Democracies Die*, I couldn't have imagined that the norm of accepting electoral defeat would be seriously—not just Donald Trump in 2015 and '16, which worried me, which is the reason, we began the project that led to *How Democracies Die* when we heard Donald Trump say he might not accept the 2016 elections.

That was bad, but when we were writing *How Democracies Die*, I could not have imagined that the Republican Party would potentially be game for abandoning the norm of accepting election defeat. And you can't have a democracy if one of two major parties can't accept election defeat.

So, I think we are, norms—I agree with everything Gretchen said, norms are incredibly important to making a democracy or any political regime work, but that we're now in, we're in a somewhat different place. Where at a place where, ultimately, political power

and numbers and mobilization are going to be critical to defeating what has become an openly anti-democratic force.

Julia Azari: Okay. Alright, Larry, you've got a couple minutes for the last word.

Larry Diamond: Well, as political scientists will tell us, political polarization becomes particularly intense and dangerous under certain kinds of conditions. And politically, one is the condition we're in now in this period in American democratic history—and you could probably say this, Julia, better than I will—when there's a relatively even balance between the two parties. So, we're in a period of protracted kind of even competition and uncertainty and alternation, there's no dominant party. We're in a party where there is a tremendous social media challenge. We're in a party of deep cultural change in the United States, and in the composition of American society because of immigration and what I think is the very exciting and ultimately will be a positive thing, transformation of American society to the first democracy in which there is no racial or ethnic majority, but it's a painful transition.

And we are in, because of these drivers and others, globalization and so on, and polarization, a period of time that isn't going to go away any time soon, of extreme danger to American democracy, because the polarization is so deep and the drivers, the causal drivers are so rooted that they are putting an impossible load on the norms. When it seems like, existentially, everything is at stake in an election and maybe your future as a group or your tribal identity or whether you think you'll ever be able to compete again in an election, it's a load, normatively, that no system of democratic values can probably bear very easily.

So, in addition to all these other things we've spoken about in terms of the need for legislation and that we'll come back to, and in terms of the medium to longer run reforms I want to say institutionally including, I repeat, as an imperative, change in our electoral system to induce more flexibility and less polarization, we've got to go to work, each of us in our lives, in our universities, in our milieus to try and walk back this polarization, this demonization, and build bridges. I think Brad Raffensperger should be admired, again, for trying to do it in his work and his rhetoric. I think there are a lot of Republicans who have been trying to do it; unfortunately, too many of them now, like Rob Portman and Jeff Flake before him, have been retiring, but there are still others like Mike Gallagher from Wisconsin; obviously, Liz Cheney. And we've just got to find ways to transcend partisan polarization, build lines of cooperation, and listen to people from the other side and try and have, if not sympathy, at least empathy.

I'll just close by saying, this is what we're trying to do in our deliberative democracy project, America in One Room. We actually have this going on now with a new online deliberation on

climate change. And any way we can get Americans of vastly different views and political orientations to listen to one another and find common ground, we've got to pursue it. Because otherwise, the culture's going to break, the institutions are going to break, and democracy's going to break.

Julia Azari: Alright.

Rick Hasen: Wow. *[Laughter]* Sobering words from this panel. Thank you, Julia, and thank you to the panelists.

The first two panels have been on the problems, the risks of election subversion. We're now turning, I hope, to potential solutions with our third panel. The third panel will be moderated by NPR correspondent, Mara Liasson, and I'm going to turn it over to Mara. Thank you.

Mara Liasson: Thanks a lot, Rick. I really enjoyed listening to the two panels. Now, this one is about solutions. You can read the biographies of my panelists on the website, but just to tell you, we've got Bob Bauer, Ben Ginsberg, and Sarah Longwell—just the right people to talk about this.

We're going to be talking about solutions, and what strikes me, especially when you talk to Democrats, is you've got this incredible tension. Their hair is on fire, they feel this is an existential threat, democracy hangs in the balance—but on the other hand, they're also paralyzed, and there's this feeling there's nothing they can do unless Joe Manchin decides to agree to a carve out for the filibuster. And if your hair isn't on fire, if you read Bob Kagan's long op-ed piece in *The Washington Post* today, I can assure you it will be.

So, the first question I want to ask the panel is, how real is the threat of election subversion? In other words, we heard Brad Raffensperger earlier saying that these laws that have been passed in states like Georgia or Texas or Arizona are merely to establish some accountability, but you talk to Democrats and they say that the laws that the Republican legislatures have passed basically give partisan control to election machinery, to the counting and certification of ballots, and they have made it impossible for Republicans to lose a close race. In other words, all those things that Donald Trump asked election officials to do in 2020 and they didn't, this time, they will be able to do it and it will all be legal.

So, how much of a threat are these new laws in the states? I'm going to start with Ben.

Ben Ginsberg: Well, they are something to be quite concerned about, that the notion that somehow the vote of the people will be usurped by politicians doing their will is a huge problem.

Now, I do think, to an extent, the number of states involved is more limited than the lead up would suggest, and in fact, many of the laws that were changed were put in in the pandemic election which saw a record turnout. But that's not to say that the ultimate solution of this is not a really strong get out the vote program and people getting energized by the election—I mean, goodness news, Republicans have done a wonderful job of providing issues to energize the Democratic base in upcoming elections.

So, I think a number of these laws are quite problematic, because they punish election officials, something that Bob and I have talked a lot about lately, and they do provide a mechanism for taking the vote of the people away from that result. So, there's a lot of work to be done.

Mara Liasson: Bob, do you think that Republican legislatures in these states have almost guaranteed that Republicans can't lose a close race?

Bob Bauer: No, I'm not sure I'd go so far yet. I don't know that that's the case, but I do want to put this point somewhat into historical perspective, because I want to underscore what a radical turn events have taken. When you consider when attention really began to turn to the way elections were administered in the wake of the Florida Presidential recount in 2000, there, the discussion was not of fraud, but of breakdown, of machines that were several generations old and election officials were having difficulty with complex or confusing or inconsistent rules, different rules applied in different counties to the same types of ballots.

And so, there followed the Help America Vote Act which, for all its weaknesses, represented a bipartisan commitment to the notion that we ought to have modernized election administration that does not produce elections like the one in Florida. And then after that came and I co-chaired that Commission with Ben, the Presidential Commission on Election Administration that was set up by President Obama, and there we also concluded that elections should be professionalized, that we needed to give election officials the resources to treat elections as what they are, which is a subset of public administration. It's a form of public administration, running the government properly and treating, by the way, the voters the way our best businesses treat their customers.

What we're seeing right now is a sharp turn, a 180 degree turn in the other direction—less professionalism, more partisan control. And the various ways with which partisan control is being exercised is, in my judgment, really insidious.

The one point I would make, and Ben is correct—we're seeing this in some states, by no means in all states, but the precedent is being set, it's encouraging other states to follow suit. It has become part and parcel of the creed of at least a significant segment of the Republican Party that this is the direction we should go, to put politicians in charge of our elections, and just to say it, I think, underscores what a serious problem it is.

Mara Liasson: Sarah, how big of a threat do you think this is—putting aside voter suppression and partisan gerrymandering, but just focusing on the partisan control of election machinery counting and certifying ballots?

Sarah Longwell: I mean, I think you have to take it in the larger context of what the whole intention here is. So, if you look at all of the bills being passed across the States, plus a lot of the moves to take out some of the people like Brad Raffensperger and hand over control to partisan state legislatures, what it looks like to me is a moving of the, moving the pieces on the chess board. To make the conditions more favorable if somebody like Donald Trump were to run again, or if Trump himself, who I think may very well likely run again, so that if the election is close, as it very well might be in 2024, that somebody like Jody Hice is the Secretary of State and not somebody like Brad Raffensperger, who would definitely—you know, because we've already seen him demonstrate this—who would do the right thing.

And so, I agree with Bob that we're not there yet, but to me, it is about, they are laying the groundwork to make the conditions more favorable. And I'll say one other thing, that you know their intentions because the rhetoric is clear. Like, when Liz Cheney got removed for—they said she wasn't on message. What they meant by that is, the message going into 2022 and 2024, the "stop the steal" message, that is their turnout mechanism, right? The big lie is what they are using to generate enthusiasm from their base to turn people out. And that means that the voters not only are primed for the idea that subversion could take place, they're demanding subversion. That's what January 6th was about. It was about Donald Trump creating the conditions in which people would go to actively overturn the results of the election. And so, it is both in the rhetoric and in these legislative moves that they are trying to create the broad conditions for subversion to occur.

Mara Liasson: Let me just push back against that, because there's some people who feel that backfired in Georgia, that by saying the election was rigged, it caused Republicans to stay home, because their vote doesn't count if the election is rigged.

Sarah Longwell: I think that might have been narrowly true in Georgia, but I think that—look, this is what Donald Trump is doing. He is going out

and saying the election was stolen, and why would Kevin McCarthy who, right after January 6th, said this was horrible, this was terrible—why did he ultimately go down to Mar-a-Lago and make peace with Donald Trump? Why did they replace Liz Cheney with Elise Stefanik? Why have they, in every action, every move, why is election integrity what they're pushing at the state level? It's because, from a narrative standpoint, they want their message to be, "the election was rigged, it was stolen."

Seventy percent of the Republican Party actively believes that the election was stolen. I do focus groups with Republicans all the time who voted for Trump. They all think the election was stolen. They all think January 6th was no big deal. And maybe right after January 6th when the Georgia vote was held, maybe it hurt them narrowly there, but the conditions have changed since then. They have been beating this drum so effectively that now, nobody thinks what happened on January 6th was even a problem.

Ben Ginsberg: Well, Mara, the results in the California recall—wow, it's California—tends to buttress the notion that that's not workin' so well. And I think one of the other important events that occurred today and last night is the Arizona audit. Because, obviously, that was Donald Trump's best chance ever to prove fraud or a rigged election, given the way they sort of took over the audit and the people they used and the money they raised. He failed, and you know, the more state audits they do, although people hate the state audits, the truth is, the same result's going to occur.

And it is important, if you want to refute the big lie, to actually have incidences like that where Trump gets to make his case, because it's not going to work.

Mara Liasson: Were you surprised at Arizona? I mean, if Cyber Ninjas were so shambolic in their audit, why didn't they just come up with a false result, you know? That said, "Hey, we found a lot of bamboo fibers, this was"—you know, keep with the big lie and say that the election was fraudulent. Were you surprised about that?

Ben Ginsberg: Not really. I mean, look, the Trump folks have succeeded so far in not having to present any evidence to back up their assertion of the big lie—not before the election, not after the election.

And so, to do something like bamboo ballots would invite the sort of scrutiny of the nonsense.

Mara Liasson: Uh huh.

Ben Ginsberg: Now, they had to make a mistake anyways, because they've said that there's somewhere in the neighborhood of 30,000 false votes.

Mara Liasson: Right.

Ben Ginsberg: But the methodology they used, you can already see from their report, has been refuted in other instances and is woefully lacking in any credibility.

So, the more they've gotten put in a place where they had to try and prove something and produce evidence, it falls apart.

Mara Liasson: Bob, let's move to solutions and what can Congress do, and what do you think Congress will do, if anything?

Bob Bauer: I can't predict what Congress will do. Of course, the Republican Caucus seems fully aligned against any voting rights legislation and even if Joe Manchin and Kyrsten Sinema support the current revised Democratic Voting Rights Bill alternative, the question seems pretty much settled, at least in Joe Manchin's mind for the time being, if he were to reverse course, he would reverse course, I can't say. But he has said pretty flatly, as has Sinema as well—at least it's been attributed to her, the view that they will not support taking the filibuster down. And so, under those circumstances, it's hard to be optimistic about what will happen, but we'll see how events unfold.

In answering the first question that you asked me, I want to go very briefly back to the Arizona audit, but not for the purpose of rehashing that, but just talking about what works and what doesn't work. If we don't imagine that there will be a federal legislative remedy between now and 2022, then the question is, "Well, what can be done?" I think Arizona is both instructive and continues to be troubling in the following respects. It's instructive because the scrutiny does matter, and the very heavy attention that was paid to the appointment of Cyber Ninjas, the early missteps, the lack of security in the ballot—I mean, frankly, the whole carnival that was on display, I think, put enormous pressure on those who were working with the company on the final results to avoid saying something that simply could not sustain scrutiny.

Now, at the same time—and I haven't had a chance to the study the report, it is my understanding that it does everything it possibly can, including with the dubious methodologies that Ben just mentioned, to cast discredit on the reliability of the outcome there. So, they kept the ball rolling at least in that respect, and that as the Abbott announcement in Texas illustrates, I think this is going to continue.

And that puts a huge burden on activity in the states, and what we need is a whole civil society response. Our general reaction in circumstances like this is, "Well, there's gotta be a law." Well, of course, laws can be passed, laws can be amended, laws can be repealed, and then of course, there's the whole question of

whether Congress can act in something so divisive when there is the potential of a filibuster and not votes to overcome it.

But what happens in Arizona, what happens in Georgia? The way in which election officials are shadowed and pressured—that, I think, does make an enormous difference, and I don't think we should understate the importance of community engagement on this, business community engagement on this, ecclesiastical community on this, you name it. If the civil society institutions that we've relied on in the past, which—and by the way, that also includes organized bar activity, which I've been, frankly, to some extent disappointed in, though the courts have spoken, certainly in the post November 3rd litigation, spoken fairly effectively on these topics. But if we can't rely on that, we're going to be in a world of hurt.

Mara Liasson: Well, let's talk about that a little. You say that it had to sustain scrutiny—why, because people were worried about being sued the way Dominion has brought these suits? Or what was the guardrail that held in Arizona? I mean, you're talking about pressure on all these actors—yeah.

Bob Bauer: It held up to a point. Right, again, I haven't—others here may have seen the report, I haven't seen the report, I'm not sure when it's going to be released in its entirety, so I haven't studied it. The general impression I get from the accounts out there right now is that there's still an attempt to discredit the election results. Not to say that they found a discrepancy between the official count on Biden and their count on Biden, but that somehow, we can never know. It's a little bit like the Florida recount conclusion.

Mara Liasson: Right, right.

Bob Bauer: And that's enough, I think, to keep the conspiracy theorists going. It's enough to continue to fuel copycat pseudo-audits in other states.

I do think, however, that, as Ben pointed out a minute ago, the scrutiny of this particular process, the attention paid to the absurdity of some of the claims, the inadequacy of some of the procedures that were adopted did drive them in the direction of being very careful not to make claims about the vote count that they couldn't sustain, but then to move to what I would call sort of the more suggestive and methodologically suspect way of saying, "Well, this election was not reliable."

And that kind of shadowing process is going to be critically important. I mean, bear in mind, there was even election official pushback, very loud pushback in Arizona at that audit. All of that really helped. And then, of course—and we can talk about this further—I do think the courts have an important role to play here.

And I want to distinguish between what we might expect from the courts on voting rules and on election subversion type issues. I think the courts wind up giving us a very mixed result on litigation over voting rules, like how many weeks of early voting, the particular conditions under which people can vote by mail. That's very contentious area in which the court performance performed November 3rd was mixed at best.

But I do think that, as the post November 3rd judicial performance suggested, engaging around compromise of the election process itself is something that can be taken successfully to the courts.

Mara Liasson: Alright, well, let's talk about that civil society response, Sarah, because you're certainly engage with The Lincoln Project as part of that. So, if Democrats can't pass laws in Congress, they certainly don't have the votes in the state legislatures, but they do have the ability to organize and even mount education campaigns.

And I'm thinking about something that happened in the 2020 election that was really instructive, which was the Hawkfish effort to educate the news organizations and the public about the difference between the red mirage and the blue wave. You know, that's something that people didn't really know about until it was out there a lot and people understood that what Donald Trump was going to say, which is, "We should stop the count on election day, anything that comes in after that is fraudulent," people were educated that that's just not the way we count the votes.

So, I don't know if you think something like that can happen in this case, but what can civil society do, and all those actors that Bob just mentioned, short of passing laws to protect against this?

Sarah Longwell: Well, just a quick correction. So, I'm not affiliated at all with The Lincoln Project, never was. I ran—

Mara Liasson: Ah—okay, I'm sorry.

Sarah Longwell: No, that's okay. I ran a different group called Republican Voters Against Trump.

Mara Liasson: That's right. I'm sorry. Yeah.

Sarah Longwell: No problem. And the theory of our case was, what we did was, we went and found all of these disaffected Republicans, of which I am one, so I've been a Republican all of my life, I'm not a hair on fair Democrat. But I have watched the Republican Party change substantially over the last five years and go to a place that I never could have imagined in terms of their willingness to facilitate and accommodate a person like Donald Trump.

And I think it's evident in a moment where, as Bob Kagan's piece very powerfully outlines, we are in a moment of crisis right now. Our Constitutional crisis is—it didn't end with the election of Joe Biden or because January 6th. You know, we're past that. It is ongoing. Like I said, I think these chess pieces are being laid out on the board for somebody, most likely Trump, to take advantage of.

And so, what you have to do, if you can't get Mitt Romney or Ben Sasse or Susan Collins and people that I've long admired to meet the moment and say we have to pass something like The Electoral Count Act, which would clarify the Vice President's role so that you don't find Mike Pence, somebody like Mike Pence in a position of calling up Dan Quayle, saying, "What do I do?" And but for a Dan Quayle phone call, you know, potentially, this Eastman memo that came out, which was a very clear plan to how you overturn the election, it could have happened.

I mean, I reject this idea that we should all just say, "Well, it didn't happen, so we shouldn't be that worried about it, and the institutions held." The institutions held because of a very thin group of Republicans who did the right thing in that snap moment, and some of the did the right thing because they didn't quite know how to do the wrong thing. And I'll just go back to that Arizona audit—the reason that there was going to be so much scrutiny was because Steven Richer and Bill Gates, who were the Maricopa County Supervisors, and I can't remember what Bill Gates' title is, but they were vocal in Arizona about the fact that the election results were correct. And they were pushing other Republicans to the point where it got embarrassing for Republicans in the state to have the Cyber Ninjas being, you know, crazy bamboo finders.

And so, the way that you tackle this if you can't get Mitt Romney and Susan Collins, those Republicans are not going to act in good faith on voting subversion or just voting rights in general, what you have to do is win elections. So, our project was about helping Democrats to build the biggest, broadest pro-democracy coalition possible that ranged everywhere from Liz Warren to Liz Cheney in which you have—you know, there's still this percentage of Republicans or right-leaning Independents, they voted for Joe Biden, but they voted down ticket for Republicans. And those swing voters are very important to this pro-democracy coalition, and Democrats have to go embrace them, get their votes, in order to hold off this dangerous version of the Republican Party, and winning elections is the only way to do it, unfortunately.

Mara Liasson: Ben, let me follow up on that, as the other Republican on the panel. We heard previous panels describe the Republican Party as a party that no longer accepts as legitimate a loss in an election. In other words, with the exception of bright blue states

like California, Republicans are the party that only says an election result is legitimate if they win. Do you think that's where the party is, or not quite yet?

Ben Ginsberg: I think that's a bit overbroad. I think there have been a number of Republicans who have behaved badly along that line. But no, I'm not sure that's going to be borne out in future elections.

I do think that Sarah put her finger on what the real problem is in this entire debate, which is, how do you talk to the 30 percent of the electorate, 78 percent of Republicans who don't believe in election results? And I love confabs like this, I think they're really important, but it's not talking to the 30 percent.

Mara Liasson: Yeah.

Ben Ginsberg: And the real struggle, Larry Diamond alluded to it in the previous panel, is how you manage to get together to reach the 30 percent, to convince them that election subversion, the big lie, the whole panoply of issues are wrong. That's why I actually think these audits, although they're driving people crazy, are really important. Because, again, they are Donald Trump's best case to lay out the evidence to prove it. And to the extent he can, that's a win for, I think, bringing people back to recognizing that our elections are valid.

The issues that Bob brought up in the Cyber Ninjas report that cast questions on the election do do that. And it's an attempt, but it is easily refutable, because again, they have to state where they got their numbers of votes, and that methodology can be disproven and is disproven.

It is also a mistake to think of the 30 percent as a monolithic group, and there are certainly a number that will never be peeled off from the conspiracy theories. But there are a number of proof points that can exist through things like audits that are helpful. So, we ought to be figuring out ways to talk to the 30 percent, and these opportunities, these forums for Trump to have to try and make his case, is an important piece of that.

Mara Liasson: Who should try to reach the 30 percent? Who in the Republican Party is a credible messenger for this kind of hardcore—like, they're the anti-Democrat equivalent of the anti-vaxxers, you know? Who could talk to the 30 percent?

Ben Ginsberg: That's not the way I'd design it. I would design it more as a forum to say, "Okay, our elections are rigged." If they're really rigged or fraudulent, it's important to find that out. We're going to give you a chance—and maybe this is Republicans who put that together, retired judges, retired members of Congress—who provide those forums to let Trump try and make his case.

Mara Liasson: So, Bob, have these audits, in some weird way, become a good thing for Democrats?

Bob Bauer: So, this is a point on which, I wouldn't say I register a mild dissent from what Ben is saying. I think he's correct that once they've been established, it is imperative to meet them head on and to make sure that the public record is absolutely clear about the methodological flaws and anything else about the report that casts discredit on the process and the conclusions that they're at least attempting to project.

I do think that's where we are now with the post-2020 audits. What we're seeing is an attempt to make this kind of thing routine, which is, post-election, whether it's now or in 2024, 2028, 2032, the normal electoral procedures that we have for certifying and testing the outcome of elections, recounts, contests, all of that are suddenly bypassed by a politicized process of pseudo-audits, each one of them in the various states structured differently, perhaps some of them piggybacking on the Cyber Ninjas experience, which was particularly risible, to make them appear more credible. And that sort of thing, if it catches on from cycle to cycle, I think is absolutely disastrous.

We have laws that permit election results to be tested, and they can be tested in every single state, and they were tested under those laws in the states that were most in contention in 2020, but that wasn't good enough. Now, we have what we have, and Ben is correct, we need to address them, but we cannot have this develop as a general practice for politicians to device procedures that are outside the legal framework to raise questions about the validity of elections. And that's what happened in Arizona, and that's what's happening in other states.

Mara Liasson: Yeah. Let me go to some of the questions that participants have submitted to us. One of them is, "What happens if we have a Republican House of Representatives? Can you imagine a scenario in 2024 where a Republican House actually certifies a win by a Democratic Presidential candidate?"

Bob Bauer: I'll just say one thing real quickly, because I know Ben has a lot to say on this topic, and Sarah, too. I think that the participant who raised the question is raising a very important point, which is, this process by which elections are contested, of course, doesn't stop in the states.

It can be taken up outside the Presidential campaign context under the Constitutional provision that authorizes Congress to judge the returns of its members. They can disregard a certification, I think Ben's about to give you an example, if I can project it, they can deny a certification from a state, and then

actually assume responsibility for recounting the vote itself on a completely uncontested basis, meaning, at the end of the day, the House can reverse the results that the state reached. And there are also mechanisms under the so-called Federal Contested Elections Act, that permit candidates to trigger a House inquiry into the validity of an election result. It is not impossible to imagine that, though these have occurred in the past, there have been a lot of FCEA cases, that this becomes much more routine, given the surrounding environment of discredit being cast on our electoral process.

Mara Liasson: Yeah, so Ben, so, that's like meaning the January 6th insurrection would finally have succeeded.

Ben Ginsberg: Well, before we get too out in front, let's remember the differences between Congressional elections and Presidential elections. So, this all took place for the Presidential election with the Electoral College. For Congressional races this time, and ever time, the House is the judge of its own members, under the Constitution, so that the certificate of election that comes from a state has to be voted on by the membership of the House and the Senate. And that could be fairly significant.

I mean, after all, what didn't get litigated in this election cycle was that, in a state like Arizona, they tried to hold up the certification of Joe Biden. But on the other hand, the majority Republican Congressional delegation ran under the same election rules.

Mara Liasson: Right.

Ben Ginsberg: So, in other words, why would the House of Representatives necessarily identify or corroborate the certifications of all members of Arizona if they were going after one particular state?

So, the Republicans who were doing this never had to confront the issue in this context, that they were actually challenging their own election.

Mara Liasson: Right.

Ben Ginsberg: So, I think that's a Congressional issue for 2022. In terms of 2024, Donald Trump should be in favor of amending The Electoral Count Act under pure self-interest. Because one great difference in 2024 is that his Vice President, under any circumstances, is not going to be sitting on the chair—

Mara Liasson: Right.

Ben Ginsberg: - it's Kamala Harris. And suppose, just suppose she sees Donald Trump as an incredible existential threat to the United States and actually does what Donald Trump wanted Mike Pence to do.

So, you know, there's all sorts of gamesmanship that is really fun to think out, but the catastrophic consequences for both parties in taking it too far can come home to roost in the next iteration.

Mara Liasson: Sarah, we have a question about what kind of community—what Bob was talking about earlier, community engagement, business, ecclesiastical, bar associations, et cetera, what can regular people do to help?

Sarah Longwell: Well, you know, one of the things that I've been sort of disappointed in is that right after January 6th, all sort of the Chamber of Commerce types, a lot of businesses came out and they said, "We're not going to support any Republican who voted against certifying the election," and that was lots and lots of Republicans. And it didn't take that long for them to start walking that back.

And this is why, I guess, I am so exercised about this is, I feel like I have to be, because so many other people seem insufficiently alarmed. Where January 6th caused everybody to say, you know, people had been telling us never-Trumpers, "You're hysterical. Trump's not going to do anything. Guardrails will hold." And the day of the insurrection, there was a lot of people saying, "Nope, he should be impeached." *The Wall Street Journal* editorial board, they came out and said, "he should be impeached."

And over time, though, I have what—and I had somebody say to me, he was actually a big Democrat, say that, "I slept the best I've ever slept that night, because I knew Donald Trump was finished after that." Because that's what we would all assume would happen after something like January 6th, when the evidence was clear that he had incited an insurrection and called for an election to be overturned.

But that's not where we are today. Where we are today, and this is why a lot of these audits in the states—and I really disagree, unfortunately, with Ben, here—it's why they want to push the audits in the states irrespective of what the results ultimately are. It's because they are not about actually auditing the results. They're a messaging tool, because most people—the Arizona election had been audited multiple times before the Cyber Ninjas showed up. It had already been audited, it had already been confirmed. They've already done recounts in Georgia. But if you ask voters, do they know the results of the audits, they don't. They still just think the election was stolen. Because the goal is to throw up lots of smoke and confusion.

And so, people in civil society, right—business leaders, elected officials at all levels—have to be there to say, "No, there are consequences for behaving this way, and we're not going to keep

supporting it." But when everybody walked it back, that creates a permission structure for everyone to say, "It wasn't that big a deal, everything was fine. It was only a few people that died, you know, and it's not clear that they definitely died during the insurrection." And the narrative shifts, the reality changes, and that's the part that is so scary is, we're starting to bake this into our politics and Donald Trump is winning a narrative war.

And so, even to go back to your earlier pushback on me, which is, "Oh, but you know, didn't it actually backfire on them in Georgia?" We've come a long way since then as a country, and it's not been in a good direction in terms of our willingness to accept all of these bills at the state level, the pushing aside and the intimidation. You know, in Arizona, they have changed the law so that Katie Hobbs, who's the Secretary of State, isn't the one who decides anymore. They changed it so that the Republican, the Attorney General, is the one making the decision.

All of these things, all of these little moves are an attempt so that—it's an attempt to set things up so that they can go differently next time.

Mara Liasson: Yeah. In terms of what you're saying is, the only solution is to actually win elections, and right now, as Larry Diamond said earlier, we're in this 50/50 country, really unstable. And you just mentioned a lot of groups and people that are part of the Republican coalition—you know, the business community. And then there are all these Republicans in Congress—people like Mitt Romney and Susan Collins, you mentioned them, too.

The fact that there seems to be nothing coming from those important parts of the Republican coalition, how can this problem be solved without leadership from those areas? I mean, without the Republican Party, some aspect of it, trying to correct this problem, how is it going to be solved?

Sarah Longwell: Yeah, so, I have two answers to that. One is, I sometimes don't—even though the practical political reality is that you're not going to get 10 Republicans to help you out on voting rights, sometimes I'm loathe to say that, because we should still be demanding that they do. You know, in some ways, we let them off the hook by saying, you know, everybody's mad at Joe Manchin and Kyrsten Sinema wen there's all these Republicans over here who are not doing what they need to do to defend against election subversion, even though they know it's a threat. They do know what's at stake, here.

And so, we should continue to put pressure on them and demand it from them. But the other group that I'm going to spend some time pushing here is, the Democrats also are moving ahead as though it is business as usual. I mean, right now, watching them

implode, fighting with each other over the infrastructure bill, instead of—you know, they seem to not be aware of the stakes, not be aware of what a potential catastrophe we're in for democracy. And the fact is, they haven't put any of the voting rights, I mean, there's a lot of, I think, Democratic activists who are pushing it. But I'm not sure that—in fact, I'm certain, in general, Democrats have not put that at the center of what they're doing. You know, rolling back executive power—there's all kinds of things Democrats could be focusing on that would frankly keep Donald Trump's and the Republican Party's abdication on this front and their attempts at subversion, keep it front and center, but instead, they're going after their political priorities. And that is the other part of this problem, because they're not demanding that, they're not putting Republicans on the spot about this, they're fighting over normal political stuff.

Mara Liasson: Right. I mean, the theme of the last six years was like a failure of imagination at every step. Nobody could imagine how much worse it could actually get.

Bob, do you—

Bob Bauer: Yeah, I just wanted to add, I wanted to second something that Sarah said about Congress' ability to move on another front in a democracy-reinforcing fashion, and that is to put up, restore some of the guardrails on abuses of executive authority. Because as we saw, after all, on January 6th, and that's part and parcel now of the fight between Trump and the current administration and the Congress, more to the point, over the release of certain documents that bear on what Trump was doing on January 6th, who he was communicating with, whether he was discussing the institution of martial law, whatever it may be.

Having Presidents who go well beyond—and of course, obviously, there have been questions about Presidential overreach in prior administrations. But there are particular abuses that have come to light, particular excesses, extremes in the abuse of executive authority that everyone swore—speaking of Sarah's frustration over things dimming over time as a source of outrage—everyone swore something would have to happen, something would have to be done about these abuses of power, because it put Presidents in the position of doing what he ultimately thought he could do, which was to try to use the federal government to save his Presidency.

Mara Liasson: Right.

Bob Bauer: And those steps need to be taken. They're not specifically focused on election protection, although they obviously do bear on election protection. They have to do with keeping the President of the United States from being in a position where he or she can

marshal the resources of the federal government to maintain power illegitimately.

Mara Liasson: But do you think the January 6th Committee has to get those documents and lay out what happened and what Trump tried to do before you can correct those abuses? I mean, there has to be—

Bob Bauer: I don't know about before. There's some curbs on Presidential power, reforms of the Presidency that can take place without regard to what the January 6th Commission concludes.

Mara Liasson: Okay.

Bob Bauer: But, having said that, this Commission really does need to be able to lay that out. It needs to put before the American public what we've already seen just from a sampling is the shocking extent to which officials of the government were prepared to take official action to subvert the outcome of a Presidential election.

Mara Liasson: Yeah, yeah. It was almost a coup. So, we have just a few minutes left, and I just want each of you, since this is a panel on solutions, to talk about kind of the one or two things that you think would be the best solution to this and that needs to happen as soon as possible. Sarah?

Sarah Longwell: Unfortunately, I have to put this back with the Democrats and say, if you're going to build this big, broad, pro-democracy coalition, you have to—the progressive solutions that your heart desires, they might have to take a back seat, and you should be focused on winning in 2024 by putting up very broadly appealing sort of center left candidates like Conor Lamb in Pennsylvania who can win. The only way you're going to get these things done is to win elections, and so, I would—the pie in the sky stuff, just like with Manchin having to take something like H.R.1 and narrow it down to something, and even there, it's probably not going to pass. So, you've gotta focus on real solutions, real things you can accomplish so you can win.

Mara Liasson: Okay. Ben?

Ben Ginsberg: Well, I think that it comes from the answer to Sarah's question about why aren't responsible Republicans standing up to folks. And the answer to that is, nobody's figured out how to talk to the 30 percent who don't believe in election results. So, I'm all up for civil society setting sort of the goals and the metrics for the way the country should be, but I'm pretty sure what that 30 percent is not going to listen to is the elites, the leftist elites telling them how they ought to behave and what they ought to believe in.

So, I do think the solution comes from groups like this not turning up their noses at the 30 percent, but in fact, figuring out the ways

to have a dialogue, let them make their case, and then refute the case.

Mara Liasson: Okay. Bob?

Bob Bauer: I do think community leadership is absolutely critical. That, to me, is one of the vehicles for communicating with the 30 percent, but also, for creating a monitoring process, like a monitory democracy, given that the officialdom that is charged with election supervision may be increasingly compromised, and they have to feel that somebody's looking over their shoulder and there have to be structured processes within every state for bringing pressure to bear on them. I think that is going to be extraordinarily important.

I'd have to say, barring legislation—and it's not clear to me that any such legislation would pass, so I agree, by the way, with Ben that there's a prospect of amending The Electoral Count Act, arguably in both parties' mutual interests. I think the Republicans need to think hard about how this door swings both ways, but beyond that, I do think there needs to be a clear message coming through in the debates about voting rights that tend to mush a lot of different issues together about this specific issue—institutional defense. Voting rules are important, I have strong feelings about voting rules, and Ben and I were part and parcel of a commission that put out all sorts of recommendations about the alternatives that should be available to voters—mail and early voting and the like. And we should continue to have those fights. They have to happen. It'll get resolved on a state by state basis.

But on a national, urgent level, the focus has to be on protecting the fundamental institutions by which our democratic elections are conducted, legitimated, and communicate.

Mara Liasson: Are the three of you optimistic or pessimistic?

Ben Ginsberg: Apprehensive.

Mara Liasson: Okay.

Bob Bauer: Depends on *[Cross talk]*—

Sarah Longwell: Sorry, go ahead, Bob.

Bob Bauer: Go ahead, Sarah.

Sarah Longwell: I was just going to say, I'm long on American democracy. I'm like, we are—we will get this figured out. I think I am—so, I wouldn't short American democracy, but I am very concerned about where we are right in this moment, and I would highly recommend everybody go read the Bob Kagan piece in *The Washington Post*, because I think he's right about a very key thing, which is that

Donald Trump is going to run again in 2024 and that our reactions are insufficient to the crisis we are currently facing.

Mara Liasson: Bob?

Bob Bauer: And I would just conclude—

Mara Liasson: I'll give you the last word.

Bob Bauer: - yeah, I'll conclude by saying I agree. One of the areas in which I take issue with Kagan is that I worry profoundly that if Trump doesn't run or re-election in 2024 that somebody borrowing, frankly, his same leadership style and tactics and subscribing to these same tenets is going to look to capture his constituency, and we're actually dealing with something that will outlast Trump. And that makes it an even more serious problem, if you look at it that way, because it means it's here with us for a while, past Trump, as well as during Trump.

Mara Liasson: You mean, like a Josh Hawley or—

Bob Bauer: Yes, absolutely—Ron DeSantis.

Mara Liasson: Ron DeSantis, yeah.

Bob Bauer: Yeah, I mean, but I'm not looking to have a fight with Republicans about Republican programs, I just listen to what they're saying on this topic, and what they will be likely to say even more if it looks like they have to inherit the mantle of Donald Trump.

Mara Liasson: Right. Thank you, thank you, thank you. Go read Bob Kagan and then take a couple aspirin. *[Laughter]*

Rick Hasen: Thank you, Mara, and thank you to the panel, and I think we're going to need something stronger than aspirin after this.

Mara Liasson: *[Laughter]*

Rick Hasen: I'm going to turn it over to our final panel, which is going to be chaired by Ned Foley. Ned is from the Ohio State University and is a Professor there and Director of their Election Law Center, and we're going to finish strong with, really, some of the top thinkers in the country on how to deal with this problem. Take it away, Ned.

Ned Foley: Thanks so much, Rick, for what's been a fantastic discussion so far, and I'm looking forward to our panel. In the spirit of very quick introductions, I'll say that we have Guy Charles from Harvard, we have Michael Morley from Florida State, we have Janai Nelson from the NAACP LDF, and we have Rick Pildes from NYU.

And I'm going to ask an initial question that's going to go to all our of our panelists, and I'll start with Guy and I'll go in the order in which I introduced them. And as we've talked about this afternoon, the risk of election subversion can affect all types of elections—Presidential, Congressional, Gubernatorial, Secretary of State, et cetera, et cetera. And we've heard mention of the Electoral Count Act from several people today, the role that Congress has, each House in terms of the ultimate authority for elections of its own chambers.

And so, wrapping our minds around this problem, to what extent is the problem of election subversion common to all different types of elections? So, our priority solution should be something that affects all different forms of elections, or instead, should we be prioritizing different solutions for different types of elections because the risk of subversion, say, affects the Presidential race more than others?

So, with that, Guy, do you want to kick us off?

Guy Charles: Sure—happy to. Thank you, Ned, and thank you to everybody. Happy to be there with all of my co-fellow panelists, my Con Law teacher and Election Law teacher, Rick Pildes; my wonderful friend, Janai Nelson; and my other great friend, Michael Morley—not to mention Ned Foley.

So, here's how I would think about this. So, part of the question really depends on how we define the problem, right? And I want to raise sort of three particular ways of thinking about how we define the problem. So, we've imported the term election subversion predominantly from the IR, the International Relations literature, where it is generally used and understood as statecraft by one country to destabilize and undermine the authority and functioning of other states in order to achieve their particular goals. Now, we can adopt it for our purposes and to think about that election subversion really means eroding the legitimacy of the political system, attempting to destabilize the political system—so, election meddling, disinformation, and even violence.

And I you think of it from that perspective, of trying to capture the core aspect of the political system, if you adapt the definition from the IR literature and you import it into our context, you then probably should differentiate among the different types, right, because the stakes are very different. What's at stake, obviously, for the Presidential election is very different from what is at stake at the local election levels, right? So, even though there's some relationship or what is at stake at, say, having an election for the Senate, for the U.S. Senate. And so, we have to think about the various stakes and the underlying set of strategies that might be used and that would differ, right? So, election meddling at the

Presidential level, even in a decentralized Presidential level, has greater harm to the political system, right? It can destabilize it well.

And I'll just say two more things. One is, we also have to think about, to what extent is the problem Trump and Trumpism, and to what extent is it sort of the asymmetrical positions of the two parties. And I think, as one of the earlier panels put it, and I think we sort of have to think about it that way, where you have one political party that is doing harm to the political process, right, how should we think about its goals and its rule with respect to across a subset of elections?

And then one last point—and we saw this in the previous two panels, and here, I will disagree with a lot of the esteemed people from the earlier two panels, which is the distinction between voter suppression and election subversion. I think there's an attempt to say that these are two different things, and I think that's a significant mistake. That is, the purpose of voter suppression is to destabilize the political system and make it easier to erode democratic legitimacy, and both are tools that go hand in hand along with election subversion.

So, if we understand the problem as destabilization, I do think that we can make a distinction between the Presidential election and all other sorts of elections, and we need to think about to what extent is Trumpism really the problem that we're trying to address, and what is the real relationship between election subversion and electoral suppression.

Ned Foley: Okay, thanks, Guy. Michael?

Michael Morley: Great. Thank you very much, and I also want to echo Guy's comments, it's an honor to be included on this panel and to have the chance to see all of you.

I agree that the question of election subversion raises different questions with regard to the particular election that you're thinking about, just most basically because you have different structures depending on the election for officially determining what the dispositive results of that election will be. And so, to the extent that there are different governmental officials, that there are different processes in place for determining the results of different elections, Presidential elections versus elections for each chamber of Congress, versus in most states elections for each chamber of the legislature, versus other types of elections, you have different officials with that responsibility who were going to come under very different types of pressure to come up with particular types of results.

And this forces us to face the question, are there some types of entities that we are more comfortable trusting with greater power

over determining the election results than others? Are there certain types of entities that are less trustworthy in this respect? And, you know, Rick Pildes has, I recently read one of his articles on this issue of institutional formalism versus a realist approach, where he poses the question to us, can we really say in the abstract that certain types of actors—be it state courts, federal courts, Congress, legislators—can we really say in the abstract that some of these actors are always going to be the better choice as opposed to, might it vary over time? Does it depend who's holding that office at a particular point in time?

And so, focusing on the different structures in place and the different officials that play a role in determining the outcomes of the different elections, I think, is a major factor in figuring out how to combat subversion, how to ensure the integrity of election results. And I also think it's helpful to think of it from a perspective of how to prevent exploitation, how to prevent bad actors from attempting to exploit uncertainty in the process, uncertainty about what particular rules are, uncertainty in how to exploit lack of knowledge about particular aspects of the process, right? It's a lot easier to try to tell people that voting machines are being beamed by a laser, right, to change votes if they don't know how the voting machines work or if they don't know about logic and accuracy tests and they don't know about all of the mechanisms in place to ensure the integrity of the results.

And so, I think that focusing on the different ways in which the process can be exploited helps focus our attention on ways of combating subversion.

Ned Foley: Great. Thanks, Michael. Janai?

Janai Nelson: Thanks, Ned. I'll echo my co-panelists. It's a pleasure to be here, and I want to thank Rick and David for servicing this question about election subversion and really training our attention on what I think is an absolute crisis of democracy.

You know, your question raises an interesting thought about the hierarchy of elections, and we at the Legal Defense Fund often emphasize that local elections are critically important and in many ways affect the lives of individuals more directly than national elections on a day to day basis. So, the idea that election subversion at any level is less harmful really is, I think, a problematic framing of the hierarchy of elections and what different elected officials mean to different constituencies.

But I will say, if we're thinking about the actual act of election subversion and who has responsibility or who has the most opportunity to subvert elections, I'm particularly concerned about Congress, and Congress' authority under Article 1, Section 5 to police itself. We know that each chamber of the House, each

chamber of Congress has the right to be the ultimate vote counting authority for elections to its own chamber and that each house shall be the judge of the elections returns and qualifications of its own members. That's written into the Constitution, which means there is an opportunity for Congressional members to advocate their duty and to allow for subversion of elections for their own offices. And that in and of itself is highly, highly disturbing and problematic, given Congress' broad authority and the checks and balances written into our Constitution.

So, I'm loathe to choose a particular set of elections that are more problematic, but I do want us to recognize that unique feature of Congress that makes it even more problematic to have Congress police itself. But I will also say that we've learned from most recent events that having a Presidential candidate talk about election subversion, advance the idea of the big lie, call for recounts in multiple jurisdictions that are absolutely baseless undermines our confidence in the electoral process more broadly. The pulpit that a Presidential candidate has is so broad and vast addition influential that that office in my mind is a significant contender as well for being one of the most harmful in undermining confidence in our democracy and fueling the democratic crisis that we face now.

So, those are my responses to that idea of the different possible ways in which elections may be subverted by different officers and elected officials, but I do want to underscore that I think any effort to do that at any level is highly problematic.

Ned Foley: Thanks. Rick?

Rick Pildes: Yes, so first, I want to thank Rick and David and UC Irvine for putting on this important conference. Most of our discussions so far have been about the role of various institutions, at least potentially Congress, courts, and the like.

I actually want to shift the discussion to talk about voters, who are often talked about as fairly passive figures in this whole scenario that we're addressing. And since the mid-2000s, we have adopted early in-person voting throughout the country. Forty-five states now have early in-person voting; the only states that don't are Connecticut, New Hampshire, Mississippi, South Carolina, and Missouri. Those periods range from 3 days to 45 days in various states. And I bring this up because, in my view, voting in person, whether on election day or through early voting, dramatically reduces the potential points of vulnerability through which election administrators or state legislatures or Congress can kind of penetrate to potentially manipulate the process for partisan purposes.

The rules for in-person voting or early in-person voting are much simpler and more straightforward. There's a lot less room for

administrative discretion in addressing those issues. And of course, in 2020, we had this massive surge in absentee voting throughout the country because of the conditions of the pandemic, which made it necessary for public health reasons. But we all know that absentee voting is wrapped up with a whole variety of procedural issues that are more complicated than in-person voting. And it's these issues that create problems for voters, potentially, who may forget to sign a ballot, create administrative discretion about whether to view this signature as matching that signature that's on file, and just open up a lot more avenues for the kinds of subversion that we're worried about.

So, one thing I would say, which applies to all of these elections at each level, up and down the system, is that voting in-person through this much more expanded early voting system that we now have would be a very effective thing that voters themselves can do to try to reduce these risks. I understand some people will still have to vote absentee and we will have higher absentee rates than we did before 2020. But I think this is something that needs emphasis in these discussions, because it really is very rarely part of the conversation. So, I wanted to kind of put that on the table as a starting point.

Ned Foley: Yeah, thanks for that, and I do want to come back to that, but Janai, can I come back to you? Because I thought the way in which you framed the risk that Congress might, itself, subvert an election result that came to it from local government, as I heard it, worries me, too, to be perfectly honest.

But I was almost thinking, based on the earlier discussion today of the opposite. You know, we had Secretary Raffensperger talk about his efforts to do the right thing, and the fear that—and as Rick put it, the fear that he may be replaced through the upcoming election with Representative Jody Hice running for that office of Secretary of State, and Jody Hice being a proponent of the big lie.

And so, which is the bigger fear? I mean, should we hope that Congress can protect at least Congressional elections and maybe a Presidential election from the subversion of a Jody Hice, or should we be worried that Congress is going to subvert the good work of somebody like an honest Secretary of State, or do we have to treat both risks equally?

Janai Nelson: That's an excellent question, Ned. So, first, I wanted to address, I guess, the idea that Rick put on the table about voters being in part responsible for helping to avoid election subversion, and I think that we have to be very careful about those types of responsibilities being placed on voters, particularly in light of Guy's comment that voter suppression is, in so many ways, deeply tied to election subversion and is, in fact, a tool for election subversion and therefore, voters have very little agency in being able to

subvert the voter suppression efforts that are proliferating and have been well documented across the country, particularly visited upon communities of color. So, I do want to flag that we have to be very, very careful about trying to place this responsibility on voters.

But with respect to your question concerning Congress—Congress has an opportunity to adopt the Freedom to Vote Act, which includes several provisions that will increase protections against subverting Congressional elections. There are specific provisions that address that issue. You know, we can obviously talk politics about who might be in office in any given state that has more extreme views about protecting elections and election subversion and does not adhere to Constitutional principles, but I'm more broadly concerned about making sure that we have institutional and structural mechanisms to prevent that from happening regardless of who's in that position.

And if we pass the Freedom to Vote Act, there are some provisions in there that help in this regard. For example, Section 3206 expands the scope of existing anti-intimidation provisions that exist in the NVRA to explicitly cover wrongdoing after votes are cast. And that amendment to the statute would apply criminal liability to anyone, including public officials who knowingly and willingly intimidate, threaten, or coerce any person in the processing, scanning, or tabulation of ballots. And that's the type of protection that we need. That's a way in which Congress can increase and enhance confidence in itself as a body to police itself and to police other elections.

There's also another Section, 34.3 of the Freedom to Vote Act, which adopts the Voting Rights Act definition of voting that includes a very holistic concept of voting, including having ballots counted and included in the appropriate totals of votes cast. So, there are ways in which Congress can enhance its credibility in this regard by passing the Freedom to Vote Act, and that has a cascading effect on state offices, as you suggest, where, regardless of who's in position, there is an opportunity for Congress to have greater oversight over those elections.

Ned Foley: Mm-hmm. Guy, can I come to you to maybe respond a little bit or to pick up on Rick's point, and can I ask it this way—I think you started to helpfully try to, what are we talking about when we talk about election subversion, how do we define it, are there several categories? And Bob Bauer on the previous panel drew a contrast between the way there was a fight over the voting process from 2000 with hanging chads and the fear that that was largely a problem of mistakes and lack of proper administration. Now, that could be manipulated by partisan actors at the local level or in the judiciary for one side or the other, but he was suggesting that the

nature of the big lie and sort of the denial of election reality that we're seeing now is different.

And I took Rick's point to be, if we could minimize the scope of ways in which potential bad actors, whether it's in Congress or it's at the Secretary of the State level or wherever, is there a way to minimize the risk by giving them less that they can fight over, or do we have to worry that if you, you know, Trumpism, it doesn't matter what the truth is, because they're going to say big lie no matter what.

How should we define the problem that we're trying to solve, and is Rick's point that we should reduce the risk by containing the risk—do you have thoughts on that?

Guy Charles: I don't have a problem with the view that different sets of electoral practices present different types of risks, right? And there's a different way of framing—Rick can speak for himself, and he shouldn't be blamed, just because he taught me, he shouldn't be blamed for the things that I say. But there's a different way that I wanted to frame what he said, which is, political elites and political actors can encourage voters to take advantage of processes that are less risky and might lead to different sets of outcomes.

So, I didn't find any tension between sort of the way, at least, that I posed it and the way that Rick posed it. To me, the tension is more in sort of the broader contention that these are two separate things. So, just think about one reason why we might be seeing electoral subversion. It's not unrelated to the changing demographic of this country, right? And then think, also, about what we believe to be some of the solutions—change the Electoral Count Act; change some of the underlying, pass either the For the People Act or any of the different types of legislative solutions.

It's really hard to pass these legislative solutions in a context in which we are very deeply divided and in a context in which voters do not have a fundamentally protected right to vote. Now, there are certain things that we ought to and should encourage voters to do—so, this is where I completely agree with Rick, right? That is, in-person, early voting is less vulnerable, right? So, you will see the parties behave in that respect.

So, my point is to say that I think this sharp contrast that we're drawing, I don't think it reflects neither the history nor the present reality. But I don't disagree that different types of procedures, as well as their implementation and different sets of systems, whether it's at local elections or at the national level, will have different sets of vulnerabilities, and we ought to recognize that and focus on the places in which the system is most vulnerable—and that, I don't disagree with.

Ned Foley: Before I go back to Rick, Michael, do you want to weigh in on this?

Michael Morley: Yeah, I generally agree with the tenor of the conversation. I guess the main thing I would add is that when we think about the electoral process, right, at the end of the day, we need to ask ourselves what are its goals, right? Obviously, the goal is to accurately ascertain the will of the people, right? Another important goal is to ensure widespread fair, broad participation, right, that we don't have members of the community, eligible voters being excluded.

And I think that recent events underscore that another equally important goal is that it has the appearance of legitimacy, the appearance of security, that it is able to give certainly, at least the most voters, the average voter, the medium—however you want to put it, but is able to give the general public, or at least as much of the general public as we could reasonably reach confidence in the outcome, and particularly even if their preferred candidate loses, confidence that that person actually lost.

And so, I think that oftentimes in trying to craft policies and determining what the laws are, which laws are good or bad, which procedures are good or bad, we often place a lot of emphasis on the first two values, quite importantly, but I think that we need to place just as much emphasis on that third value of promoting that appearance of confidence, appearance of legitimacy, allowing the public to easily be able to accept the results and make it harder, right, for people to mislead the public and make it harder for people to try to sell lies and to try to sell conspiracy theories.

Ned Foley: So, Rick, I'm going to come back to you, and you should feel free to respond to what other people have said, but I thought I might put on the table also what Congress might do by way of legislation at this moment. Obviously, the Freedom to Vote Act is pending in the Senate, there's the John Lewis bill, there's another bill that I think is devoted just to election subversion that really hasn't developed yet. People have mentioned the Electoral Count Act being reformed that hasn't—no bill to that effect has been introduced, to my knowledge.

You know, earlier panels talked about the difficulty of overcoming the filibuster, the difficulty of getting a coalition that includes enough to get 60 Senators, but people talk about the need to protect democracy at this moment. And, you know, given what Guy said earlier about wanting to connect the two topics of election subversion and the right to cast a ballot, where in previous panels, as Guy acknowledged, there was some discussion about divorcing those topics, if you will, and saying, "if Congress can't pass a complete omnibus Voting Rights Act,

maybe it should at least try to pass something targeted to the issue of election subversion."

Do you want to weigh in on that, as you also have talked about—

Rick Pildes: Well, I think I want to put a slightly different issue into the mix as well, partly because I'm just not optimistic that Congress is going to legislate in this area. I agree with the earlier panel discussion, and I think it's meaningful coming from Ben Ginsberg that maybe, on the Electoral Count Act, there could be a broad enough coalition to do something. I'm not optimistic there, either.

But I think the courts can also do something, here, to help reduce the risk of electoral subversion earlier on in the process than on Election Day and the days after the election. And what I mean by that is, we still have a lot of legal uncertainty that we're going to have going into the 2024 Presidential election. And the earlier the courts are willing to clarify that uncertainty, the better, in my view. And what I mean concretely, just one example that all of us are aware of, there is now an ongoing debate about whether the Constitution gives the state legislatures a kind of independent power over national elections, particularly over the Presidential election so that whatever rules they set can't be altered by state courts, state Secretaries of State, federal courts, and the like.

This is going to be a constant issue in the run up to the 2024 Presidential election. And unfortunately, the way our court system works, the courts tend to be very reticent to get involved in resolving issues until the very, very last minute when they absolutely have to act. In the context of a Presidential election, that's extremely dangerous. The more we know who is going to win or lose from any ruling, the worse position it puts the court in and the less likely the result is to be accepted by the half of the country that loses.

So, I very much hope courts are going to see the need to resolve a variety of legal issues, but particularly this one, in advance of the aftermath of the 2024 election. And I think whatever the Supreme Court comes to as a resolution on this issue, once there's a clear set of rules, the various actors will adopt that rule and people will not be able to try to subvert the election after the fact by arguing that the Constitution has been violated, once the Supreme Court has said, "this is, or this isn't a violation."

This was a hugely destabilizing issue after the 2020 election. It became actually, probably, the primary argument once the fraud issue turned out not to be something that could be backed up in court. The major issue, then, became, the election had been irregular and illegal because various actors had changed the rules the state legislature had adopted for the election.

I think we desperately need clarity on that issue, and of course, there are others. And so, I think the courts can contribute here by giving us the clarity so it takes those issues off the table and again reduces the scope of potential partisan manipulation and subversion based on legal theories that have been discredited in advance by the courts. So, that's something that could be done, more likely than Congress enacting legislation to address these issues, perhaps. And so, I do want to put that into the discussion, as well.

Ned Foley: Yeah, thanks. We've got a lot of things on the table. Janai, if I can come back to you—can we solve this problem, as Rick has said, without Congressional legislation? I mean, Bob Bauer was talking about mobilization and the previous panel was thinking there has to be actors other than Congress if we're going to succeed here.

So, I guess part of the question is, can we save democracy without Congress coming to the rescue? And if we need Congress to do something, is it better for Congress to sort of do half a loaf or at least some of the things that are on the list as opposed to the entire list? How would you prioritize what we need to do going forward?

Janai Nelson: Well, one of the things that I think weave some of this together is that what makes election subversion much more difficult is when there is a clear winner, when there is an overwhelming majority. And so, legislation that enables more voters to have access to the ballot and secure access to the ballot—so, increasing the methods of enabling voters to cast a ballot will, I think, in many ways take some of the confusion and the uncertainty off the table. It won't rule it out entirely but it certainly makes it much harder to contest election results when you have an overwhelming majority in favor of a particular candidate or a ballot reform.

But I do think that—so, in that regard, I do think that Congress needs to act, and Congress needs to make sure that the voter suppression efforts that have galvanized so many conservative legislatures, there needs to be a federal solution to that. Short of that, we do have courts to rely upon and, as we know, when we saw efforts to abuse executive authority in the last administration, many courts across the country stepped in. All the courts denied those efforts to overturn election results in a quite unanimous way. And so, I do have some hope that courts will play a backstop role when we see this inevitably occur in 2024 and potentially also in 2022. I don't think we should only be focusing on the Presidential election, because I suspect that some of this playbook will be teased out in the upcoming midterm elections and we'll be starting to see some of the hints of undermining confidence in our election process as early as 2022.

But I do think that there's a long history that the court, the Supreme Court in particular, has had in pushing back against wrongdoing in vote counting and certification processes well before Bush v. Gore. The problem, however, is the crisis in confidence in this particular Supreme Court, and I will point to the Brnovich case that the Court just issued at the end of this term, and the idea that the Court really invented new rules around Section 2 of the Voting Rights Act that are completely unmoored from its earlier precedent. And that gives me great pause in relying on this Supreme Court to necessarily play the backstop role that it traditionally has, and that it will necessarily be viewed as an impartial actor.

So, to answer your question, I'm really of mixed views about whether we can rely on another institution outside of Congress and without federal legislation to help put an end to this.

Ned Foley: Michael, can I come to you next to weigh in on this? Do you think we can protect sufficiently against election subversion, whether in '22 or '24 or beyond, without some form of new Congressional legislation, you know, relying on the courts or maybe other means besides Congress? And if we need something essential from Congress in your view on this, what is that piece of Congressional legislation that might have some prospect for enactment?

Michael Morley: Well, particularly with regard to Presidential elections, I think a lot does come back to the Electoral Count Act, and certainly, if there is any aspect of the process where we should be able to have easy bipartisan agreement where there isn't an obvious partisan valence to clarifying particular parts of the act where there isn't any particular political party that can easily predict that it would systematically tend to benefit from certain clarifications to the act.

I think the ECA, amending the Electoral Count Act, would go—that should be the low-hanging fruit. That should be a reform that could go a long way toward limiting or even eliminating opportunities for the types of controversies that arose in 2020, and even to a lesser extent in 2004 with regard to objections on the floor of Congress, trying to get electoral votes thrown out.

But then one of the main problems—and obviously, Ned, you are one of the nation's leading scholars on this, right? One of the major problems with the Electoral Count Act is that most of the key terms are basically legal black holes, right? What are the minimum legal requirements for something to be a valid slate? I don't know. What does it mean for a slate to be lawfully certified? What does it mean for electoral votes to be regularly given? These key terms, they're vague, they're amorphous, they're undefined, and as a result, you have this law that's supposed to be laying out a neutral, fairy uninteresting process, in fact, allows for the

opportunity for chaos, because everybody's free to interpret these vague terms for themselves.

So, trying to get some clarity on the ECA, trying to provide some greater specificity to the ECA so we know what the—to echo on Rick's point, so at least we know what the rules of the election are before the election is held, before we know which candidates are going to benefit from particular interpretations. I think that that should be the low-hanging fruit that would, particularly given our experiences with 2020, would be one of the most urgent things on my agenda.

Ned Foley: Mm-hmm. Guy, do you want to weigh in on courts versus Congress and the path forward?

Guy Charles: You know, I don't have that much to say. I mean, I agree with my co-panelists. I think it would be great if we can get legislation in this area, whether it's the Electoral Count Act that Michael has characterized as low-hanging fruit, whether it is one of the major pieces of legislation. I also agree with Rick. I'm not optimistic that we're going to see, even on what one could say, to quote Bob Bauer, that there is a mutuality of interests, here, on the Electoral Count Act. I'm just not optimistic.

I also agree that the Article 2 question is extremely important, and even the broader point that Janai and Michael and Rick have made that getting clarity on the rules at the very beginning is important. And the one place of vulnerability on what can legislatures do, that's a live argument. It's live not because I agree with it or because I think that there—right, but it's live because there's partly a tradition, but there are also, you could count at least two, maybe four votes on the Supreme Court on that question.

So, I think there are other areas of vulnerability and the problem is, it's not clear that we have solutions. So, it's not clear that we can get a legislative process solution out of Congress. It's not—we want the Court to provide us with clarity, but we see that the Court is divided. And I think Bob Bauer did make an additional important point earlier today as well, saying, "Look, the Court might feel differently about some of the voting rights issues versus some of those other questions." But the Article 2 question is actually one in which we might see it go in multiple directions, right? So, it's not clear that they're going to be useful there.

Civil society—Sarah made a wonderful point in the earlier panel, saying that, well, first, you had the corporations coming out and saying, "We're not going to support anybody who subverts elections" and then everybody forgets and backs off, right? So, it's hard to find where is the place that we can realistically say? The best that I can offer is the state legislatures that are controlled by

Democrats—that's the best that I can offer in terms of a place where you can get realistic reform to assure at least in those that there is clarity of rules, that there is some model process that is to be followed.

So, other than that, I think it's hard to identify a place that we can put a lot of faith in terms of actual reform.

Ned Foley: Mm-hmm. We have just a couple minutes left and Rick, I'm going to come back to you for a point that, again, came up in earlier panels, but was echoed here a little bit, and that is, the best way to avoid election subversion is by electoral victories that just can't be questioned. But electoral victories are in part determined by the electoral systems and rules for running in elections. And Larry Diamond, on a previous panel, made a plea for ranked choice voting and, as I think about the race between Secretary Raffensperger and Jody Hice or other races like that, it does seem to me that the mechanics of electoral systems make a difference.

So, as we think about the strategies for dealing with the problem of the big lie and election subversion, should we be thinking about the rules for counting votes and making sure that we have accurate results, or should we be thinking broader in terms of how we run elections in general?

Rick Pildes: Yes, I think that's a good question. So, I think our electoral institutions, the way they're designed right now, create tendencies for factional candidates to be able to get elected to office who actually are not the candidates that a majority of the electorate would support if we had different structures for voting, for example. The nature of our primary election process is one example of that.

So, as some of you know, I have been, under a separate hat, very concerned with political reforms that would reduce extremism in American politics, and I have written on a number of different topics in that area where I think changes to the structure of our elections could make it more likely that candidates who actually have a broader appeal to the electorate get elected. I think those candidates are probably less extreme and less likely to participate in election subversion activities. So, that is a whole big additional topic, but I agree with your instincts about that, that we do need to be thinking on that front, as well.

Ned Foley: Thanks. Well, I see Rick Hasen coming back on the screen and so, I want to turn it back over to him, but I thank my co-panelists for a very lively discussion, putting a lot of issues on the table, and I hope we can move forward to pursue this important topic further, so thank you.

Rick Hasen: Thank you, Ned, and thank you to the panelists. A lot of things to think about. I think we should think about this as the beginning of a discussion rather than the end of a discussion. I know that we at the Fair Elections and Free Speech Center at UCI Law are going to be thinking about these issues, and we look forward to your suggestions of how to move forward from ideas on a screen to the reality of protecting our elections and assuring that people can vote fairly.

I also wanted to direct you to the Fair Elections and Free Speech Center website, law.uci.edu/fefs, where we have events coming up, including a three-part series on disinformation in American elections, and the first panel will feature Michigan Secretary of State Jocelyn Benson, joined by Neal Kelley, who's the Registrar of Voters in Orange County, California. We have a lot coming up.

We appreciate everyone's attention today, we appreciate your interest in this. It is obviously something that people are concerned about and we want to do things that are constructive to help keep American democracy strong and vibrant.

Thank you, all, for coming. We'll see you again soon.

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