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# Policy to Advance Good Faith Election Observation

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Bipartisan Policy Center

The United States' democracy is built on a foundation of checks and balances. They extend from the three branches of government to the relationship between state and federal legislatures—and even to the inner workings of local election administration. Election observers and challengers are one small, but mighty, component of our intricate system of collective governance.

Across the globe, election observation is regarded as a pillar of democracy-building, crafted to advance transparency and integrity. When correctly managed, it stands to boost civic engagement, voter confidence, and election security. Yet without the proper guardrails in place, election observation can become a partisan or prejudicial tool used to disrupt orderly elections and undermine voter confidence.

Dating back to the earliest days of the republic, election observation—like much of our electoral system—has a checkered past. Throughout history, individuals have abused the right to observation to unfairly target marginalized groups. In 2020, a new crisis emerged when pandemic social distancing requirements clashed with the high number of prospective observers, all during the heat of one of the most contentious elections in U.S. history. Resource and capacity limitations left many observers feeling as if they were unfairly excluded from the observation process; other observers took advantage of their position to disrupt and delay the administration of the election. One thing became clear: Current rules around election observation are inadequate to advance the meaningful engagement of observers in the electoral process.

As we gear up for the 2022 midterms, many in the elections community are increasingly concerned about partisan observers and challengers disrupting the voting and counting process. If 2020 and 2021 are any indication, going forward we can expect large numbers of observers and challengers who are eager to interact (or, at worst, interfere) with the voting process. As we have seen, inadequate protections risk undermining trust in both the process and the outcome of elections. With proper policy and preparation, states will reap the benefits of an engaged electorate who is well-informed about how elections operate. If states fail to act, they risk further fracturing an already-polarized public and undermining election worker security.

This report outlines policy best practices for election observers and challengers. The set of recommendations is unanimously endorsed by the Bipartisan Policy Center Task Force on Elections, a diverse group of state and local election officials from across the country. Election officials have the best perspective for how election policy works when put into practice. To secure the integrity of the 2022 and 2024 elections, we need look no further than the dedicated professionals long committed to our democracy.

The recommendations made in this report stand to ensure accountability and transparency in the administration of elections. For maximum effectiveness, the recommendations should be considered as a unified set. Election administration is a complex ecosystem: Changes to one policy have upstream and downstream impacts for countless other parts of the process. This set of recommendations anticipates those impacts and works cohesively to address them.

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## THE BIPARTISAN POLICY CENTER TASK FORCE ON ELECTIONS

The Bipartisan Policy Center believes that better policy comes from reasoned deliberation and compromise. When it comes to election administration, policymakers need to hear from those who administer elections.

BPC's Task Force on Elections includes 24 state and local election officials from 15 states who are devoted to making meaningful improvements to U.S. elections. This report builds on the task force's recommendations made in [Logical Election Policy](#), [the Voting Experience After 2020](#), and [Bipartisan Principles for Election Audits](#).

**The task force unanimously endorses the recommendations for election observation policy contained in this report.** In addition to the members listed below, this report was also created with the input and endorsement of the Task Force on Elections Advisory Council, comprised of former election officials from a variety of states and political affiliations.

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# What Is Election Observation?

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As with most concepts in election administration, the specific terminology, rights and responsibilities, and protocols pertaining to election observation are multifaceted, overlapping, and at times contradictory. States often adopt different terminology to refer to the same idea or practice.

For the purposes of this report, the task force defines two major categories of election observation:

***Election observers*** include any individuals who observe election processes. They include partisan and nonpartisan appointed representatives, members of the public, and international observers. States vary in whether observers have to be appointed, and who is permitted to appoint them. At minimum, candidates or political parties are entitled to appoint observers; at maximum, some states permit anyone to observe without being appointed.

*Partisan observers* are often called “poll watchers” and are typically situated in polling places and tabulation centers. Poll watchers are concerned with protecting the interests of candidates, parties, and advocates of ballot questions. *Nonpartisan observers* watch the election process to ensure integrity and fairness in administration, and they usually represent academia or nonprofit groups.

***Election challengers*** have the same basic privileges as election observers, and are differentiated by their ability to dispute voter eligibility or administrative activities. The rights of challengers vary by state, but generally they can only challenge election worker actions and voter eligibility that are in violation of law. Challengers cannot object to practices solely because they do not personally agree with them.

For the remainder of this report, “election observers” or “observers” refer to any individual observing an election process—whether or not they are permitted to challenge. “Election challengers” or “challengers” refer specifically to observers who have the right to challenge voters or processes while observing.

This report is intended to outline evidence-based, bipartisan recommendations for election observation policy. It is not intended to provide a comprehensive picture of which policies are currently in place. We encourage those interested in a broader survey about the current state of observation rules to explore resources compiled by the [National Conference of State Legislatures](#) and [The Carter Center](#).

# Bipartisan Best Practices for Observers and Challengers Regulations

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Election observation should be centered in accountability, transparency, and fairness, not political motives. Specifically, the BPC Task Force on Elections encourages state lawmakers to set observation rules in accordance with the following principles:

- Election observation rules must promote accountability and transparency
- Election observation rules must not enable observers to interfere with the free and fair electoral process
- Election observation rules must be fair to and devised with the input of all major stakeholders

In 2021, some state legislatures reimagined the roles of observers—often focusing solely on observers’ ability to be close to all aspects of election administration. For meaningful transparency to be achieved, new policy must advance both access and integrity. Observers’ heightened access to administrative practices must be paired with protections for voters, election workers, and election security. Sweeping rules that center solely on access embolden partisan observers during the heat of campaigns, can threaten security, and can lead to conflict and litigation.

As our electoral systems modernize, we must also revisit what good policies around election observers and challengers look like. The BPC Task Force on Elections encourages states to consider the recommendations below as a cohesive set of reforms that function together to bolster transparency and integrity.

1. **States should provide resources to local election offices—including funding and adaptable training modules—to support the training of observers. At a minimum, organizations that dispatch observers should receive training from the state or local election office on how to train the observers they appoint.**

Transparency is foundational to a functioning democracy. Yet policies that prioritize unfettered visibility into election operations risk resulting in misinformation as events are pulled out of context. Without proper guardrails in place, election observers (either by sheer volume or through unruly behavior) can interrupt and interfere with the voting and counting process. Policy must advance *contextualized transparency*, not only providing the opportunity to observe election procedures but ensuring that those observing have all the information they need to understand what steps are being taken and how security is maintained. The first step to contextualized transparency is training.

States must take the lead in developing training programs for election observation. A scalable, virtual statewide training program would advance uniform expectations both for observers and election offices, while lifting a burden from local election offices, which are already under-resourced. For areas in which local offices have discretion over observation, states should give localities training resources that can then be tailored to local rules. Should a state prefer to leave this responsibility entirely to local offices, the state must provide the necessary levels of funding and guidance for local offices to do so. Nonetheless, it is the opinion of the task force that, in most cases, it would be more cost effective to fund one statewide training program than one for each jurisdiction.

Ideally, all observers should undergo training prior to serving. However, that creates an unreasonable barrier in jurisdictions that consider polling places as public, or that consider election observation to be a right of voters. As such, the task force recommends that all observers appointed by political parties or relevant entities be required to undergo training. States should consider training appointing entities on how to conduct observer training or requiring a review of training materials used by appointing entities. This layered approach reduces the burden on government resources to train all observers, while ensuring that observers receive sufficient training to understand the rules.

Training should cover the rights of observers, the parts of the election process they are allowed to observe, restrictions regarding confidential voter information, the observers' code of conduct, and grounds for removal. In addition to training alone, election offices should bolster observers' understanding of the election process through educational materials (for example, handouts for observing clearly laying out the rules), proactive outreach, and having additional staff on hand to handle questions from observers, especially on Election Day. The U.S. Election Assistance Commission has provided [guidance](#) for educating observers, including starting educational activities early and maintaining contact with key stakeholders throughout the process.

2. **States should specify which election activities observers are allowed to see and how that observation should take place, including in the pre- and post-election period, during ballot processing and during in-person voting.**

The first principle of election observation policy is that it promotes transparency and accountability, both of which require that observers be able to understand what activities are being performed and why. At the same time, the privacy of certain voter information must be protected, voters must be able to vote free from intimidation, and election workers must be able to continue to do their jobs free from interference.

The major categories of election-related activity typically open to observers include pre-election activities, ballot processing, in-person voting, and the post-election process.

Rather than set generic rules across all of election observation, states should set observation rules according to which election-related activity is taking place. Overly prescriptive distance requirements (for

example, requiring that observations be within 3 and 8 feet of election activity) may work for a polling place, but not at the central counting site. Tailoring rules to each type of observation ensures meaningful access for observers, without creating untenable situations for election administrators.

#### *Pre-Election Activities*

The most common pre-election activity open to observers is Logic and Accuracy (L&A) testing, or the testing of voting and tabulation equipment prior to an election. L&A testing has great significance in the history of election observation, as its original purpose was to demonstrate the integrity of the tabulation equipment being used in the upcoming election to candidates, parties, and the public. BPC encourages states to include pre-election accuracy testing (L&A or equivalent) in its collection of approved observer activities.

It is critical that the security of voting equipment be maintained during L&A testing. Accordingly, states should enable election workers to designate an area where observers are permitted to view the testing that ensures noninterference. *The task force has also encouraged* election officials to publish the results of any pre-election accuracy testing or audits for public consumption.

#### *Ballot Processing*

Recent expansions in mail voting, as well as expanded windows for ballot processing before Election Day, increase the scope of activities taking place outside the polls. In many election jurisdictions, this has created situations where the available space has been inadequate to host observers. Local election officials are often at the mercy of municipal and county governments that determine how much space is allocated to the election office. Both local and county governments, as well as state legislatures, must be willing to provide adequate space to their election departments to accommodate demand for election observation.

The task force recommends that states that permit observation of ballot processing set clear rules for what activities can be observed. This includes detailing the rights of observers relating to ballot inspection, signature verification and curing, ballot tabulation, ballot adjudication, the duplication of soiled or unreadable ballots, and any other significant step in ballot processing or tabulation.

Observers must be barred from touching or handling any ballots or ballot peripherals during observation, and should be required to maintain adequate distance from the ballot processing to allow election workers to complete their duties unhindered. Additionally, observers must not be permitted to view any confidential voter information, film election workers, or make note of ballot identification numbers.

#### *In-Person Voting*

In-person voting is the most common venue for election observation to occur. As states expand opportunities to vote in-person prior to Election Day, states must set clear expectations for observers at all parts of the in-person voting process, including early voting, in-person absentee voting, and voting on Election Day.

At a reasonable distance, the activities observers are entitled to see should include: the opening and closing of the voting site, the transfer of voting materials to the central site, and voter check-in (including any changes to voter registration).

Observers should be barred from viewing inside the voting booth or private voting area, interacting with voters, handling any election materials, viewing classified voter information, photographing voters or election workers, and in any way interfering with the voting process.

States that conduct traditional, polling-place-style early voting should extend the same rules to early in-person voting as they do to that which occurs on Election Day. As with ballot processing, jurisdictions that have in-person absentee voting (in which a voter can complete and submit their absentee ballot in-person at the elections office) often face space and capacity limitations that make accommodating observers unworkable. County and state governments, and the legislatures responsible for crafting policy to begin with, must provide local election jurisdictions sufficient space to meet demand.

#### *Post-Election Activities*

Observers should be able to view tabulation [audits](#) and recounts that take place after Election Day, as well as the [official canvass](#).

### **3. States should clarify how many observers each party or authorized entity is allowed to have present at each part of the election process.**

Together, the COVID-19 pandemic and the 2020 election exposed many of the cracks in the current election observation system. Seemingly overnight, record-breaking numbers of citizens sought to observe election processes, while public safety concerns made that kind of large gathering unrealistic. Even without the pandemic, too many observers in one voting or counting site can impede the orderly administration of an election.

There is no way of knowing for certain what circumstances future elections will have to cope with. Sustainable observation policy must be functional both during a pandemic and not, with and without heightened demand for observation. Finding this balance requires thorough state guidance and expanded resources.

The task force encourages states to specify how many observers each appointing entity is entitled to have at each part of the election process.

Some states have opted to set concrete rules for observers—for example, allowing each appointing entity exactly one observer at each part of the process. Yet blanket rules do not account for high-traffic voting and central counting sites that might warrant additional observers. Colorado provides an interesting alternative. The state [sets](#) a flexible standard for observers based on the number of election judges. Colorado states that, subject to space limitations and local safety codes, counties must accommodate a set number of watchers from each appointing entity that is tailored to what election process is being observed. For example, appointing entities are allowed one watcher for every 10 election judges at the central counting site. For

signature verification, appointing entities are allowed one watcher for every four election judges.

This flexible approach ensures reasonable access for observers relative to the scale of events taking place. To maintain this heightened level of transparency, it is essential that states provide sufficient resources to local jurisdictions to securely conduct their elections with enough space for both observers and election workers. Rules that increase the number of allowed observers according to election judges (or equivalent) can create large numbers of observers in crowded races. For example, in states that give candidates the right to appoint observers, in a city council race with 10 candidates, the number of observers at any one site can quickly get out of hand.<sup>1</sup> Rather than simply turn observers away due to capacity limitations, states must ensure that local jurisdictions have the space and resources to manage the flow of observers.

4. **Election officials should have discretion in determining whether an observer is violating standards for acceptable behavior. There should be a clear process and chain of authority in place for removing a disruptive observer from the voting or counting site.**

All states bar observers from interfering with the orderly conduct of elections. In Texas, for example, observers must affirm [the oath](#): “I swear that I will not disrupt the voting process or harass voters in the discharge of my duties.”

Confirmation from observers that they will not disrupt the voting process is important. Yet to ensure the integrity of the voting process, additional protections must be taken. States need clear rules for how observers unlawfully interfering with the administration of the election can be removed. The increasingly contentious nature of U.S. elections increases the likelihood of unruly observers in the future. It also makes it more difficult to remove unruly observers who quickly claim partisan bias on the part of election officials.

To circumvent claims of mistreatment, states must proactively detail codes of conduct for observers, including which activities qualify as grounds for removal. Furthermore, states must clarify how the decision to remove an observer should be made.

BPC believes that for election officials to carry out their public duty of administering free and fair elections, they must have the discretion to remove disorderly observers or limit the number of observers present when capacity limitations are exceeded. While this has been common practice for years, in 2021 several states made it more difficult for election officials to remove observers acting unlawfully. Some states have even imposed [legal penalties](#) on election officials for removing observers in certain circumstances. To maintain order in the voting or counting process, election officials must have authorization and direction from the state on how to remove observers interfering with the process.

Just as election officials should have procedures in place for

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<sup>1</sup> Some states do not permit candidates to appoint challengers, leaving that responsibility to political parties. This approach could also help manage the flow of observers in races with high numbers of candidates.

the removal of unlawful observers, observers should also have a remediation route available to them to contest their removal, most likely with state courts.

**5. States should permit nonpartisan, international, and academic observers.**

The United Nations' [Declaration of Principles for International Election Observation](#) states that “International election observation has the potential to enhance the integrity of election processes, by deterring and exposing irregularities and fraud and by providing recommendations for improving electoral processes.” Yet observation policy in the United States tends to focus heavily on partisan observers—largely ignoring nonpartisan, international, or academic observers.

While the U.S. has long considered itself above the need for third-party election observation, the increasingly contentious nature of U.S. elections today demands reevaluation. The United Nations further states that international election observation “can promote public confidence, [...] promote electoral participation and mitigate the potential for election-related conflict.” The treacherous moment we are in politically underscores the importance of international and nonpartisan observers who can provide an impartial voice during heated debates about the election’s integrity, fulfilling the same function for the United States that they fulfill around the world.

States should clarify credible methodologies, procedures for appointment, capacity limitations, and codes of conduct for international, nonpartisan, and academic observers in the same manner as they do for partisan watchers and in accordance with each of the prior recommendations. Rules for international observers should follow global standards that ensure transparency and security.

## Additional Recommendations for Election Challengers

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Most election observers are not entitled to challenge any part of the election process. Election challengers, in contrast, have additional rights that must be met with higher standards. State policy regarding election challengers should include each of the recommendations that we laid out in the previous section. Those policies should be further complemented with the following set of recommendations that focus on the distinctive functions challengers serve compared to other observers.

The BPC Task Force on Elections neither endorses nor opposes allowing members of the public to make good-faith challenges to the implementation of election procedures or voters’ eligibility. What the task force does condemn, however, is challengers who abuse their rights to disrupt the voting or counting process.

For states that allow election challengers, the task force recommends the following policies that promote the coequal interests of transparency, integrity, and the ability to vote free from intimidation.

**1. States should set detailed rules for what parts of the election process may be challenged and train challengers accordingly.**

In the previous section, BPC recommended that states set clear rules for how many observers are allowed at each part of the election process, and the same applies to challengers. States must detail which actions challengers are allowed to contest in each part of the election process and how those challenges should be filed.

Challengers should be allowed to challenge no more than the following procedures: signature verification, ballot duplication, and voter eligibility. If a challenger witnesses a violation of the law outside of these activities, they should be permitted to raise it with the relevant election authority, which can then address and resolve the claim by making a correction or providing explanation.

To keep outsized numbers of challengers from interfering with the election process, states should limit the number of challengers by the type of election activity being performed at a specific location. Often, states set a ceiling for the number of challengers allowed across a jurisdiction—resulting in difficult-to-manage imbalances when certain voting locations receive high numbers of challengers and others don't. The task force encourages states to set rules on the number of challengers allowed per polling place or other individual election site, rather than at large.

Clear rules around when, where, and how challengers interact with the elections process are crucial in minimizing disagreement over vague statutes during observation. By extension, clear rules also reduce the likelihood of superfluous litigation, which has [negative repercussions for voter confidence](#) and further strains limited election office resources. For maximum effectiveness, the rights and responsibilities must be communicated to challengers through supplemental training. The first recommendation of this report emphasized the importance of training for all appointed observers. This remains true for challengers, and foundational observer training must be supplemented with additional guidance on how challenger rules differ from those of observers.

**2. Challengers should not be permitted to interact with voters, and should direct all claims to the designated election authority. Challengers should be required to provide a reasonable basis for their claim.**

Challenger laws often trace back centuries. In 1937, Pennsylvania allowed [electors](#) “to challenge any person offering to vote,” interrogate them and their witnesses, and examine their documentation.<sup>2</sup>

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2 To protect voters, states should consider both placing the burden of proof on the challenger and barring challengers from interacting with voters directly. Pennsylvania has made great strides since the 1930s and currently employs many of the best practices this task force recommends. The Pennsylvania Department of State now [requires](#) that challenges be directed to the election judge—not the voter. Furthermore, “Challenges may not be affirmed and voters may not be refused a ballot unless the election officers of the precinct are satisfied that the challenger has proven the voter’s ineligibility on proper grounds and with sufficient evidence.”

In smaller communities without today's advanced technology, that interpersonal check provided an important layer of integrity on the voting process (when it was not abused to target certain demographics of voters). New developments—such as electronic poll books and interstate voter registration databases—solve many of the risks around in-person voter fraud that challenger laws were initially intended to address.

Election administration has rapidly evolved over the past three decades, and yet a cohort of states continue to allow challenges against voter eligibility to be made without evidence. Requiring challenged voters to defend their eligibility—rather than requiring a challenger to defend their allegation—opens the door for prejudicial targeting and voter intimidation. Policy around the rights and responsibilities of challengers must modernize by shifting the burden of proof from the voter to the challenger. To reduce the risk of voter intimidation, challengers should be barred from interacting with voters; any and all claims should be directed to the designated election authority.

States have various policy options available to them for how to best protect voters during the challenging process. In Michigan, challengers must provide a reasonable basis for their claim. Challengers are further forbidden from making claims based solely on the [impression that a voter is ineligible](#) due to their “manner of dress; inability to read or write English; the voter’s perceived race, ethnic background, physical or mental disability, or support for or opposition to a candidate or political party; or the voter’s need for assistance with the voting process.” In Minnesota, [challengers must](#) document their claim in writing and “swear under oath that the challenge is made based upon personal knowledge.” In both states, challengers are not allowed to approach or speak with voters directly.

**3. Voters should be given the opportunity to respond to challenges made against them and, if resolved, cast a regular ballot.**

Protecting voters’ access to the ballot is paramount. When a voter’s eligibility is challenged, the voter must be given the opportunity to respond to and resolve the claim. At first glance, the solution seems obvious: Challenged voters should simply provide additional documentation or identification to establish their eligibility. Yet this risks disenfranchising voters by placing an unfair burden on voters who show up to vote not prepared to have to supply this additional information beyond the requirements of any state law. Equity and fairness require that voters be able to defend their eligibility without identification requirements other voters do not face. To advance integrity without compromising equity, states should consider having election authorities ask challenged voters a series of questions to establish their eligibility under oath and penalty of perjury.

The state must establish who decides whether the voter has provided sufficient evidence to dispel a challenge, as well as how determinations on the eligibility of a voter should be made. If a voter demonstrates that they are eligible to vote, they should be permitted

to cast a regular or challenged ballot.<sup>3</sup> Once the designated election authority has ruled on a challenger’s claim, the challenger should not be allowed to continue their protest, regardless of the nature of the decision.

Provisional ballots should be avoided where possible. However, if a challenged voter’s eligibility cannot be established at the point of contest, the voter should be provided a provisional ballot as the relevant election authority investigates the claim, consistent with federal law. The voter should be given ample opportunity to submit additional evidence of eligibility to contest the claim, even if this period extends beyond Election Day.

**4. States should establish clear procedures for how challenges to election worker activities are resolved.**

Just as voters should be able to resolve a claim against their eligibility on the spot, there must be a clear process for resolving claims that violations occurred in the administration of the election.

To ensure orderly administration and the fair treatment of challenges, states must clarify how challenges are filed and with whom. In [Arizona](#), for instance, “If an observer [...] seeks to raise an objection, the observer should speak solely to the designated point of contact (e.g., inspector, County Recorder, or other officer in charge of elections) and not to other poll workers or staff.” Michigan [further details](#) a multitiered process for filing claims: “If a challenger has reason to believe that the precinct board is not following applicable election laws, the actions of the precinct board may be challenged by consulting with the precinct chairperson. If the chairperson rejects the challenge, the challenger may contact the clerk to resolve the matter.”

A clear chain of responsibility with built-in checks and balances—as demonstrated by Michigan and Arizona—is crucial to the fair and orderly handling of election challenges. As previously recommended, challengers must support their claim with reasonable evidence. The validity of that challenge should then be determined at the point of contest by a predesignated election judge or respective authority. As with voter challenges, once the designated authority has ruled on a challenge, the challenger should not be allowed to continue the protest on site.

The role of election challengers is to hold electoral systems to account. Election challenges are not intended to be the space for candidates to launch campaigns of unsubstantiated voter fraud. Candidates who believe their ballots were not counted correctly should seek an official recount and monitor the results of official audits conducted after every election, per the [recommendation](#) of the BPC Task Force on Elections.

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3 Challenged ballots enable the ballot to be retrieved after the election if ordered by a court. In Michigan, challenged ballots are prepared [as follows](#): “The election inspector handling the challenge writes the number appearing on the voter’s ballot in pencil on the back of the ballot. After the ballot number is recorded in pencil on the ballot, the number is concealed with tape and/or slip of paper as directed by the election official administering the election. [...] After the voter has voted the ballot, the ballot is deposited in the tabulator under routine procedure. [...] A challenged ballot cannot be retrieved for examination after the election without an appropriate court order.”

# What's At Stake

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Partisan conflict is threatening the very foundation of U.S. democracy. If we don't take action to rebuild public trust in democratic institutions, we risk losing it forever. Good-faith election observation is one step in the long journey toward educating the public about how elections work and all that goes in to producing trustworthy results.

Clarifying roles and responsibilities for election observers and challengers will not rebuild confidence overnight. It is clear, however, that democracies with even more fragile electoral processes have benefited when the rules are clear for observation and challenging. In this era of low confidence, high participation, and overwhelming polarization, states must address their glaring weaknesses in this area before the 2022 midterms and 2024 presidential cycle.





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