



Economic  
and Social  
Research Council



# IMPACT OF COVID-19 ON THE 2020 US PRESIDENTIAL ELECTIONS

Case study, 25 July 2022

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## INTRODUCTION

This case study<sup>1</sup> looks at how the administration and environment of the 2020 US presidential election was affected by the onset of the Covid-19 pandemic. US presidential elections are in reality over 50 separate contests, held concurrently with elections for a wide variety of other federal, state and local offices, along with referendums or ballot measures. Unsurprisingly then, there was no unified response to the pandemic.

Unless specifically noted, this case study does not examine the impact of the pandemic on the political party nominating contests, or other federal and state elections. It looks instead at the impact on various elements of the electoral process and what actions were taken to provide open but safe participation in the face of the pandemic. The study also addresses efforts made after election day to discredit legally cast and counted ballots in an attempt to overturn the results. However, to fully account for these events—whose repercussions are still not fully known at the time of writing—would require a separate accounting all its own. Here, we address those events to the degree they shed light on administrative adaptations to Covid-19 and the character of the US electoral administration system.

The elections were delivered relatively smoothly (and with notable turnout), but in an environment of continued uncertainty about which arrangements to make and how they would be funded, and with repeated recourse to litigation.

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<sup>1</sup> This case study was first published on 20 November 2020, but this updated version includes post-election analysis. It is part of a series of case studies on elections and Covid-19, available at [www.idea.int](http://www.idea.int). Research for this case study covered the period March 2020 up until January 2022. Therefore, some references may be outdated. This case study does not include analysis of the 2022 US general election.

The large rise in postal voting and the expanded provision of early voting saw voters have access to a range of voting channels, allowing them to choose the one that best suited their (Covid-altered) circumstances. Being able to deliver such choice, albeit in an acrimonious and tense political environment, marks a real achievement for US electoral officials.

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## BACKGROUND

In the United States, there is no uniformity in electoral arrangements for federal elections; powers to make laws and rules for federal electoral administration are dispersed between federal, state and local governments. The US Congress has some power to mandate electoral arrangements for federal offices, and they have done so in the case of uniform election days, districting requirements, voter registration, and polling arrangements for members of the military and US citizens abroad. This dispersion of policy-setting, decision-making and funding responsibilities, and the heightened partisan divisions in present-day US politics, meant that a unified response to the Covid-19 epidemic proved hard to reach in many states.

Nevertheless, there are communities of practice within US electoral administration, and there has been sharing of Covid-19 experience and resources within and across states. The federal Election Assistance Commission (EAC) made efforts to share information on how to deliver Covid-secure elections, though with some criticism (Huseman 2020) that internal divisions in the agency's leadership limited its role as the pandemic emerged. This, in turn, pushed election jurisdictions that were scrambling to expand vote-by-mail options to rely on advice from their overstretched peers.

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The fragmentation of decision-making was exacerbated by the partisan nature of decision-making. Of course, it is a fact the world over that electoral laws are made by legislatures that have been elected on a partisan basis. However, implementation is then often handed over to non-partisan administration; independent electoral management bodies are a feature of arrangements in 137 countries (64 per cent) around the world (International IDEA n.d.). In the USA, partisan implementation of electoral laws is built into the system, either through the use of an elected official as a state's chief electoral officer, as occurs in 26 states, or through the use of partisan-based oversight boards and commissions (NCSL 2020a).

There are two federal commissions related to electoral matters—the Federal Election Commission (FEC), which oversees federal political finance matters, and the Election Assistance Commission (EAC), which has an advisory and sometimes a funding role in support of electoral administration. Both agencies were established by statutes that require appointment of commissioners on an equal partisan basis.

The USA also has an unfortunate history of using discriminatory electoral arrangements to exert political and societal control over minority groups, and for the achievement of electoral outcomes that amplify the societal position of the majority group. In many parts of the country, especially the Jim Crow South, blatant and deliberate exclusion of African-American citizens from the electoral process was practised up until the passage of major civil rights legislation in the 1960s; various organizations (Brennan Center for Justice n.d.) have detailed modern practice and policy that achieve similar ends.

The US Constitution stipulates a four-year presidential term, and federal statute sets a uniform voting day. In 2020, the incumbent President Donald Trump of the Republican Party stood for re-election. His main challenger was former Vice-President Joe Biden of the Democratic Party. A variety of other candidates appeared on presidential ballot papers in some states, including candidates from the Green Party and the Libertarian Party (US Federal Election Commission 2021). However, the two major parties have held a duopoly on the first and second places in presidential elections since 1916. Prior to the election, Mr Trump's Republican Party held a majority in the Senate, and the Democratic Party the majority in the US House of Representatives; 35 Senate seats were to be elected in 2020 (including one special election to fill a vacancy), and all 435 House seats.

### **Covid-19 in the United States**

The national Centers for Disease Control and Prevention (CDC) are responsible for compiling statistics on Covid-19 cases in the United States (see CDC n.d.a). Between 21 January and 31 October 2020, the nation reported 9,105,230 cases and 229,932 deaths. The USA experienced noticeable peaks in the average number of confirmed cases being reported in April, August and October with a continued rise to the end of October, three days before the statutory polling date of 3 November (Johns Hopkins n.d.).

Unlike many western and central European countries, the United States did not 'flatten' its Covid curve during the summer months (NB, of the 11 such countries in the Johns Hopkins dataset, only Romania did not experience a full flattening of the curve). The continued transmission of the virus in the wider community meant that electoral administrators and their political stakeholders had to plan for an election to take place in pandemic conditions. (Some states also held party primary elections and other state and local elections under pandemic conditions prior to the November general election.)

As with the administration of elections, responsibility for responding to health emergencies in the USA is shared across levels of government, with most states decentralizing primary authority to local governments (CDC 2020). Therefore, the response to the Covid-19 pandemic by US authorities has been similarly varied. The CDC issued guidance for electoral officials, their staff and voters on how to vote in a Covid-safe manner (CDC n.d.b). It is also clear that at state level, electoral officials consulted with state public health authorities on how to arrange Covid-safe elections.

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Fortunately, by November, mitigation measures (hand-washing, mask wearing and physical distancing) were well-understood among both service providers and the voting public, and perhaps therefore easier to integrate into the election than for those primaries held earlier in 2020. However, there was a lack of consistency in public messaging around the pandemic in the USA, accompanied by efforts at all levels of government to shift blame and responsibilities onto other authorities. As the year progressed, the topic of the pandemic and how to respond to it became increasingly politicized, especially in relation to any measures that could be framed as affecting individual liberties, such as the imposition of lockdowns or requiring the wearing of face masks (Schaeffer 2021; Deane, Parker and Gramlich 2021). In an election year, it was no surprise that the pandemic became a key topic animating voters' decisions (Pew Research Center 2020; NPR 2020).

### Litigating the election

As federal election dates are fixed and therefore known well in advance, it was clear from the early days of the pandemic's spread into the United States that the November election could be affected. Unlike countries that discussed or moved election dates due to the pandemic (see International IDEA 2020a), there was no serious discussion of moving the November date in the USA, although the dates of primaries, about which local authorities have a greater degree of control, were often moved back in response to the spring surge of Covid infection (Fortier and Stewart 2021).

In 2020, the need to adapt and amend electoral arrangements to enable a Covid-safe election indeed gave rise to a new batch of litigation. While President Trump did suggest on Twitter in July 2020 that an election delay should be considered, moving a presidential election date would require action by the US Congress; the Republican leader of the Senate was quick to dismiss the suggestion as unacceptable (*New York Times* 2020). Even if the election date were to have been moved, there is no mechanism for changing the expiry of the presidential term as set out in the Constitution, so an election would still need to be held and settled by that deadline (20 January 2021). In the end, electoral administrators continued their preparations for the November election, with broad political support, even as the virus spread across the country.

There is a lively academic debate as to whether and why the USA might be the world's most litigious society (see Lieberman 1981). What is clear is that US elections are highly, and increasingly, litigious (Hasen 2005, 2022)—especially compared with other developed democracies. The willingness of all participants in US elections to 'rush to law'—candidates, parties, electoral administrators, office holders and interest groups—means that electoral administrators must be prepared to change their arrangements at short notice because of court rulings. This is exacerbated by potential litigants' ability to 'forum shop' (that is, to choose among various courts when raising disputes), and it is common for the same election issue to be subject to concurrent litigation in both federal and state courts (see, e.g. Montgomery and Corasaniti 2020).

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In 2020, the need to adapt and amend electoral arrangements to enable a Covid-safe election indeed gave rise to a new batch of litigation. As will be shown in sections below, almost all efforts to widen access to voting services and to improve the enfranchisement of citizens ended up in court at some moment in 2020. There were so many cases that to adequately respond, new resources needed to be created. Key resources for following election-related cases included a resource for federal judges maintained by the Federal Judicial Center (Federal Judicial Center n.d.), a litigation tracking project sponsored jointly by SCOTUSblog and Election Law at Ohio State (SCOUTUSblog n.d.), and a comprehensive tracking site maintained by the Stanford-MIT Healthy Elections Project (Stanford-MIT n.d.a).

It is a widely accepted international standard that electoral arrangements should not, unless in case of dire emergency, be changed less than 12 months before polling. In the USA, the 'Purcell Principle' is generally applied by courts to bar changes to election rules in the period immediately before the election (Hasen 2015). Despite this, US administrators commonly have to implement legal judgments passed *the day before*, or even *on*, polling day. Of the 432 cases in the Healthy Elections tracking database, 182 were still 'active' as of 31 October 2020.

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## FINANCING THE ELECTION

As in other countries, organizing and delivering a Covid-safe election in the USA required additional funds for electoral administration. Such funds were required to provide basic safety measures for staff and voters at in-person events (personal protective equipment (PPE), sanitizer, plastic screens etc.); to clean and keep clean electoral facilities to a Covid-safe standard, including the sanitizing of voting machines, touch screens and other multi-user equipment; and to provide additional voting opportunities, whether through the deployment of special voting arrangements to offer a new voting channel, or through expansion of an existing channel of voting (Asplund, James and Clark 2020).

In the USA, federal funds for electoral costs (when available) are provided through the Election Assistance Commission. Two special appropriations from Congress administered by the EAC were available to states to meet the challenges of conducting the 2020 election. The first was an appropriation of USD 805 million in 2018, primarily to improve election security and combat outside interference with elections. The second was the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which President Trump signed into law in March 2020 (Fortier and Stewart 2021, Chapter 6; US Election Assistance Commission 2021a). The CARES Act included USD 400 million in new emergency funds for states to prevent, prepare for and respond to Covid-19 in the 2020 federal election cycle.

The EAC distributed the funds in response to state requests and issued guidance on its usage (US Election Assistance Commission n.d.). Many

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electoral administrators continued to request additional federal resources to meet the cost of Covid-safe elections (Kelly 2020), but no wider financial package in response to Covid-19 passed the Congress.

The EAC reported on the use of the funds in 2021, although some money appropriated in 2020 was yet to be spent. As of July 2021, the Commission reported that USD 255 million of the 2018 election security funds and USD 326 million of CARES Act funding had been spent, leaving balances of USD 564 million and USD 72 million unspent, respectively (US Election Assistance Commission 2021a). Approximately one-third of CARES Act funds were spent on 'voting processes', defined as additional costs associated with printing and mailing ballots, high-speed scanners, and the like. The remaining funds were distributed in roughly equal proportions to supplies (PPE, disinfectant, etc.), communications, staffing, and subgrants to local jurisdictions.

A new development in 2020 was the deployment of substantial private funds to electoral administrators to meet such costs. Facebook founder Mark Zuckerberg, along with his wife, Priscilla Chan, made electoral administration grants to the value of USD 400 million. Former California Governor and movie star Arnold Schwarzenegger also provided funds (Levine and Vasilogambros 2020). The Schwarzenegger grants were available 'for local and state election officials who want to reopen polling stations they closed because of lack of funding' (USC Schwarzenegger Institute n.d.). Grants were distributed to 32 local jurisdictions in eight states. Chan-Zuckerberg funds were distributed by the Center for Tech and Civic Life (CTCL) to 2,518 separate recipients, almost all of which were local jurisdictions. The CTCL's final report on grantees did not indicate how the funds ended up being spent (Center for Tech and Civic Life 2021a, 2021b, 2021c), but their initial report about application information indicated that local jurisdictions intended to spend grant funds in a fashion similar to CARES Act funds (Center for Tech and Civic Life 2020). Using 11 broad categories of expenditures, the top 5 were temporary staffing, mail/ absentee equipment supplies, poll workers, PPE and election equipment.

While private funding has long been the engine of US political parties, and is used to fund complementary electoral efforts such as voter registration drives and provide donated polling places, 2020 was the first year when large sums were provided from private donors to meet the costs of providing electoral administration services. Not surprisingly, this development was itself subject to legal challenge (Federal Judicial Center 2020) and criticism from conservative organizations (Flanders, Petersen and Koenen n.d.; Doyle 2021). In early 2021, at least 11 states controlled by the Republican Party passed laws that either prohibited or limited the use of private funding in future elections (Schouten 2021).

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## REGISTERING VOTERS

The methods and processes of voter registration are largely determined at the state level. There is a requirement for states to accept the National Mail Voter Registration Form, mandated in law in 1994 for federal elections. States are free to impose their own registration requirements for state and local elections, and many do so.

In the 49 states and the District of Columbia that require registration—North Dakota does not have voter registration—voters register using a variety of channels. The following options are available in all states: using papers forms at the local electoral office; registering at the state Department of Motor Vehicles (DMV), usually in connection with a driver's licence application; using a paper form at other state agencies providing public-facing services; and registering through a third-party organization such as a political party or civil society organization. In addition, more and more states have allowed voters to register online, using systems that are integrated with DMV databases.

In the two years leading up to the 2020 election, 38.5 per cent of new registrations were generated at state DMVs, 14.2 per cent used mail forms, and 8.9 per cent were in person at local election offices (Fortier and Stewart 2021). The corresponding statistics for the two years leading up to the 2016 election were 39.7 per cent, 15.6 per cent and 12.9 per cent, respectively. The biggest change from the past was that 29.5 per cent of new registrations in 2020 came from online registration portals, compared to only 15.4 per cent four years before.

Many administrative systems that had previously been instrumental for registration, especially DMVs, were suspended for substantial periods of time, blocking the channels that nearly half of voters had used to get registered in 2016. These effects were felt in a variety of states. In New Jersey, the state added 8,002 new voters in April 2020, compared to 29,000 added in April 2016 (Biryukov 2020). Arizona took 48,614 new registrations in March 2016, but only 31,872 in March 2020 (Center for Election Innovation and Research n.d.). Closures of government agencies were concentrated in the spring and had the biggest effects on registration for presidential primaries. By November, registration rates matched those of 2020. Indeed, new registrations for 2020 exceeded those for the 2016 election by between 13 and 16 per cent (Fortier and Stewart 2021).

In addition to these governmental offices being closed to registrants, the registration efforts usually mounted by political parties and civil society rely heavily on face-to-face interactions in those states that stipulate a paper-based registration process. Opportunities to do so, such as door-knocking, setting up stalls at events and shopping locations, mobilizing through music festivals, religious services and other activities were all obstructed by Covid-related restrictions on gatherings and events (see e.g. Wines 2020; Garrison 2020). Statistics reported to the US Election Assistance Commission indicate that the

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percentage of new registrations that came through face-to-face registration drives fell by half compared to 2016, to 1.8 per cent from 3.7 per cent.

Forty states offer some form of online voter registration, supplementing their paper-based channels. While this may appear to offer an easy solution to the lack of face-to-face services, there is a catch: 'In most states, online voter registration systems work for people who have state-issued driver's licenses or identification cards, although a few states provide online access for other potential voters as well' (NCSL 2021). So, if a voter is new to the state, or does not have a state-issued identification document, they will be unable to use the online system. In 2020, this barrier was compounded by the lack of opportunities to have such identification issued at a government office in the spring, as discussed. At a national level, delays were also experienced throughout 2020 in the processing of US passports (Morello 2020), another commonly accepted identification document.

Similar issues arose in the 19 states (and the District of Columbia) that offer what is known as 'automatic voter registration': these states register voters 'automatically' when they undertake a qualifying transaction with a state government agency such as the DMV. Closed offices limited the qualifying transactions that could be made.

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**Among states that offered same-day registration in both 2016 and 2020, the number registered at the point of voting nearly tripled, from 1.3 million to 3.5 million.**

Twenty-one states and the District of Columbia also offer some form of 'same-day registration', where a voter can register and vote on the same day, whether at an election office, early voting centre or traditional polling station. All these states require proof of residency, and some require photo identification. Again, the issuance of such documents was significantly impacted by pandemic restrictions in 2020. Nonetheless, the number of same-day registrations grew in 2020 compared to 2016. Among states that offered same-day registration in both 2016 and 2020, the number registered at the point of voting nearly tripled, from 1.3 million to 3.5 million (Fortier and Stewart 2021).

Closely related to the issue of voter registration is that of voter identification. Thirty-five states require voters to show a form of identification document (ID) when they come to vote (or to note the document's details on a postal voting declaration) (NCSL 2022); 17 of these states require the ID to have a photo. Commonly accepted forms of photo ID are again those issued by the DMV and other state agencies; in many states these documents must be currently valid to be accepted. Just as with registration, there may have been a pandemic-related impact for some of those voters refused a vote due to lack of valid and acceptable ID. However, there were not widespread reports of such issues arising on 3 November, and in many states the relevant government offices were open again (see e.g. Sink 2020, for a case in Colorado).



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## CAMPAIGNING FOR PRESIDENT

US elections are long, drawn-out affairs—Mr Biden announced his candidacy on 25 April 2019 and was finally officially nominated on 18 August 2020. In that year both the Democratic and Republican parties held their nominating conventions online (at <<https://twitter.com/demconvention>> and <[www.2020gopconvention.com](http://www.2020gopconvention.com)>, respectively), a significant departure from the usual practice of gathering party delegates and office holders in a selected city for a multi-day jamboree (Klinghard 2020).

The US general election campaign was traditionally considered to start after Labor Day, the public holiday that marks the end of the US summer vacation (in 2020, this fell on 2 September). While many states relaxed their Covid-related restrictions over the summer months, by September the rate of infection was rising. This led to a decrease in traditional face-to-face campaigning, such as door-knocking, public events and large rallies.

However, as September and October unfolded, the two main campaigns diverged considerably in their approach. That of Mr Trump reverted to holding the large public rallies that had been a feature of his successful 2016 campaign. Rather than indoor arenas, however, the 2020 Trump campaign largely made use of outside venues, and often airfields where Mr Trump would fly in on Air Force One, hold the rally and depart. Reports indicate that Mr Trump was determined to deploy such rallies in 2020, even at short notice and with little preparation (Elfrink, Shammass and Griffiths 2020). The rallies reflected Mr Trump's own ambivalent relationship with Covid precautions, insofar as it was common to see large crowds without masks and not observing social distancing. A recent study (Bernheim et al. 2020) of 18 such rallies held by Mr Trump between June and September 2020 estimated that they 'ultimately resulted' in more than 30,000 incremental confirmed Covid-19 cases and 'likely led to' more than 700 deaths.

Mr Biden's campaign was slower to return to the road but in October began holding 'drive-in' rallies where supporters stayed in their cars at a parking area or sports ground to hear from Mr Biden and his campaigners. The distant nature of the crowds at such rallies contrasted poorly with television pictures of animated crowds at Trump rallies, but this may have been a deliberate campaign message of safety and sobriety (Reuters 2020).

Both campaigns continued the use of online tools that have been a feature of recent US elections. The use of video-conferencing software that became common during the pandemic lockdowns also entered the electoral sphere, with the Biden campaign utilizing the Democrats' connections with the entertainment industry to mobilize and motivate voters (see Chaney 2020), and also mixing old and new tools to give campaigning a personal touch (Hensley-Clancy 2020b).

Advertising, a traditional mainstay of modern US campaigning, enjoyed higher screen audiences than usual due to the pandemic. More people are at home

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watching television, listening to radio and podcasts, surfing the Internet—and therefore receiving campaign advertisements. One estimate is that total political advertising spending reached USD 8.7 billion, of which USD 1.8 billion was spent on the presidential general election contest alone (Passwaiter 2020). Digital campaign advertising also saw massive growth in 2020, with a USD 1 billion spend included in the predictions for advertising spend overall.

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## CASTING BALLOTS

With an unmovable polling date, the experience of the primaries in some states, and the continued presence of Covid-19 in the community, it was clear for some months that US electoral administrators would need to find ways to accommodate voters in a Covid-safe manner. The clear priority was to find ways of moving the burden of voting away from single-day, in-person voting locations to either voting outside of a polling location or voting at polling locations over multiple days. Administrators were keen to find ways to space out voters, remembering that the multiple races to be contested on 3 November meant that US voters had dozens of different decisions to make in the voting booth. (In this context, ‘spacing out’ voters had both a physical and temporal dimension: voters needed to be kept physically apart to help limit the spread of disease, and the voting time period needed to be expanded to accommodate physical demands.)

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In general, administrators seem to have met their aim of spacing out voters, with both early in-person voting and postal voting greatly increasing in 2020 (see Figure 1). For the first time in US history, most votes for president were cast before election day.

States followed a variety of paths in spacing out voters. This is illustrated using a ternary plot that shows the distribution of votes cast on election day at traditional polling locations, early in-person, and by mail (see Figure 2). States at the top of the ternary graph had all their votes cast on election day; those at the lower left corner all voted by mail; and those at the lower right corner all voted in-person early. In 2016, a dozen states saw nearly all their votes cast on election day, three saw all (or nearly all) ballots cast by mail, and the remaining states utilized some mix of Election Day ballots augmented either by mail or early voting as a supplemental channel. In contrast, no states are at the top of the 2020 graph. Most shifted in a south-westerly direction compared to 2016, indicating greater reliance on postal voting. However, a handful of states—all conservative Southern states with state legislators resistant to allowing many accommodations to the pandemic—predominantly relied on in-person voting before election day as the ‘escape valve’ for Covid concerns.

### Postal voting

In the US context, postal voting encompasses voting methods known as ‘vote-by-mail’ and ‘absentee’, as well as those cast by military and overseas voters. Postal voting has been steadily growing as a voting channel in the USA for two

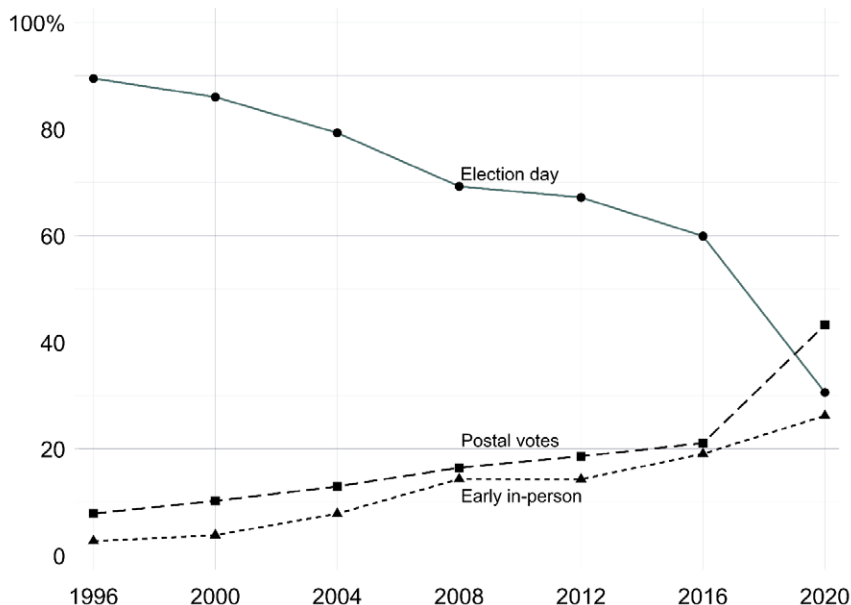
decades. As all states already offered some form of postal voting, scaling up this channel was an obvious choice in seeking to meet pandemic needs.

Before the Covid-19 pandemic arrived, five US states were already prepared to hold 'vote-by-mail' elections, where all registered voters were sent a voting pack and there were limited traditional in-person polling locations. (Three states—Colorado, Oregon and Washington—had already held all-postal elections for several years. Hawaii and Utah were already preparing to do so for the first time when the pandemic hit.) In 2020, four additional states and the District of Columbia also sent voting packs to all registered voters as a once-off expedient. Other states maintained their usual systems of application-based postal voting; some states required an 'excuse' to be provided to vote by post; 10 states amended their rules so as to make Covid-19 and related issues an acceptable reason to vote by mail (NCSL 2020b). In the end, all but five states made some form of accommodation to facilitate postal voting in 2020. The consequence of this was to create a massive increase in postal voting rates in 2020, to over 40 per cent of votes cast, more than 69 million in all (see Table 1).

The expansion of postal voting opportunities was not without its problems, as can be expected with such a large increase in numbers. Problems were experienced by electoral administrators with the issue of postal voting packs (see Villeneuve and Matthews 2020). Postal votes also require a significant

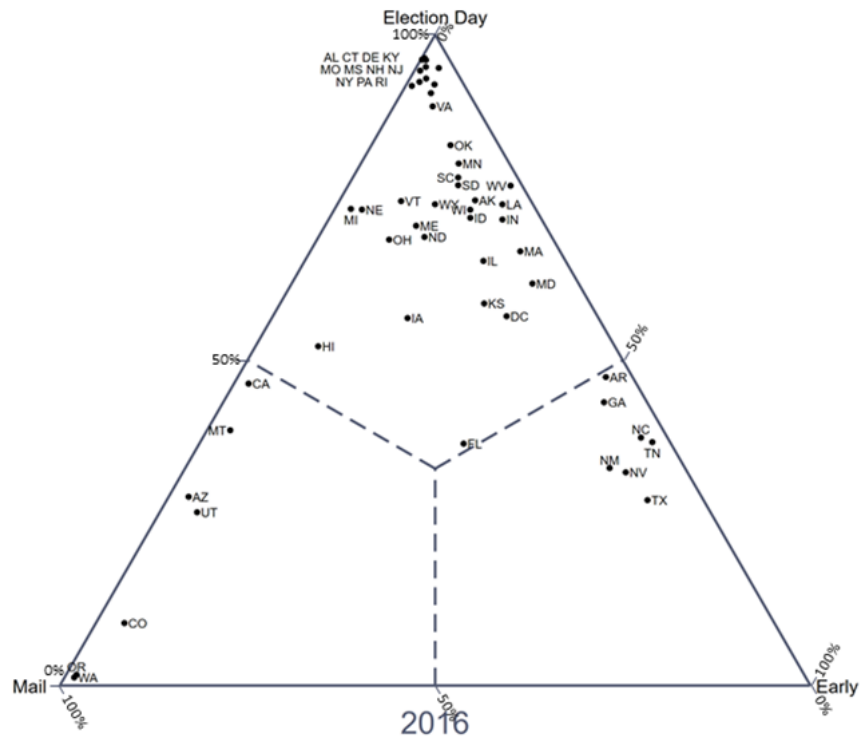
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**Figure 1. Methods of casting ballots in presidential elections, 1996–2020**



Source: Current Population Survey, Voting and Registration Supplement (US Census Bureau), various years.

**Figure 2. Distribution of voting channels by state in 2016 and 2020, by state**



Source: Data from Current Population Survey, Voting and Registration Supplement (US Census Bureau), 2016 and 2020.

**Table 1. Postal voting at recent US presidential elections**

	Postal voters (millions)	Total voters (millions)	% of voters who voted by post
<b>2012</b>	24.2	130.3	18.6
<b>2016</b>	29.2	138.9	21.1
<b>2020</b>	69.1	159.7	43.2

Source: Data from United States Elections Project <www.electproject.org> and Current Population Survey, Voting and Registration Supplement (US Census Bureau), various years.

amount of processing upon return before the ballot papers contained within can be counted.

Depending on the state, electoral administrators may have had to check that declarations are completed correctly, look at post marks on return envelopes, ensure ballot papers are contained in secrecy envelopes, and match signatures and other identifiers on postal vote declarations with those held on file at electoral offices. This a complex task that caught some administrators out during the primary elections (McKinley 2020) and needed careful management for the general election. In some states, electoral officials had asked for political agreement to allow for pre-processing of at least the declarations before 3 November (Chen and Marley 2020), but it was not always possible to reach a bipartisan consensus on the matter in time.

The task facing electoral officials in certain key states should not be underestimated. Every state saw an increase in postal votes, both as a share of votes cast and in absolute numbers. Some of the biggest increases came in states that drew less media attention (because they leaned decidedly towards one of the two major parties), but there were also so-called 'battleground states' that experienced up to a tenfold increase in the number of postal votes that needed to be processed (see Figure 3). Postal vote processing is a skilled job, which in the USA has several steps and requires the use of various IT applications. Electoral administrators had to increase staff and train vast numbers of people to handle the work volume generated. These staffing operations were especially challenging in light of disease-control protocols in place and space limitations to process the unprecedented volume of mail.

Over the course of 2020, there was repeated commentary—and in some areas, concern—about the ability and willingness of the US Postal Service (USPS) to handle the large increase in postal votes in a timely fashion. The USPS itself issued warnings that it would be unable to meet postal voting deadlines proposed in many states (Cox et al. 2020). The situation was further inflamed due to the appointment of a new Postmaster-General seen as a strong ally of incumbent President Trump. Discussions on funding and operational policies at the USPS became entangled in both Mr Trump's personal campaign against postal voting and wider discussions of government funding in the US Congress (Cochrane and Fuchs 2020). The performance of the USPS was heavily tracked and discussed during the electoral period (see USPS 2020) and became, predictably, the subject of litigation (Broadwater 2020).

In the days immediately after 3 November, additional scrutiny was directed on the USPS's performance, as states waited for returned postal votes to finalize their state electoral result. While concerns about USPS capacity were frequently expressed before the election, statistics released later by the states and the US Election Assistance Commission suggest that the number of ballots delivered too late to be counted was negligible (Fortier and Stewart 2021).

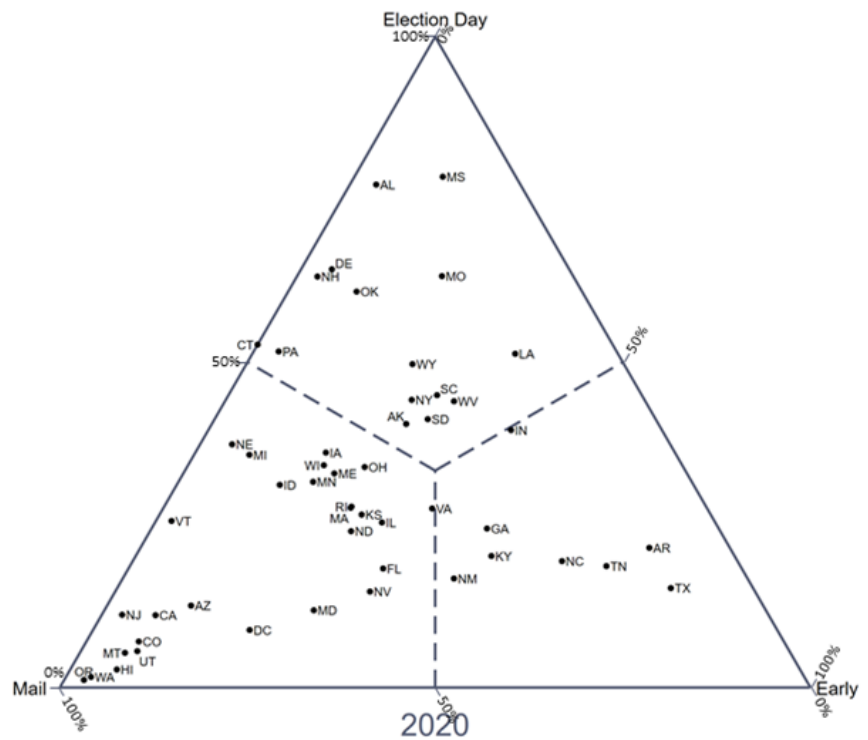
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The expansion of postal voting has had two major impacts on the wider electoral process. The first is the repeated assertions (Rutenberg 2020) by Mr Trump and some of his supporters that postal voting is inherently 'bad' and subject to massive manipulation, assertions made with no evidence and at the same time as his own Republican Party expended considerable effort in encouraging voters to vote by post (Saul 2020). However, the prominence given to Mr Trump's comments may have caused some planned postal voters to switch their voting channel where possible. The use of postal voting certainly declined in the November general election compared to the primaries. Evidence of Mr Trump's influence over the propriety of voting by mail is found in the fact that Democrats used postal ballots at twice the rate (60 per cent of ballots cast) of Republicans (32 per cent), by far the largest partisan gap in the use of postal ballots ever seen in US elections (Stewart 2021: 9).

The second impact is that the administrative requirements of postal voting meant that not all ballot papers would be available for counting on 3

**Figure 3. Growth in postal votes compared to 2016, selected states**



Source: Data from United States Elections Project <[www.electproject.org](http://www.electproject.org)> and Current Population Survey, Voting and Registration Supplement (US Census Bureau), 2016 and 2020.

November itself. The calendar of when electoral administrators can open and undertake the preliminary processing of returned postal voting packs varied greatly across the states. In some, processing could only start soon before 3 November, while others were able to process them as they returned (well visualized graphically in Corasaniti and Lu 2020). Efforts to expand the processing period were, again, the subject of highly politicized debate (Kroll 2020).

Pennsylvania, a state that proved to be of great import to the outcome of the presidential election, was able begin processing the return postal votes only from 3 November itself; with 2.5 million returned before that day, this would obviously take some time. Other states such as Florida were confident of having nearly all returned postal votes ready to count when the in-person polls closed, as indeed was the case, with Florida's postal vote tallies being announced on 3 November. This patchwork of arrangements opened the way for commentary and concern to arise about the inclusion of so-called 'late votes' when in fact these are votes that were completed and returned by voters in accordance with state rules—such comments were a feature of Mr Trump's tweets.

With the rise in postal voting over recent years, electoral administrators developed a secondary return method for completed postal voting packs, namely ballot drop boxes. These boxes originally provided a free-of-charge delivery method for voters in states where the voter must pay the return postage on a postal vote, which was the case in 33 states (NCSL 2020d). As the offer of postal voting was expanded to meet Covid-safe demand in 2020, so too were drop box locations. Some areas also offered 'drive through' drop-off services, where voters could hand their completed postal voting pack to an official in a Covid-safe fashion.

There was more discussion of drop boxes in 2020 than another alternative method, which was to use an agent to return the completed postal vote on behalf of the voter. The agent could return the completed postal vote by either posting it, putting it in a drop box, or returning it directly to an electoral office. While usage of agents is a settled part of postal voting provision, usually designed for home-bound voters who cannot physically access a post box or drop box themselves, it can lead to accusations of 'ballot harvesting'. Accordingly, such return methods are regulated in state law (NCSL 2020e).

As with many other elements of the 2020 electoral arrangements, postal voting featured heavily in electoral litigation. Challenges were made to states' efforts to expand postal voting eligibility, ease administrative verification requirements and allow for earlier processing of returned postal votes and the expansion of drop box numbers and locations (for an example in Texas, see McCullough 2020). In the Stanford-MIT Covid-Related Election Litigation Tracker, 264 cases relate to postal voting (Stanford-MIT n.d.b). Other challenges were to clearly established deadlines and processes contained in state law. Whatever the merits and motivations of such litigation, it could increase the administrative burden on electoral officials while also raising voters' doubts about the wisdom

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of using their postal voting pack, possibly sending some voters back to in-person voting facilities, undermining the Covid-safe message.

**All but six states offered some amount of in-person early voting, and in 2020 this was another obvious means of spreading out attendance at a polling location over a number of days to decrease crowds and queueing.**

#### **In-person early voting**

Similar challenges as were raised against expansion of postal voting were made against efforts to increase the availability of in-person voting prior to 3 November (in-person early voting). All but six states (NCSL 2020f) offered some amount of in-person early voting, and in 2020 this was another obvious means of spreading out attendance at a polling location over a number of days to decrease crowds and queueing. This channel proved popular, with 26 per cent of voters reporting having used it (see Table 2), albeit the number of days provided for early voting varied widely from state to state.

The increase in early-voting usage was not as marked as that of postal voting, which makes sense during a pandemic when many voters wished to minimize social contact. Early in-person voting had in any case already been established as the preferred method of providing pre-election convenience to voters in some conservative states, such as Tennessee and Texas. The same political forces that had made legislatures in these states reluctant to loosen restrictions on postal voting in the past, now worked to limit postal voting during the pandemic. Almost by default, this led to increased use of in-person early voting.

**Table 2. Early in-person voting at recent US presidential elections**

	<b>Early in-person voters (millions)</b>	<b>Total voters (millions)</b>	<b>% of voters who voted early</b>
<b>2012</b>	18.6	130.3	14.3
<b>2016</b>	26.4	138.9	19.0
<b>2020</b>	41.8	159.7	26.2

Source: Data from United States Elections Project <[www.electproject.org](http://www.electproject.org)> and Current Population Survey, Voter and Registration Supplement (US Census Bureau), various years.

**One popular initiative was to use sporting arenas, which were not in normal use due to pandemic restrictions, as early voting locations.**

Most states took what had become standard approaches to making early voting Covid-safe with use of PPE, requiring or encouraging mask wearing, enforcing social distancing, additional sanitizing (especially of voting equipment), use of voters' own pens and so forth (on e.g. approaches in Illinois and California, see Kane County Connects 2020; San Francisco Department of Elections n.d.).

States also innovated in their provision of early voting. One popular initiative was to use sporting arenas, which were not in normal use due to pandemic



restrictions, as early voting locations. Such venues had much to recommend them: they were well known, large enough to allow social distancing, and had car parking and public transportation facilities (Parks 2020). The novelty value of the location was also thought to be attractive to less-regular voters. Finally, the publicity value of offering arenas for voting without charge provided a public relations boost for the sponsoring organizations.

Some electoral administrators also expanded days and times of early voting, such as the well-publicized 24-hour early voting centres in Houston, Texas (Hensley-Clancy 2020a). Such efforts married the traditional aims of early in-person voting (giving alternative times and places for those who cannot get to a traditional polling location) with the pandemic-mandated need to space voters out.

While there are many positive reports of early voting centres, some electoral administrators experienced problems in managing the volume of early voters (Jacobs 2020), though this may have been due to existing capacity and resourcing issues.

Average wait times to vote—the most direct measure of capacity sufficiency—ballooned during early voting in 2020 as compared to 2016. The average wait time to vote early in 2020 was 22 minutes, compared to 11 minutes in 2016 (Stewart 2021: 20). The provision of extra and sufficient early voting facilities was not always seamless, as some states remained constrained in the number and amount of early voting that could be offered. Many states did not allow early voting on weekend days, for example (NCSL 2020f). The Healthy Elections Litigation Tracker cites 24 Covid-related court challenges about the provision of early voting (Stanford-MIT n.d.b).

### **Recruiting poll workers and identifying polling places**

Recruiting the legion of temporary staff required to run polling locations was of course common to both early in-person voting and polling on 3 November itself. These temporary staff are called ‘poll workers’ in the USA. At the 2018 general elections, two-thirds of poll workers were over 60 years of age. In 2020, with age a known risk factor for Covid-19, electoral officials were concerned about the pandemic’s potential impact on recruitment, an already difficult task in most electoral jurisdictions (US Election Assistance Commission 2019: 9–10). In the event, poll workers were slightly younger in 2020, although most remained over the age of 50 (Fortier and Stewart 2021).

Efforts to help meet the expected shortage proceeded along multiple paths. Local electoral officials reported an increase in self-motivated volunteers compared to the past. To help meet the expected shortage, the EAC ran a National Poll Worker Recruitment Day, which used social media and provided generic information and guidance for gathering poll workers’ application details. Nonprofit organizations spent millions of dollars in campaigns to encourage volunteering and ran websites that paired up volunteers with local needs. These campaigns appear to have paid off. Most local electoral officials reported that they were at least satisfied with efforts to recruit poll

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**Average wait times to vote—the most direct measure of capacity sufficiency—ballooned during early voting in 2020 as compared to 2016.**

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**In some warmer states, polling was conducted outside to minimize infection risk.**

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**2020 saw the highest turnout rate of its adult population in US history.**

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**This increase fits with a trend noted by International IDEA whereby elections held later in the pandemic experienced increases in voter turnout, often as a result of the provision of alternative voting channels or SVAs.**

workers (Fortier and Stewart 2021, Chapter 4). There were limited reports of poll workers being exposed during polling (Cole 2020), or of polling locations needing to close due to Covid exposure (Powers 2020).

Besides fresh poll workers, in many cases electoral officials needed to find new or additional polling locations (Corasaniti and Wines 2020). Many locations either were unsuitable as they were in, or close to, 'Covid-sensitive' sites such as care facilities for older people, or were too small to allow for physical distancing. Despite localized problems, electoral officials were able to harness broader community efforts to find suitable locations. In some warmer states, polling was conducted outside to minimize infection risk (Fuller 2020). Most states requested voters to wear masks inside the polling location, which prompted the inevitable legal challenges (Izaguirre 2020) and some isolated voting day confrontations (Goodman 2020).

In general, polling on 3 November proceeded well, with limited reports of problems (Gardner, Viebeck and Ye Hee Lee 2020), and none that would be considered of an abnormal scale for such a large election. With 100 million votes already cast early or by post, significant pressure was removed from 3 November polling. There were isolated Covid-related problems—such as the case of hand sanitizer transferring onto paper ballots which then jammed a ballot scanner (Kornfield 2020)—but for an election putting in place new mitigation measures, it appeared the months of planning and debate paid off in a smooth final day of voting.

### **Turnout**

In all, despite the challenges to managing the election and the health risks taken by electoral officials and voters from participating in the process, turnout—which has been steadily increasing in the USA since the 2000 election—reached 67 per cent of the eligible population (see Figure 4). This is the highest rate since the presidential election of 1900. Considering that only men over the age of 21 were eligible to vote in 1900, this means that 2020 saw the highest turnout rate of its adult population in US history.

This increase fits with a trend noted by International IDEA whereby elections held later in the pandemic experienced increases in voter turnout, often as a result of the provision of alternative voting channels or special voting arrangements (International IDEA 2020b). Research into turnout in the USA has yet to establish what role the expansion of voting channels played in increasing turnout compared to other factors, such as political mobilization of a highly polarized electorate.

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## **POLITICIZING THE RESPONSE TO VOTING DURING COVID-19**

One clear feature of the 2020 election was that the electoral administration response to the pandemic was politicized. The federal system of electoral administration provided opportunities for partisanship to intervene in decision-

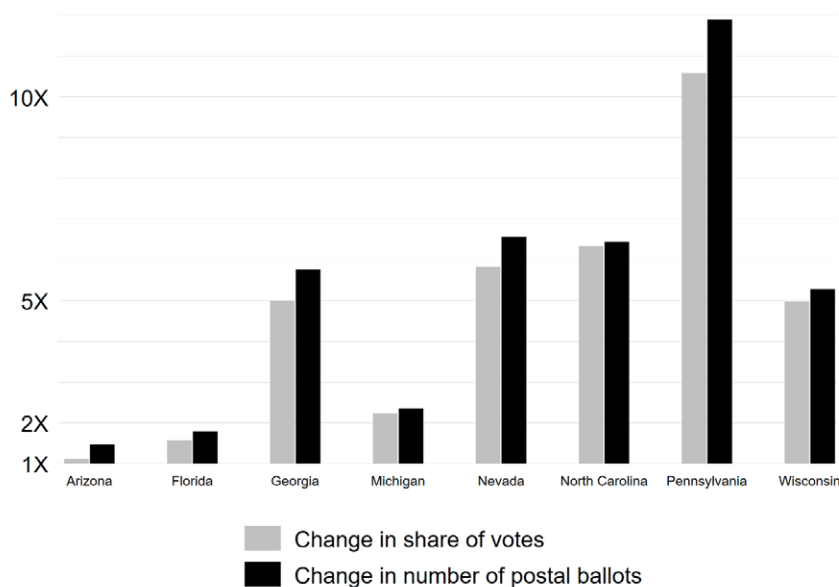
making about how to respond to the special circumstances created by the Covid-19 pandemic, but in different ways in different states. Furthermore, the distributed nature of the judiciary (election-related lawsuits may be filed in both state and federal courts) produced opportunities for inconsistent judicial decisions, depending on geography.

Most consequential for the practical conduct of the election, partisan differences were evident in many states over how best to respond to Covid-19. This was most evident in so-called ‘battleground states’, highly contested states where partisan divisions in the electorate were close and officials from different parties controlled different branches of the state government. In a few battleground states—notably Florida, Georgia and Texas—Republicans held all the key executive positions and controlled state legislatures. In these states, relatively few major administrative or legislative changes were made to voting rules.

When partisan controversy arose in these states (i.e., those under fully Republican control), it generally concerned state officials opposing efforts undertaken by administrators in large, urbanized counties to expand election access beyond what state officials preferred. For instance, Governor Greg Abbott of Texas issued an executive order prohibiting more than one drop box location in a county. Harris County (Houston) wished to have 11 locations; other urbanized counties also wanted multiple drop box locations. Eventually a federal appeals-court panel, consisting entirely of judges appointed by

**One clear feature of the 2020 election was that the electoral administration response to the pandemic was politicized.**

**Figure 4. Voter turnout, 1900–2020**



Source: Data from United States Elections Project <<http://www.electproject.org/>>.

President Trump, ruled in favour of Governor Abbott's restriction on the number of drop boxes (Chappell 2020).

But as mentioned, most battleground states were not controlled by officials from one party, and it was in these states where partisan acrimony was most obviously displayed. Of particular note were the states of Arizona, Michigan, Pennsylvania and Wisconsin, where state authorities were either Democrats or a non-partisan electoral board (as in Wisconsin) but the state legislature was controlled by a large Republican majority. Three of these states saw significant expansion of postal balloting in 2020: Michigan and Pennsylvania, because of previous legislation to liberalize postal balloting that had passed before 2020, and Wisconsin, as a consequence of the spring presidential primary (Simkovitz 2021; Hufford and Maung 2021; Freeman 2021). (Arizona already had a history of postal balloting, owing to its use of a 'permanent early voting list'.)

Partisan divisions in these states hampered cooperation over passing legislation to streamline administrative processes that were threatened due to the pandemic. For instance, bargaining over allowing the pre-processing of postal ballots was characterized by brinkmanship in Michigan until an agreement was reached to give larger jurisdictions a small pre-processing window, whereas the Pennsylvania legislature never reached an agreement to allow pre-processing (Scanlan 2020).

In states such as Arizona, Michigan, Pennsylvania and Wisconsin, where Democrats had effective day-to-day control over electoral procedures in the face of opposition from Republican-majority legislatures, much of the partisan controversy was played out in the courts. When election authorities interpreted election laws more generously than legislative leaders would have preferred, lawsuits ensued that pitted Republican legislators, party leaders and allied groups against electoral officials. On the whole, electoral officials tended to prevail in these lawsuits, particularly in state courts. However, disgruntlement about these more liberalized procedures continued past the election, leading to a slew of post-election lawsuits that we address in the next section.

Overlooked by comparison were actions by several states and the District of Columbia to take a decidedly liberalizing path to expand access to postal balloting. In particular, the heavily Democratic states of California, Nevada, New Jersey and Vermont, along with the District of Columbia, took steps to send postal ballots to all registered voters as a once-off emergency measure. (Vermont later passed a law in 2021 to make this change permanent.) Other than Nevada, none of these states was a contested partisan battleground, which explains why the larger public generally did not take notice of these changes.

Because primary responsibility for electoral administration in the USA is with the states, congressional activity, including partisan disagreements, was limited. The most notable effort to use federal legislation to mandate the expansion of early voting options was the Natural Disaster and Emergency Ballot Act of 2020 (Senate S3529), introduced by US senators Amy Klobuchar

and Ron Wyden and co-sponsored by 36 other Democratic senators. Among other things, this legislation would have mandated 20 days of early voting, no-excuse absentee voting, and the electronic delivery of postal ballots to all voters. As the Senate was controlled by the Republican Party in 2020, the bill died without even receiving a formal hearing.

The most consequential of federal action was the USD 400 million in funding for elections during the Covid-19 pandemic discussed above, which passed the Senate unanimously and the House with only six nay votes. In contrast with other proposed election-related legislation that was highly prescriptive and elicited highly partisan responses, CARES Act funding for electoral assistance was simply provided 'to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 election cycle' (Public Law 116-136).

Taken as a whole, judicial decisions avoided overt partisanship. Still, decisions delivered through the federal courts did come under criticism from the observer team from the Organization for Security and Co-operation in Europe (OSCE) for betraying traditional partisan principles in their decisions (OSCE 2021: 30–31).

Partisan differences were seen in how different courts applied the two major jurisprudential doctrines that frame election litigation in the run-up to elections. On the one hand, the 'Anderson-Burdick' doctrine is a balancing test that weighs state interests against burdens imposed on voters (Mahmud 2020). Lower courts, following what has been termed the 'democracy canon' (Hasen 2009), have tended to side with voters when applying Anderson-Burdick balancing. A separate doctrine is the 'Purcell Principle', which holds that courts should refrain from rulings that change election regulations close to an election, so as to avoid confusion to voters. In the weeks preceding the election, the US Supreme Court tended to minimize Anderson-Burdick balancing and to give greater deference to state interests in limiting (or failing to expand) access to the polls.

The greater deference given to state interests in election litigation opened the US Supreme Court to criticism from those who advocated greater flexibility in administering election laws. At the same time, the stalwart refusal of the judiciary at all levels to follow partisan cues during post-election litigation demonstrates that it is simplistic to characterize judicial decisions about election practices purely in partisan terms.

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## RESISTING THE ELECTION OUTCOME

In light of the challenges that faced electoral administrators and voters during the Covid-19 pandemic, the 2020 election was widely regarded as a success by impartial observers of US electoral administration (Persily and Stewart 2021). Unfortunately, a competing narrative took hold after the election that was

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popular among supporters of Mr Trump and has animated a significant part of the Republican base since, even heading into the mid-term elections of 2022. According to this narrative—often referred to by opponents as the ‘Big Lie’ due to the lack of any evidence to support it, the election was stolen by widespread fraud (Miller and Weiser 2022). This narrative evolved to the point where supporters of Mr Trump, who was clearly defeated in both the popular and electoral vote, engaged in aggressive litigation strategies to get election results overturned in several states. Once those strategies failed, some sections of Mr Trump’s supporters turned to violence to stop the proceedings by which Mr Biden was formally declared winner of the election, while some others provided the attempt with rhetorical cover.

Seeds for rejecting the outcome of the election had already been planted by Mr Trump and his supporters prior to the 2020 election and, indeed, during the previous presidential election cycle. In the 2016 campaign, then-candidate Trump refused to state outright that he would accept the result (Healy and Martin 2016) and later claimed, contrary to evidence, that he would have ‘won the popular vote if you deduct the millions of people who voted illegally’ (Wootson 2016).

Mr Trump’s unwillingness to pre-commit to accepting the 2016 election outcome continued into the 2020 election campaign. For instance, in a late-summer speech in Wisconsin, he stated that ‘the only way we’re going to lose this election is if the election is rigged’ (Chalfant 2020). In statements before the election, Mr Trump and his supporters often made clear that they believed postal ballots would be the major channel through which the election would be rigged (Kiely and Rieder 2020).

Once ballots began to be counted on 3 November, the unfolding tally made it clear that the identity of the winner would be slow to emerge; recounts and other election challenges under established electoral laws were likely.

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The US news networks have a decades-long tradition of projecting winners in presidential contests based on incomplete and unofficial election results (Pettigrew and Stewart 2020; Curiel, Stewart, and Williams 2021a, 2021b). By the morning following election day 2020, the status of election results released at that point indicated that neither candidate had accumulated enough electoral votes in the states that had been ‘called’ to identify the winner. Eight states remained uncalled by any of the major national news sources—Alaska, Georgia, Maine, Michigan, Nevada, North Carolina, Pennsylvania and Wisconsin. (The number goes up to nine if one counts Arizona, which was called in favour of Mr Biden early on election night by Fox News, but which other outlets waited until the next day to call.)

Once vote-counting restarted on Wednesday morning after an overnight hiatus, Arizona, Maine, Michigan and Wisconsin were projected to give victories to Biden, but this still left him six votes short of achieving the 270 Electoral College votes needed for victory. Pennsylvania was finally declared in favour of Mr Biden around noon on Saturday, 7 November, which put him over the top.

The state of Georgia continued to be undeclared until 19 November, but by then its electoral votes were no longer decisive to the result.

The pattern by which ballots were counted and reported proved an important factor in the pro-Trump narrative that developed after election day. However, experts in the field of electoral administration and journalists who cover elections have long known that ballots are not counted in local US jurisdictions all at once. Larger jurisdictions take longer to complete their vote count than smaller ones. States that allow postal ballots to arrive after election day (although postmarked by election day) will see ballot tallies evolve as those ballots are counted in the days following the election.

Because larger, slower-counting jurisdictions mostly support Democratic candidates and smaller, faster-counting jurisdictions mostly support Republicans, election returns tend to exhibit non-random trends with respect to partisanship. This has led to a pattern termed the ‘blue shift’, wherein early returns are favourable to Republicans, but trend in a pro-Democratic direction as all the ballots are counted. (It is termed the ‘blue shift’ because of the practice in the USA of associating the Democratic and Republican parties with the colours blue and red, respectively. Therefore, vote tallies tend to become ‘bluer’ in the days following the election.) This pattern had already been established in scholarly research prior to 2020 (Foley 2013; Foley and Stewart 2020). Using scraped media reports in 2020 starting within minutes of poll closures, it was possible to show how this pattern worked in the 2020 election in granular detail (Curiel, Stewart, and Williams 2021a, 2021b).

### Explaining the count: Georgia

The case of Georgia provides a glimpse into the patterns that were common across the states. Figure 5 illustrates how the blue shift emerged in Georgia, which ended up being the state that Joe Biden won by the smallest vote margin in percentage terms (0.24 per cent).

Figure 5 uses the vote reports from the state’s election department to illustrate the two-party vote share between Joe Biden and Donald Trump each hour after the polls had closed (top half of graph) and how many votes had been counted and reported each hour (bottom half). The overall totals are reported, as are the totals for each voting channel used in Georgia: in-person on election day, early in-person, and mail. To help highlight the early period when the vote totals changed the fastest, the x-axis has been transformed by taking logarithms.

The upper portion of Figure 5 shows that in the very first hour after polls closed at 19:00, Biden and Trump were virtually tied among the half-million votes that had been reported at that point. (Georgia would eventually count almost exactly 5 million ballots.) However, in the second hour, Mr Trump took a large lead of 58 per cent to Mr Biden’s 42 per cent. From that point forward, Mr Biden’s vote-share gradually grew until he overtook Trump at the 58-hour mark, never to fall behind again.

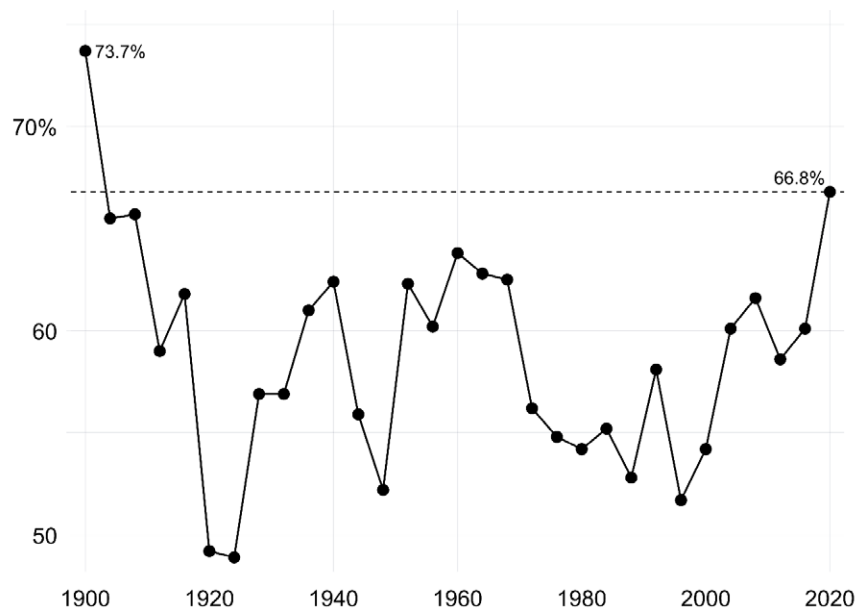
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Breaking the reported vote into its three major channels, we see that Mr Biden received a fairly constant share of the mail ballots throughout the count, at 65 per cent. In contrast, the early-reported in-person votes were heavily weighted toward Mr Trump, but became less so as the hours progressed. For instance, at the second hour after the polls closed, Mr Biden had received only 33 per cent of the reported early in-person vote and 25 per cent of the reported election day vote. By the time all the ballots had been counted, Mr Biden received 47 per cent of the early in-person vote and 38 per cent of the election day vote. These patterns reflect the fact that absentee ballots were counted no quicker in heavily Democratic areas of the state than in Republican areas, whereas votes cast in-person (both early and on election day) were counted more quickly in Republican areas than in Democratic areas.

The lower portion of Figure 5 shows that in the first hour after polls closed, it was the postal votes that dominated the vote count, not the in-person vote. This explains Mr Biden's relatively strong performance in the first hour vote reports. After the first hour of vote-counting, the newly reported votes primarily came from ballots cast in-person. Although these in-person votes were more pro-Trump than the postal ballots overall, they were also increasingly pro-Biden as time went on. That is because the in-person votes reported in the earliest hours tended to be in the rural, highly Republican parts of the state, while votes reported later tended to come from the cities and surrounding suburbs, which were predominantly Democrat.

**Figure 5. Timing of votes reported in Georgia, by hour**



Source: Georgia Secretary of State election night reporting system, gathered by the MIT Election Data and Science Lab.



### The count and public perception

The temporal pattern by which votes were reported in Georgia was not the only one observed in 2020, but certain dynamics observed in Georgia were common in most states. The first is that immediately upon the close of polls, Mr Biden often surged to a quick lead in states that allowed the pre-processing of postal ballots, because mail ballots in even small, rural counties were heavily Democrat. However, that apparent lead quickly disappeared because the in-person votes from smaller, rural areas began to be reported in the second hour, eliminating the initial Biden advantage. Finally, with the most rural and most conservative parts of the state finished with all their counting early in the evening, counting in larger, more liberal urban areas continued. This period, which started at the two-hour mark and continued until all the ballots were counted, was the most visible to the public that had settled in to watch election returns, and became the focus of those who wished to explain the pattern in terms of fraud.

Press accounts and political commentary before the election had already alerted the public to how the blue shift was likely to be exacerbated in 2020, both because of the surge in postal voting and because Democrats were anticipated to use this channel at a much greater rate than Republicans (Prokop 2020). Reporting before election day recounted how Mr Trump thought it 'terrible that we can't know the results of an election the night of the election' (Riccardi 2020) and was planning to declare victory prematurely on election night before all the ballots had been counted (Swan 2020). In the early hours of Wednesday morning, Mr Trump held a press conference where he declared that he had won the election, but that the ongoing vote count in states such as Georgia and Pennsylvania were 'a major fraud on our nation' (Rucker, Olorunnipa and Linskey 2020). On the day after election day, Mr Trump's campaign and political groups allied with the campaign went to court in at least four states—Georgia, Michigan, Nevada and Pennsylvania—to stop the counting of ballots, to no avail (Sherman 2020).

The pattern of the tallies became the basis on which Mr Trump and his supporters would charge that illegal post-election 'ballot dumps' in states such as Georgia, Michigan and Pennsylvania diluted legitimate ballots for Mr Trump, thus denying him victory. However, this was not the only basis on which the Trump campaign claimed that electoral administration irregularities amounted to widespread fraud and so rejected defeats in the various battleground states. The litigation tracker of the Stanford-MIT Healthy Elections Project records 129 cases filed after election day, 80 in state courts and 49 in federal courts. Almost all of these were filed by Trump-allied parties, including his campaign. All Trump-affiliated lawsuits were eventually dismissed (Cummings, Garrison and Sergent 2021; Rutenberg, Corasaniti and Feuer 2020).

### Post-electoral disputes

The Trump-affiliated lawsuits charged numerous irregularities beyond ballot dumps. The most visible were those claiming that state decisions to adapt voting procedures to the exigencies of the pandemic were unconstitutional under a legal theory known as 'independent state legislature doctrine'. This

doctrine states that ‘a state legislature’s power to regulate federal elections does not arise from its state constitution (like most of the legislature’s other power) but rather from an independent grant of authority directly from the U.S. Constitution’ (Morley 2021: 502–503). One extreme version of this doctrine holds that state and local election officials have no discretion whatsoever in implementing state election laws applied to federal elections, even in the face of emergencies, and even if state laws generally grant discretion to these officials. The doctrine further holds that governors rightfully play no role in the passage of these laws and state courts have no authority to interpret them under this doctrine. All authority starts and stops with state legislatures.

The most high-profile federal court case that was brought to overturn the results of the presidential election, *Texas v. Pennsylvania* (Supreme Court 2020), relied on an appeal to the independent state legislature doctrine. This lawsuit, which was filed by the attorney general of Texas and joined by 17 state attorneys general (Williams 2020) and 126 Republican members of Congress (Diaz 2020), argued that government officials in the states of Georgia, Michigan, Pennsylvania and Wisconsin loosened regulations governing the use of postal ballots under the cover of responding to the Covid-19 pandemic, thereby ‘weakening ballot integrity’ and ‘flooding’ those states with illegitimate postal ballots (Howe 2020a).

The Supreme Court’s dismissal of *Texas v. Pennsylvania* four days after it had been filed (Howe 2020b) would normally have settled the issue, at least as far as mainstream law and politics are concerned. Members of the Electoral College met in their respective state capitals on 14 December and formally cast their ballots for president. Certificates of Vote from those meetings were forwarded, as is provided for under US law, to the Archivist of the United States and Vice President, in his role as President of the US Senate. Those certificates were then made ready for counting and official certification by the US Congress meeting in joint session on 6 January 2021.

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**Most troubling was the growing movement to disrupt the formal counting of electoral votes on 6 January, which led to the riot and invasion of the US Capitol building as the counting of electoral votes proceeded.**

Of course, the normal course of mainstream law and politics did not flow from the Supreme Court’s dismissal of *Texas v. Pennsylvania*. Lawsuits challenging the election continued to be filed—32 cases in all, according to the Stanford-MIT Election Litigation Tracker. During 6 January proceedings, formal objections were lodged against the slates of electors from Arizona and Pennsylvania. When roll call votes were finally taken on these challenges, 147 Republican members of Congress (8 senators and 139 representatives) supported objections to the legality of the electoral votes from either Arizona, Pennsylvania, or both (Yourish, Buchanan and Lu 2021).

Most troubling was the growing movement to disrupt the formal counting of electoral votes on 6 January, which led to the riot and invasion of the US Capitol building as the counting of electoral votes proceeded. That invasion led to a pause in the counting as members of Congress were evacuated and the rioting put down, but not before five individuals lost their lives (Healy 2021). Congressional leaders of both parties believed it important for the counting to resume as soon as possible, which led to Joe Biden being declared elected

to the presidency by Vice President Mike Pence at 3:32 following an all-night session (Bella 2021). Shortly thereafter, Mr Trump announced that there would be an orderly transition of power (McGraw and Kumar 2021), despite having stated the day before that he would 'never concede' the presidency (Reuters 2021).

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## SYSTEM VULNERABILITIES—AND RESILIENCE

The events leading up to and including the riot continue to be under investigation by grand juries, Congress and journalists. The riot itself and its aftermath are beyond the scope of this case study, except to the degree that the episode reveals weaknesses in the US system of electoral administration and, perhaps surprisingly, some strengths.

Undoubtedly, the reaction to the 2020 election outcome reflects the deep partisan divisions in the USA and the willingness of Republican political leaders to use the anger that motivates those divisions to arouse their followers to action. A well-designed system of electoral administration should be resilient in the face of such sharp divisions.

The parts of the US system of electoral administration that held the firmest were those that can be termed the 'fact-based' part of that system: the portion that is constrained by clear rules of process and evidence. This starts with local election officials, who are bound by myriad rules regarding the acceptance of ballots, the safekeeping of those ballots, the reconciliation of inconsistencies, and the ultimate certification of the results. It was on the basis of adherence to these procedures that state election officials, including Republican officials, defended the integrity of the outcomes in the face of fierce opposition from those who insisted that Donald Trump was fraudulently denied re-election.

Lawsuits brought to overturn election results in pivotal states made no progress in impeaching the procedures used by local election officials to ascertain the correct vote totals in their jurisdictions. At most, these lawsuits brought 'penny-ante' complaints that would not have mattered to the outcome even if they were true (Millhiser 2020). Federal judge Timothy Batten, a Georgia jurist who had been appointed by President George W. Bush, wrote that the lawsuit sought 'perhaps the most extraordinary relief ever sought in any federal court in connection with an election' (Long and White 2020). In upholding the decision of a Trump-appointed federal judge challenging Pennsylvania's election, a panel of appellate judges (all appointed by Republican presidents), called the demand that the state results not be certified 'breathtaking' (Long and White 2020).

The resilience of the fact-based part of the electoral administration system extended to the final certification of the electoral vote in the early hours of 7 January 2021. Despite strong pressure from Mr Trump and death threats

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from the crowd while it had attempted to invade the Capitol, Mike Pence in his constitutional role as president of the US Senate eventually followed the prescribed script laid down by federal law, congressional resolution, and the Senate parliamentarian, declaring Biden the victor (Woodward and Costa 2021).

In arguing that the formal, fact-based part of electoral administration held firm in the face of intense political pressures, we do not overlook the intense pressure placed on electoral officials at every level, some of which tested the ability of the system to hold together. For instance, the Wayne County, Michigan (Detroit) Board of Canvassers, which is composed of two Republicans and two Democrats, initially deadlocked over whether to certify the county's election results. This was despite finding no irregularities that would provide a reason to withhold certification (Ruble and Hamburger 2020).

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**What remains to be seen is whether fragmentation and partisanship will play more active roles in undermining the integrity of US elections in the future.**

Two criticisms that are commonly levelled against the system of electoral administration in the USA are the fragmented nature of responsibility for administering elections and the fact that electoral officials often achieve their positions through partisan processes. Although they seemingly played roles in stoking the post-election controversy that led to the 6 January Capitol riot, it is hard to argue that absent these factors, the ardour that motivated rejection of the election would have been any less. Indeed, it could be argued that in the event, the partisan credentials of Republican secretaries of state who declared that elections in their states were free of widespread fraud created a firebreak against baseless allegations of fraud spreading any further (Corasaniti, Epstein and Rutenberg 2020).

What remains to be seen is whether fragmentation and partisanship will play more active roles in undermining the integrity of US elections in the future. The election-rejection movement within the Republican Party spawned an effort to replace Republican electoral administration officials with pro-Trump activists (Homans 2021; Gardner, Brown and Dawsey 2021). Should this effort succeed in electoral officials implementing election laws in an avowedly partisan fashion, then at best the legal system will be beset with a rise in lawsuits ordering electoral officials to follow the law; at worst, the impartiality of electoral administration in certain states could be ruined.

Furthermore, the major role that fragmentation played in post-3 November developments was that there were more opportunities for supporters of Mr Trump to file frivolous lawsuits or to threaten to withhold certification of legally counted ballots. Looking forward to the 2022 and 2024 federal elections, it remains to be seen if activists will take advantage of this fragmentation to place even more roadblocks in the way of reaching closure to elections.

One of the reasons the legal system was so successful in beating back the myriad frivolous attacks on the outcome of the 2020 election is that election law runs along a set of well-worn paths in state and federal courts, with one exception. That exception pertains to the Electoral Count Act (ECA) of 1877, which is the federal law that lays out the procedures for counting electoral

votes. The ECA is widely regarded by election law experts as incoherent (Alexander and Sheldon 2021; Hasen 2021). It was under the ECA that a single US senator or member of the House could file a frivolous objection to a state's electoral votes. The ECA is rarely litigated in the courts; it last made an appearance in the controversy over the 2000 recount in Florida. Unless the ECA is clarified and reasons for rejecting electoral votes narrowed (or even specified), the door will be wide open in the future for a repeat of the events of 6 January in the halls of the US Congress.

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## LESSONS LEARNED

It is astonishing that a year after the 2020 election was held and Joe Biden won a comfortable victory at the ballot box, legal efforts to challenge the results were still proceeding (Gardner, Brown and Dawsey 2021). As much as election deniers would like to make the case that the outcome should be doubted because of irregularities, no credible evidence has emerged to support this contention. Quite the contrary.

The persistence of election denial efforts should not be considered an indictment of US electoral administration. Instead, these efforts can be understood as a stage on which far-right elements in American politics—which have made their way into the Republican party (Gardner and Arnsdorf)—dramatize the narrative about how the USA is being stolen from 'true' Americans—white, Christian and native born (Gjelten 2021). While there is danger that these movements may undermine free and fair elections in the short term, a bigger danger is that they will have a corrosive effect on support for liberal democratic institutions in the USA in general, not just electoral administration (Edsall 2021).

The dominance in the news of persistent efforts to undermine democratic legitimacy and the understandable wish to protect electoral officials from personal threats of violence has muted the degree to which the mainstream electoral policy community has been able to assess lessons learned from the 2020 election. The EAC has sponsored efforts to focus on administrative developments that should lead to learning, including a series of video interviews with state and local election officials (US Election Assistance Commission 2021b), a report on the effect of Covid-related changes on voters with disabilities (Schur and Kruse 2021), and a comprehensive report taking on issues ranging from voter registration to election finance (Fortier and Stewart 2021).

The increase in the take-up of early voting and postal voting will have a long-term effect on US elections. How extensive and persistent that effect will be is unlikely to be known for several federal election cycles. This is due to a combination of factors related to both what states offer to voters as officials attempt to return to 'normal' electoral administration, and how voters respond as they acclimatize to the presence of Covid-19 in their everyday

lives. Although the majority of mail-ballot voters reported in surveys that they intended to vote by mail in the future, the small number of statewide elections held in 2021 saw a marked reduction in the fraction of voters using postal ballots, compared to 2020. For instance, 9 per cent of voters in the November 2021 gubernatorial election in the state of Virginia cast postal ballots, compared to 23 per cent in the November 2020 presidential election.

The coincidence of the pandemic with the presidential election calendar revealed that state laws related to emergency election procedures are often inadequate in the face of a disruption as comprehensive as Covid-19. The National Conference of State Legislatures notes that '[at] least 45 states have statutes that deal with Election Day emergencies in some way, though there is little consistency between state on what events would be covered and exactly what plans will be followed in each emergency' (NCSL 2020c). Because it is possible, even likely, that comprehensive emergencies like the Covid-19 pandemic will continue to arise, it is important for states to develop clear election emergency statutes and that these be developed on a non-partisan basis.

A related issue to examine is the funding mechanism for federal elections. This has been the subject of debate for many years. While there was hope that the experience with the federal CARES Act during the 2020 electoral cycle would provide a template for future federal involvement, no movement was discernible in this direction during the first session of Congress that convened after the 2020 election. One clear lesson learned from 2020 is that if federal funding is to become regularized, political support will only be present if it is provided with few restrictions related to election policy itself.

Some lessons appear to have been learned during the 2020 electoral cycle itself, with the media reporting more accurately on election night (and the days following) about the projected nature of their data, the progress of actual counts and the impact of postal voting processing on electoral result timing. Relations between election officials and the media are often antagonistic in the reporting of results, with news outlets pushing for faster reports and officials concerned that reports of informal vote counts will be interpreted by the public as official results. Yet, 2020 demonstrated the importance of cooperation between election officials and the national mainstream media, both of which have interests in controlling the spread of misinformation and disinformation related to election results.

Finally, while electoral administrators are no strangers to strong partisan feelings among participants in the electoral process, 2020's was an electoral cycle that broke with long-established US political norms. The willingness of partisan participants—notably, top federal and state elected officials—to spread disinformation on the basics of the electoral process, to allege large-scale manipulation before any votes had been cast, and to continually misinform the public on the lawful nature of electoral officials' actions, will have long-term repercussions. That this all occurred while electoral officials were struggling to deliver safe elections in the midst of a pandemic is all the more concerning.

Confidence in elections and electoral processes is a vital element of a functioning democracy; it takes time to build, but is quick to be lost.

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### Further reading

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**For historical trends in electoral administration see:**

Foley, E., *Ballot Battles: The History of Disputed Elections in the United States* (New York: Oxford University Press, 2016)

Kousser, J. M., *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974)

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This case study is part of a collaborative project between the Electoral Integrity Project, Electoral Management Network and International IDEA, edited by Toby S. James (University of East Anglia), Alistair Clark (Newcastle University) and Erik Asplund (International IDEA).

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