

Which States Adopt Election- Subversion Policies?

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Research highlights a growing divergence among U.S. states in their costs of voting, the partisan balance of their legislative districts, and the responsiveness of state policy to public opinion. Less is known, however, about a new and acute threat to democracy at the state level: policies that increase the states' vulnerability to election subversion. In this article, we investigate recent trends in state legislation that transfer election administration authority from independent to partisan actors, making it more likely that a losing presidential candidate could take office over the will of the electorate. We find that Republican control of state legislatures and the closeness of the 2020 presidential election are associated with these policies. Interestingly, these policies are mostly uncorrelated with gerrymandering and voter suppression policies that were enacted in the 2010s. We conclude with a discussion of how a recent Electoral Count Act reform in Congress partly mitigates the risk of election subversion.

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American federalism gives our state governments wide-ranging policy authority. Since the 1990s, state policies have diverged in areas like abortion rights, taxation, gun control, and environmental policy. After the Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization* (597 U.S. 215, 2022), for example, some states have moved to implement

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abortion bans that might be “out of step” with their voters’ preferences (Grumbach and Warshaw 2022). Yet American federalism does not just give states authority over these areas of public policy; it also gives states much of the authority over the *rules of democracy itself*, such as election administration and legislative districting. Over the past two decades, the quality of electoral democratic institutions has diverged among states as well (Grumbach 2022a), making it possible, for example, for gerrymandered state legislative maps to help to protect legislative incumbents from being held accountable by pro-choice voter majorities for the effects of the laws that they pass (Grumbach 2022b).

This democratic divergence has had major consequences. Voter-suppression legislation has contributed to some voters, especially lower-income people and people of color, waiting hours in line to vote (Chen et al. 2022; Pettigrew 2017), struggling to procure necessary voter ID documentation (Fraga and Miller 2022; Gaskins and Iyer 2012; Harrison 2012), or being purged from state voter registration rolls despite eligibility (Biggers and Smith 2020; Feder and Miller 2020). But beyond voter suppression and gerrymandering, a new and acute threat to democracy and the rule of law has arisen in some states: policies that increase the threat of *subversion* of presidential elections.

This election subversion occurs when an election loser becomes a winner on the basis of “(1) usurpation of voter choices for President by state legislatures purporting to exercise constitutional authority. . . ; (2) fraudulent or suppressive election administration or vote counting. . . ; [or] (3) violent or disruptive private action that prevents voting, interferes with the counting of votes, or interrupts the assumption of power by the actual winning candidate” (Hasen 2022: 265). Decentralized election administration, the Electoral College, and nationally polarized political parties have made the risk of subversion especially acute in presidential elections; and concerns over the possibility of subversion increased dramatically in the wake of the 2020 general election, when then-President Donald Trump began privately pressuring Republican leaders in key states to block the certification of Joe Biden’s election victory (Hasen 2022).

In this article, we analyze the passage of new state-level legislation that legal scholars argue increases the risk of election subversion in upcoming presidential elections. Specifically, we study the passage of laws that interfere with the ability of local election officials to administer elections; that make the appointment process for election officials more partisan; that shift election authority, administration, or oversight to state legislatures; or that otherwise usurp the role of state election officials. We find that the closeness of the 2020 vote count in a state is positively associated with the emergence of subversion policy. Republican state legislatures (but not governors) are also more likely to pass subversion policies. However, we find that states that engaged in partisan gerrymandering and voter-suppression policies—important sources of democratic backsliding in the 2010s—are *not* more likely to pass election-subversion policy. This finding may point to the distinct utility of these different forms of democratic backsliding for antidemocratic coalitions. We conclude with a discussion of how a recent congressional reform of the Electoral Count Act somewhat, but not fully, mitigates the threat of election subversion.

Defining Election Subversion

While comparative scholars and nongovernmental organizations have been attentive to election subversion outside of the U.S. (e.g., Arriola, Devaro, and Meng 2021; Kuntz and Thompson 2009), journalistic and scholarly attention to the threat of election subversion in the U.S. was sparse until the insurrection attempt at the U.S. Capitol on January 6, 2021. And despite this growing attention, research focused on election subversion in the U.S. remains nascent. As a consequence, there is no widely agreed-upon definition of subversion among scholars.

Definitions of election subversion in recent legal scholarship vary in their expansiveness. Manheim (2022) argues for a narrow definition of election subversion in which actors exploit “a breakdown in the rule of law to install a candidate into elected office” (322). Subversive actors achieve their ends by relying on unlawful tactics (323). Manheim alternatively defines this concept as “brazen election subversion,” in which subversive actors use “a twisted version of legality: an invocation or application of legal principles that is not only erroneous, but clearly erroneous” (323). This definition is intentionally restrictive in order to focus the legal community’s conversation on behavior that cannot be reasonably debated on normative grounds (324).

An alternative approach suggests that Manheim’s narrower definition of subversion fails to capture policy actions taken in advance of elections that legalize antidemocratic election processes. Bulman-Pozen and Seifter (2022), for instance, suggest that “the new election subversion” is more expansive. Once policies are put in place that allow partisan actors to ensure their preferred candidate wins even if voters prefer another candidate, election subversion no longer depends upon policymakers and election administrators violating the rule of law. Rather, this subversion comes “from new state laws rather than challenges to them, and from enforcement of legal provisions rather than objections to them” (3).

Our definition of election subversion is an attempt to ensure that one candidate or party ends up holding power regardless of the expressed will of voters. Conceptually, we lean toward the more expansive definition that would include actions both in advance of an election (e.g., administrative changes that enable future subversion) and after it (e.g., violations of election law or acts of political violence).

Our definition of election subversion does not imply that timing is irrelevant to the analysis of democratic backsliding. There is a clear temporal aspect that distinguishes election subversion from other antidemocratic processes, such as voter suppression and gerrymandering. Subversion aims to change election results *after* votes have been cast—though, importantly, this is often enabled by policies adopted *before* an election occurs. Suppression and gerrymandering, by contrast, change the rules of the election itself in order to shape who votes and how those votes are translated into political outcomes, thereby giving one party a competitive advantage.

TABLE 1
Paths to Subversion in a Presidential Election

Path to Election Subversion	Example of Subversion-Enabling Policy in the States
(A) Usurpation of presidential election voter choice	Partisan transfer of authority over state legal representation in federal election law to partisan actor (e.g., Arizona Senate Bill [SB] 1819)
(B) Manipulation of election results	Partisan transfer of authority over voter-registration list maintenance and purging (e.g., Iowa SB 413)
(C) Election intimidation and violence	No contemporary examples ^a

a. Beyond the scope of this article, some state legislatures have proposed to allow greater presence of partisan poll watchers, which could increase the potential for electoral intimidation.

Broadly speaking, there are three paths to election subversion (Hasen 2022). We list these three paths in Table 1, along with, as we describe in the next section, state policies that are likely to increase the potential for subversion. The first two paths for subversion, usurpation and manipulation, might be enabled by recent policy changes in certain states.

First, a state could attempt to give its Electoral College votes to a candidate who did not win the state's electorate (or an electorate at the congressional-district level with respect to the Electoral College in Maine and Nebraska). There are multiple paths to subversion through the usurpation of voter choice. For instance, multiple states have introduced or passed legislation enabling partisan actors to review election results and address any "irregularities"—thus opening the door for the potential rejection of fairly and accurately cast ballots. In this situation, a state (or county acting on delegated authority from a state) might eliminate a subset of otherwise legitimate votes for a presidential candidate in a way that changes the results of the election.

The second path to subversion involves partisan actors manipulating the vote-counting process so that their preferred candidate appears to win the election, despite not truly being supported by most voters. Legal paths to subversion in this manner are often predicated on the Independent State Legislature theory, which would give state legislatures outsize control over how they run elections, even if their practices would otherwise be found illegal by a state court (see, e.g., Shapiro 2023). Importantly, while in June 2023 the Supreme Court in *Moore v. Harper* (600 U.S. 1, 2023) rejected the most extreme interpretations of the Independent State Legislature theory, "the Court makes clear that it is not providing any standard at all—even an attempt at a standard—as to what this means concretely" (Pildes 2023). Litigation around Electoral College certification that attempts to pave a path for subversion therefore remains highly likely in 2024.

Third, violence and intimidation could be used to keep people from voting in certain jurisdictions and to disrupt the free and fair administration of elections and counting of ballots. While each of these paths to subversion deserves attention, we focus on the first two in this article.

It is unlikely that partisan actors will overtly adopt prosubversion policies. Instead, subversion-enabling policy typically takes the form of legal changes that give partisan actors more influence in either the vote-counting or election-certification processes. We call these subversion-enabling policies because they increase the opportunities for partisan actors to subvert elections in the future, even if such subversion in a presidential election remains a low-probability event. In the next section, we highlight specific state legislation that is likely to increase the potential for subversion in the 2024 presidential election through usurpation or manipulation.

State-Level Election-Subversion Legislation

The newness of scholarly attention to election subversion in the U.S. not only makes its definition elusive; it also makes it difficult to tell which public policies and administrative rules increase the risk of subversion. Drawing on legal scholarship (Bulman-Pozen and Seifter 2022) and reports from voting-rights legal organizations (e.g., Voting Rights Lab 2022; Wilder, Tisler, and Weiser 2021), we focus on policies that transfer authority over election administration, especially at the vote-counting and election-certification stages, from expert administrators toward partisan political actors—especially state legislators. More specifically, we focus on state legislation that transfers election authority in at least one of four ways: interfering with local election administration, injecting partisanship into the appointment process for election officials, moving election authority or oversight from existing administrative bodies to the state legislature, or otherwise enabling partisan actors to usurp the role of state election officials.

One important signal that a state policy is related to election-subversion risk is when a partisan coalition designs the policy to remove authority from an actor or office that is insufficiently committed to empowering the party in elections. For example, among other transfers of authority, Georgia's Senate Bill (SB) 202 legislation shifted the chairship of the state's main election administrative agency, the State Elections Board, from the secretary of state to an individual appointed by the state legislature. This bill passed in the wake of Georgia Secretary of State Brad Raffensperger prominently refusing to change the state's results for the 2020 presidential election under pressure from Republican legislators and activists. In other words, intent matters. There are democratic, legal, practical, and historical reasons to prefer statewide executive officeholders rather than the legislature to manage the electoral bureaucracy (e.g., because statewide districts cannot be gerrymandered), but the partisan context and intent are important for understanding the relationship between a policy and the potential for election subversion.

Overall, determining whether policy has an intended or real effect on the risk of subversion is, of course, challenging. We do not claim that our coding of laws as enabling of subversion is anything more than our best judgment based on the reading of legislative text and secondary reports from legal scholars and organizations. We expect that the 2024 presidential election might provide greater

clarity on which pieces of state legislation contribute to subversion risk (although we certainly hope not). Yet even after additional presidential elections, we want to emphasize that the relationship between specific pieces of legislation and election subversion will remain highly uncertain. The subversion of a presidential election is a catastrophic but low-probability event, and, as a consequence, social science is unlikely to produce especially precise estimates of the causal role of particular policies on subversion. But while low-probability events are hard to study, they are not unworthy of inquiry; the Cold War did not ultimately produce nuclear war, but it was helpful that scholars studied what might help to prevent it.

We now turn to our coding of state legislation. Which policies increase the risk of election subversion in upcoming presidential elections? We intentionally limit our scope to pieces of legislation that are relatively clear examples of lawmakers' making it easier for partisan actors to influence electoral outcomes. Since the November 2020 election, we code seven states as having passed laws that enable electoral subversion: Arizona, Georgia, Iowa, Kansas, Kentucky, North Carolina, and Texas.

Table 2 lists the state legislation and the provisions that are most relevant to the threat of election subversion, along with the path to subversion (A, B, or both) that the provisions may enable. With these pieces of legislation in hand, we next turn to analysis of the correlates of these state laws.

What Drives Subversion Policy?

Support for election subversion among some segments of the U.S. mass public has increased, and an increasing number of subversion-friendly candidates ran for elected office in 2022 (Malzahn and Hall 2023). Yet relatively few state legislatures have adopted policies that increase the risk of election subversion. In this section, we turn to the factors that would lead states to pass subversion-enabling legislation. Which state-level factors are associated with a legislature passing a subversion law?

We expect that states with legislatures controlled by the Republican Party will be more likely to pass and implement subversion policy. Republican control of government reduced the quality of state-level electoral democracy in the 2000s and 2010s (Grumbach 2022a). Since then, a large number of Republican candidates who promoted conspiracies about mass voter fraud and a stolen 2020 presidential election (the "Stop the Steal" conspiracy or the "Big Lie") ran for state-level offices (Homans 2022). We expect partisan control of the state legislature to be especially important since threats of subversion in 2020 were often initiated by state legislators against statewide officials such as secretaries of state. Furthermore, while statewide elected officials like governors and attorneys general sometimes threaten electoral democracy, state legislative majorities often represent smaller proportions of a state's electorate due to gerrymandered legislative maps (e.g., Stephanopoulos and Warshaw 2020).

TABLE 2
Election Subversion-Enabling Bills Passed by States in 2021

State	Bill	Select Relevant Provisions
Arizona	SB 1819	<ul style="list-style-type: none"> • Shifts lawsuit-related election authority from the secretary of state (at the time a Democrat) to the attorney general (AG) (at the time a Republican), including by declaring that the AG has the “paramount” position when there is a disagreement with other state officials about how to defend state election laws, and by providing that, through January 2, 2023, the AG “speaks for” the state in all election litigation (A) • Shifts voter-list maintenance-related election authority from the secretary of state to the AG and the legislature, including by requiring the secretary of state to provide access to the statewide voter-registration database to an entity designated by the legislature, and to the election integrity unit of the AG’s office (B) • Gives the legislature oversight of voter-registration procedures of county recorders and the secretary of state (B) • Creates a special committee to review the findings of the senate audit of the 2020 general election in Maricopa County and recommend legislation to the senate president (A)
Georgia	SB 202	<ul style="list-style-type: none"> • Replaces the secretary of state as chairperson of the state election board with an individual chosen by the legislature (A) • Limits the ability of the state election board to issue emergency regulations (B) • In certain circumstances, requires the secretary of state and the state election board to appoint an independent performance review board for a given county (A) • Establishes a process through which up to four election superintendents at a time may be suspended by the state election board (A, B)
Iowa	SB 413	<ul style="list-style-type: none"> • Authorizes the state election commissioner to oversee county election officials in the 60 days before and after an election and report technical infractions of election rules (B) • Creates new criminal offenses for election officials, including a new felony offense for failing to perform official duties and new aggravated misdemeanors for failing to perform required voter-list maintenance, and increases penalties for various existing crimes that could be committed by election officials (B) • Permits the state election commissioner to issue guidance on election laws and rules outside of the rule-making process (B) • Requires the AG or county attorney to investigate reported allegations of election misconduct (A, B)
Kansas	HB 2332	<ul style="list-style-type: none"> • Prohibits the governor from modifying election law or procedure by executive order (A, B) • Generally prohibits the executive branch from modifying state election laws (A, B) • Generally prohibits state courts from having the authority to modify state election laws, beyond executing powers granted by Article 3 of the state constitution (A)

(continued)

TABLE 2 (CONTINUED)

State	Bill	Select Relevant Provisions
Kentucky	SB 1	<ul style="list-style-type: none"> Removes the ability of the governor (at the time a Democrat) to modify the manner in which an election is conducted during a state of emergency (B)
North Carolina	SB 105	<ul style="list-style-type: none"> Removes language that had permitted the state board of elections to, when the general assembly was not in session, enter into consent agreements with the courts to address unconstitutional or invalid state or local election laws (A, B) Requires the joint approval of the speaker of the house and the president pro tempore of the senate (at the time both Republicans) for a consent agreement in election litigation in which the legislative leaders are parties or in which they have intervened (A) Limits the length of a state-of-emergency declaration (and therefore any election-related rules made under state-of-emergency declaration) by the governor to 30 days unless the governor receives the consent of the council of state and 60 days unless the governor receives the consent of the general assembly (B)
Texas	SB 1 ^a	<ul style="list-style-type: none"> Creates new criminal offenses for election officials, especially with regard to mail-ballot applications, with early voting clerks subject to state jail felony charges for acts such as distributing a mail-ballot application to a person who did not request one (B)
Texas	SB 1933	<ul style="list-style-type: none"> Gives secretary of state the authority to investigate election “irregularities” after complaints are filed, but only in Harris County (A, B)

NOTE: Data and language on election subversion provisions were drawn from the Voting Rights Lab “Bill Tracker” database (at tracker.votingrightslab.org).

a. We code TX SB 1 as subversion-enabling, because it is a major contributor to an unprecedented number of mail-ballot applications and mail ballots being flagged for rejection in Texas in the 2022 midterm election.

Still, to a lesser degree, we expect Republican control of governorships to be associated with the passage of subversion policy. Governors must sign state-level legislation (except when their veto is overridden, which we do not anticipate to be a common occurrence in the case of highly partisan subversion policy). This logic also leads us to expect that unified control of state government by the Republican Party—the *interaction* of state legislative and gubernatorial control—might predict the passage of subversion policy. However, states with divided government are likely to be more electorally competitive, including in the 2020 presidential election. As we describe in the next paragraph, close electoral competition is likely to increase the probability that a state passes a subversion law—which would lead us to expect that unified Republican control might *not* predict subversion policies.

We also anticipate that states whose voters were more closely divided in the 2020 presidential election are more likely to adopt subversion policies. There are

at least two reasons why this might be the case. First, antidemocratic policymakers and interest groups may see subversion as easier in these states, relative to states where candidates win by larger margins. In a close race, relatively few votes would need to be “overturned” by partisan actors in order to flip election results. And at the election-certification stage, it is presumably easier to publicly frame close elections as “contested” in order to facilitate legal or legislative intervention that is entertained by political elites and voters. Indeed, voters are more likely to embrace conspiratorial political thinking, such as the idea that an election was “rigged” and warrants corrective action, when their preferred candidate lost a recent election (Kim, Stavrova, and Vohs 2022)—and nowhere is there a larger percentage of such voters than in a competitive presidential state. Second, Republican legislators in these states may have experienced a greater sense of threat or loss by the 2020 outcome and therefore be more willing to support subversion legislation. Indeed, Lee’s (2016) prominent theory suggests that close elections and narrow legislative majorities increased partisan polarization in the U.S. It could be the case that politicians are more willing to erode norms when electoral competition is especially tight.

Another possibility is that states with a recent history of weakening electoral democracy are more likely to adopt election-subversion policies. Perhaps the state lawmakers who, in the past, adopted restrictive voting laws and heavily gerrymandered legislative districts are ideologically opposed to expansive electoral democracy such that they would also be likely to pass election-subversion policies. In this case, a state’s preexisting democratic performance should at least partially predict its adoption of a subversion bill. While this hypothesis is intuitive, it is not necessarily convincing. Unlike gerrymandering and voter suppression, which mostly affect how costly it is to vote and how effectively votes translate into legislative seats, election subversion is about overturning election results in a way that overrules the voters’ will. Policymakers who have already passed laws that limit the ability of certain groups of voters to participate in elections and to translate their votes into political power might have less need for subversion. In turn, it might be the case that subversion and gerrymandering or voter suppression are substitutes, not complements.

Results

We present the main results in Table 3. In these analyses, the outcome variable is a binary indicator of whether a state has an electoral-subversion policy as described in Table 3.¹ Republican Legislative Control is a binary indicator of whether both the upper and lower chambers of the legislature were controlled by Republicans in the 2021 to 2022 legislative session, and Republican Governor is a binary indicator of whether the governor’s office was controlled by a Republican in 2021. State Democracy Index is the measure of electoral democratic performance as of 2018 from Grumbach (2022a), with this variable scaled to have a mean of 0 and standard deviation of 1. POTUS Competition is a measure of the closeness of the two-party 2020 presidential vote in a state, taken as -1

TABLE 3
Correlates of State Election-Subversion Policies

	Dependent Variable			
	Subversion Law			
	(1)	(2)	(3)	(4)
Republican Governor	-.000 (.210)			.223 (.225)
Republican Legislature	.429*** (.151)			.419** (.176)
Republican Governor × Republican Legislature	-.255 (.255)			-.420 (.257)
State Democracy Index		-.044 (.047)		.058 (.054)
POTUS Competition			.024*** (.009)	.022** (.010)
Constant	-.000 (.083)	.133** (.050)	.351*** (.087)	.162 (.126)
Observations	49	50	50	49
R ²	.164	.018	.145	.256
Adjusted R ²	.108	-.002	.127	.169
Residual Std. Error	.334 (<i>df</i> = 45)	.351 (<i>df</i> = 48)	.328 (<i>df</i> = 48)	.322 (<i>df</i> = 43)

* $p < 0.1$. ** $p < 0.05$. *** $p < 0.01$.

× |50 – 2020 Trump vote share| (i.e., a one-unit increase in this variable is one percentage point closer to Donald Trump receiving 50 percent of the two-party vote share).

Party control of government

We find nuanced results for the role of party control of state government. States with Republican control of the state legislature are significantly more likely to have passed subversion policy. Importantly, however, states with a Republican legislature but a Democratic or Independent governor are more likely to have passed subversion-enabling policy. Specifically, all seven states passed these policies under Republican control of their lower and upper state legislative chambers (out of 23 total states with Republican control of both legislative chambers). By contrast, only four of seven states that passed these policies had Republican governors (out of 22 total states with Republican governors).

Competition in the 2020 presidential election

We find a robust positive relationship between the closeness of the state electorate's vote in the 2020 presidential election and the passage of a subversion law.

A one-percentage-point increase in the closeness of the election is associated with a 2.2- to 2.4-percentage-point increase in the probability of passing a subversion law. Substantively, moving from the closeness of the election in a state like Delaware or Tennessee (where Trump won about 40 and 60 percent of the electorate, respectively) to Georgia (where Trump lost by less than one percentage point) increases the likelihood that the state passes a subversion law by 22 to 24 percentage points.

Relationship to gerrymandering and voter suppression in the 2000s and 2010s

In contrast to our subversion policies, the State Democracy Index measures state electoral performance as a function of partisan gerrymandering, eligibility and cost of voting, election integrity, and policy responsiveness to public opinion (Grumbach 2022a). We find that subversion-enabling policies are unassociated with states' 2018 scores on the State Democracy Index.

We interpret this null finding as related to the different roles of voter suppression and gerrymandering on the one hand, and electoral subversion, on the other. Voter suppression affects who votes by making voter registration or casting a ballot more costly for some populations. Gerrymandering affects how much each vote counts toward setting seats (and especially partisan majorities) in state legislatures and the U.S. House. By contrast, electoral subversion threatens to disregard election results regardless of how districts are drawn or votes are cast. Thus, we believe electoral subversion could partially serve as a substitute for, rather than a complement to, gerrymandering and voter suppression.

Electoral Count Act Reform in Congress

Support for subversion gained traction among the Republican base, culminating in the January 6, 2021, insurrection at the U.S. Capitol. Trump supporters stormed the Capitol in an effort to stop Congress from certifying Electoral College votes that would declare Biden the winner of the 2020 presidential election. The insurrection failed to stop the certification of Joe Biden's Electoral College victory, but President Trump continued to spread the "Big Lie" that the election had been stolen from him. A large number of "election denier" candidates who aligned themselves with this narrative began declaring their candidacy for election administration roles on the ballot in the 2022 election. Widespread concern developed that these candidates might win—a plausible fear, given polling showing competitive races in key swing states. With more "subversion-friendly" actors in place, the prospect of an overturned 2024 election seemed plausible.

Notably, every election denier running for a secretary of state office in a swing state lost their race in the 2022 midterm elections—a result that foreclosed one path to election subversion in the 2024 general election. This is not to say that

every election denier was repudiated at the ballot box, however. At least four states—all Republican-dominated—elected secretaries of state who questioned or rejected President Biden's victory. Nine election-denying governors were elected, as were 10 election-denying U.S. senators (Dale 2022).

The following month, an omnibus appropriations bill passed by the 117th Congress included reforms to the Electoral Count Act that further limit opportunities for election subversion at the federal level. This reform primarily clarified a series of congressional rules and processes for approving state electors following a presidential election. In also requiring that the executive of each state (the governor, unless explicitly stated otherwise prior to the election) be the one to send forward the slate of electors, the reform removed potential ambiguity from that key step in the electoral process. Perhaps most relevant to concerns about potential election subversion, the bill also requires that electors be appointed "in accordance with the laws of the State enacted prior to Election Day," thereby precluding states from changing the appointment rules postelection.

Further congressional legislation should focus on shutting down additional potential routes for subversion. Such a policy could ban voting machines that do not leave a paper trail, which could be used in recounts in disputed elections, and increased civil or criminal penalties for election subversion. Furthermore, there remains a strong need for greater funding for election administration at all levels.

Even with further reform to the Electoral Count Act, a broader threat of subversion may remain. The election deniers who won their midterm races could still subvert elections at the state or local level. New election-denier candidates could succeed in 2024 or beyond. And the recent antisubversion congressional reforms, while important, do little to prevent state legislatures from passing the types of laws we investigate here—that is, laws that make it easier for partisan actors to manipulate election outcomes.

Conclusion

This study of the implementation of state laws that could increase the likelihood of electoral subversion in the 2024 presidential election shows that states that implement such laws tend to have Republican-controlled state legislatures and saw close 2020 presidential election margins. Interestingly, these laws do not tend to arise from states that had the most gerrymandered legislative maps or aggressive voter-suppression laws in the 2010s.

We argue that the lack of a relationship between pre-2020 democratic backsliding and post-2020 subversion policies reflects the difference in usefulness of these tools across different state contexts. Gerrymandering and voter suppression can help a partisan coalition expand its national power in Congress regardless of the electoral competitiveness of the particular state; voter-suppression policies also tend to require support from the state's governor for passage and

implementation. Electoral subversion, on the other hand, is unlikely to arise in uncompetitive states and tends to require only a willing state legislative majority.

In 2022, the federal government took two important measures to mitigate the risk of election subversion: Congress reformed the Electoral Count Act to raise thresholds for challenging the certification of Electoral College votes in presidential elections, and the Supreme Court rejected the Independent State Legislature theory that posited that state legislatures were not constrained by the U.S. Constitution or state constitutions in making decisions—most notably about who should win a state’s Electoral College votes. Still, ambiguities in legal interpretations and the regulation of U.S. elections remain. Legal scholars have concluded that the Supreme Court’s ruling sent a “mixed message” by rejecting only the most extreme version of the Independent State Legislature theory (Pildes 2023).

As the 2024 election approaches, scholars and practitioners should be attentive to the potential for election subversion. While such subversion would transfer power in the White House in Washington, DC, its origins would almost certainly be at the state, or, through delegated state authority, county level.

Note

1. We exclude Nebraska from the models with partisan control of government variables (model 1 and model 4) due to its nonpartisan legislature.

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