

Op-Ed What an election law expert worries about on election day



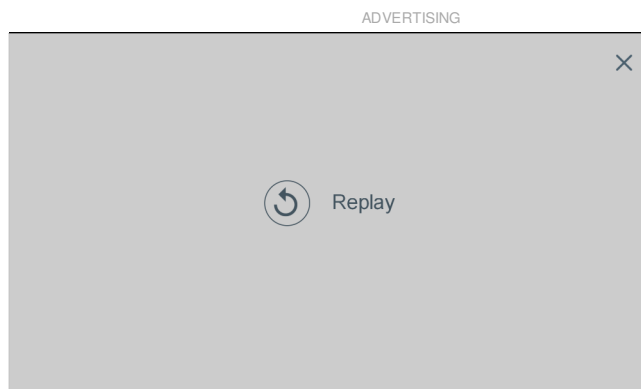
Democrats filed lawsuits against the Donald Trump campaign and other Republicans to stop potential voter intimidation at the polls in several states. (Brian Cahn/Tribune News Service)

By **Richard L. Hasen**

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For those of us who follow elections and election law professionally, election day itself is pretty uneventful—unless of course you work for a campaign. There often are reports of “flipped votes” for one candidate or another thanks to a miscalibrated machine, problems of long lines here or there and various little hiccups, but generally nothing major.

This time around, though, I am more nervous than usual. Here are the three things I am most worried about, from least to most concerning.



Bureaucratic shenanigans. In recent years, Republican legislatures have passed a slew of laws making it harder to register and vote, especially if you’re poor, a person of color or a student (all populations likely to vote Democratic). In response, [Democrats](#) and voting rights groups have sued, claiming the laws violate the Constitution or the Voting Rights Act.

Although federal courts in some states, such as Wisconsin and Texas, have imposed interim remedies to assist those who, for example, do not have one of the narrow forms of photographic identification required to cast a ballot, reports from the early voting period suggest that

misinformation is widespread. (That's often because recalcitrant state governments are unwilling to clarify requirements or to fully and fairly implement court orders.)

A related concern: Will voters who have been wrongfully purged from the rolls in states such as Ohio be able to cast provisional ballots that actually count?

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The public probably won't focus on these issues unless the election is very close, but the risk of disenfranchisement is real for some despite legal efforts to deal with the biggest problems.

Rogue Trump supporters. Donald Trump has repeatedly claimed the election is “rigged” and urged his supporters to do something about it. At a rally in August he said, “Go down to certain areas and watch and study to make sure other people don't come in and vote five times.” He's even created a signup page on his website where supporters can pledge to keep an eye on these “certain areas.” (It's likely he's referring to poor and minority-dominated neighborhoods).

The Republican National Committee is under a consent decree not to engage in so-called ballot security efforts—read: voter intimidation— but that may not stop rogue Trump supporters from following their leader's urgings.

One Trump supporter told the Boston Globe of his planned election day activities: “I'll look for . . . well, it's called racial profiling. Mexicans. Syrians. People who can't speak American...I'm going to go right up behind them. I'll do everything legally. I want to see if they are accountable. I'm not going to do anything illegal. I'm going to make them a little bit nervous.”

Especially in states with open-carry laws, the potential for voter intimidation is greater than ever. Local law enforcement officials will be on the lookout for problems at the polls, as they always are, but it's hard to predict what will happen when a presidential candidate encourages behavior which could well lead to violence.

A major cyberattack on our infrastructure. Hacking and cyber dirty tricks have been a recurring feature this election cycle. In addition to the stolen John Podesta emails posted on Wikileaks, we have seen attempts to steal voter registration information from state election administration websites, and, in October, a major dedicated denial of service or DDoS attack that brought down a number of important websites, including Twitter.

The good news is that our voting machines are not hooked up to the Internet and are therefore not vulnerable to hacker manipulation. Most, though not all, voting takes place using systems that produce paper receipts in the event of concerns about the integrity of the vote count. (Parts of Pennsylvania, with electronic voting machines, are a notable exception.)

The bad news is that cyberattacks could affect our elections even if they can't change vote totals. A hack affecting the electrical grid or traffic control system could impede voters' abilities to get to the polls. Widespread Internet outages could interfere with get-out-the-vote efforts and foster the spread of misinformation. Serious disruptions to infrastructure could lead to court cases to extend voting, and further litigation casting a shadow over the legitimacy of the election.

Whether such an unprecedented interference with our infrastructure could happen is in the hands not of election officials, but Homeland Security officials and IT professionals.

I start each election day with a few butterflies in my stomach. This one will start with more than that, and I hope end with the recognition that all my worrying was unwarranted.

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