



New Models for Keeping Partisans out of Election Administration

Summary Version

In at least six swing states, elections in 2022 for secretary of state will feature well-funded “stop-the-steal” candidates, who if elected, will be responsible for overseeing the administration of elections and appear prepared to overturn unfavorable election results to help their side win. Similar threats are emerging at the local level, where most of the core election functions of registering voters, administering polling stations, and tabulating results take place.

These scenarios underscore the need to address a unique vulnerability of U.S. election administration: the lack of safeguards against party or candidate loyalists holding key election administration positions.

Most senior U.S. election officials are party representatives who come to their posts through partisan processes. While the vast majority of these officials rise above party politics and render impartial service, high-profile exceptions illustrate the risk partisan senior election officials pose to voter trust and the sanctity of election results.

By contrast, constitutionally independent bodies run elections in 73 countries. The U.S. is the only country in the world that relies on partisan elections to select its election officials, and one of very few to allow high-ranking party members to lead state election administration.

While partisan election administration is a long-standing feature of U.S. elections, our history also includes innovations in other areas that offer potential models for election reform. In two important areas—the appointment of judges and the drawing of district boundaries—the U.S. has successful, relevant models for how to appoint independent, impartial individuals to politically important positions. Specifically, judicial nominating commissions, which assist in the appointment process for state judges, and independent redistricting commissions, which determine state legislative and congressional district boundaries, can provide models for new approaches to how election officials are selected and operate.

Judicial Nominating Commissions (JNCs) and Independent Redistricting Commissions

Twenty-three states and the District of Columbia appoint supreme court justices and some lower court judges with guidance from a **judicial nominating commission**, and another 10 states use these commissions in some manner. Judicial nominating commissions receive applications, interview candidates, and produce a short list of approved nominees. In the best versions of this system, the governor can only appoint a judge from this list and must do so within a given period; otherwise, the commission names the judge.

The gold standard for JNCs, recommended by advocacy organizations such as the Brennan Center for Justice, precludes control of a majority of commission positions by either one person, such as the governor, or by one political party. A common model includes three members named by the governor, three by the state bar association, with the chief justice serving as the seventh.

In contrast, in states where judges are elected, there has been an increase in fundraising for judicial elections, often concentrated among entities with a direct interest in decisions before the courts. A 2001 survey found that nearly half of state court judges agreed that campaign contributions had at least some impact on judicial decisions.

Redistricting commissions outside of the legislature play a role in state legislative redistricting in 16 states and congressional redistricting in 10. The most important of these bodies are the four independent citizens commissions in Arizona, California, Colorado, and Michigan, each led by diverse groups of citizens who determine district boundaries completely independently from the state legislatures. Key attributes of these commissions include detailed criteria to guide their mapmaking, guidelines for transparency and conflicts of interest, and a mechanism for review or appeal to the state supreme court.

The superiority of independent to legislative redistricting is well summarized by Nicholas Stephanopoulos, a leading election law scholar: *"[Independent redistricting] is far more popular worldwide than any other approach (and still growing in popularity). ... It prevents district plans from being devised with the intent to harm a particular party. And the plans that it generates are in fact less biased, more responsive, and perhaps more competitive than those fashioned by political actors."*



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Applying These Models to State Election Administration

Summarized below are seven key attributes of these commission types that can provide model approaches for reforms to state election administration:

1. Appointment processes prevent control by one or both political parties, while providing meaningful input from them.
2. Appointment processes involve relevant stakeholders such as civil society organizations, professional associations, political independents, and third parties.
3. Commission membership guidelines prevent or limit member conflict of interest.
4. Explicit criteria help guide the work and output of the commissions.
5. Commissions are required to work transparently.
6. Commission processes include mechanisms for review by, or appeal to, branches of state government.
7. Commissions have constitutional status, providing protection for their functions and composition.

Recommendations for reform:

- ★ States should make the state chief election official position nonpartisan.
- ★ States should consider establishing broadly representative “election official nominating commissions” to select nonpartisan chief election officials and other positions.
- ★ As an alternative to nominating commissions, nonpartisan elections for chief election officials should be established carefully.
- ★ State election boards should be redesigned to reduce control by party-affiliated members, leveraging lessons from independent redistricting commissions.
- ★ Reforms should strengthen the authority of state election officials and establish their roles in state constitutions.
- ★ At the local level, states should consider a nominating commission role for some local election positions and should carefully increase the use of nonpartisan elections.

The full report includes a proposed structure for an election official nomination commission and for revising state election boards. The proposal incorporates representation of election officials, political parties, civil society organizations, and other stakeholders. The report was written by Kevin Johnson and published by The Carter Center and Election Reformers Network. It is available [here](#).

