

Roadmap to a Free and Fair 2020 General Election

The 2020 general election may be among the most challenging in modern history. From conducting an election during a public health crisis, to understanding the Electoral College and the process by which Congress counts electoral votes—and all the problems that could arise along the way—the American public needs to understand how the election is supposed to work and the particular causes for concern this year. We all have a critically important role to play in mitigating potential crises and maximizing confidence in the outcome of the election.

The National Task Force on Election Crises is a diverse, cross-partisan group of more than 50 experts in election law, election administration, national security, cybersecurity, voting rights, civil rights, technology, media, public health, and emergency response. We offer this brief roadmap to help identify points of particular concern, along with recommendations and resources for ensuring a free and fair general election.

CONDUCTING THE ELECTION DURING A PANDEMIC

During the 2020 primary season, states experienced a range of challenges conducting elections due to the coronavirus pandemic and widespread civil unrest. In August, the Task Force published a report, [*Lessons Learned from the Primary Elections: Recommendations for Avoiding a Crisis in November*](#), that analyzes what worked well and what did not during the primaries and provides recommendations for the general election. The Task Force's **recommendations for election officials** fall into several categories:

- ✓ Preparing to conduct wide-scale voting by mail, including by making it easier for voters to request and return absentee ballots, and increasing election officials' time and capacity to process and count ballots.
- ✓ Maximizing early voting options, and encouraging voters to vote early whenever possible, whether in-person or by absentee ballot.
- ✓ Making in-person voting on Election Day as safe and accessible as possible.
- ✓ Ensuring proactive and transparent communication with voters and the general public, including educating voters about their rights and obligations.

Importantly, although November is drawing closer, many states are still preparing and the rules that will apply to the general election are still being determined. Notably, there have been hundreds of lawsuits filed around the country that specifically address the conduct of elections during the coronavirus pandemic, many of which are still ongoing. We all need to make sure that voters and the general public understand how the election will be conducted, including any changes to voting rules and processes between now and Election Day.

At the same time, it is important to promote public confidence in the integrity of the election, including with respect to the safety and security of voting by mail. Some public officials have used unfounded claims about the reliability of voting by mail to suggest that the election could or should be postponed. Importantly, the president has no authority to do that. While the manner in which the election is conducted is governed primarily by state and local law, the date of the general election is set by federal law (which only Congress can change). And this nation has successfully completed presidential elections during war, pandemics, and other crises in the past, and it must do so again this year.

Critical Point: The president has no authority to cancel or postpone the general election, even during an emergency.

For more information, read the Task Force paper, [*The President Cannot Cancel or Postpone the General Election*](#).

RESOLVING ELECTION DISPUTES

Making Sure All Ballots Are Counted

All states have rules governing how and when ballots are counted, including rules around recounts (which generally involve re-canvassing or re-tabulating the vote tallies initially reported by one or more precincts). In some states, interested parties are required to demand a recount, but most states also provide for automatic recounts when the margin of victory is narrow. It is important that everyone involved let these processes play out.

Critical Point: Any attempt to prematurely stop or interfere with the counting of ballots should be rejected.

A significant challenge during the primary season—one that we can expect to see again during the general election—was the time it took states to process and count a larger-than-usual number of absentee ballots. This is likely to be a particular

concern in November in states like Pennsylvania, Michigan, and Wisconsin, that do not allow election officials to begin that process until Election Day. Moreover, given the number of absentee ballots to be counted, there is a possibility that the final results in some states will be quite different than the initial results on Election Night.

Accordingly, the Task Force **recommends that the media** and others:

- ✓ Manage public expectations before, during, and after the election about the time it may take to count votes and the fact that extended counting is not a reason to distrust the process.
- ✓ Avoid “calling” the election or crediting claims of victory until the results are absolutely clear.
- ✓ Make clear that Election Night results are never official, and this year we may not know the final results for days or longer. Use terms like “Election Week” or “Election Season” (to include the early voting period), not just Election Day/Night.

It is critically important that the media in particular avoids covering the election in a way that undermines public confidence in the outcome. For more detailed recommendations, see [*Recommendations for Avoiding a Crisis in November*](#).

Disputes Over the Winner

Post-election disputes and related litigation are not uncommon. In fact, most states provide for special legal proceedings to resolve disputes over the outcome of elections and implement remedies when necessary—including when there are allegations of fraud, misconduct, and other irregularities. There’s also a growing body of federal law on these issues. For more information, read the Task Force paper, [*State and Federal Election Contests - An Overview*](#).

Presidential election disputes are especially complex, though, because the process of electing the president is unique. **It is crucial that public officials and the media:** (1) understand the process, and (2) help educate the American public, both in advance and as disputes arise.

On November 3rd, voters do not choose the president directly, but rather vote for electors who will participate in the Electoral College in December and then have their votes counted by Congress in January. That process is governed by both the Constitution and federal law. For more information, read the Task Force paper, [*The Electoral Count Act & The Process of Electing a President*](#).

Importantly, although there is some speculation this year about state legislatures intervening in the process, they may not usurp the popular vote by directly appointing presidential electors

simply because there are delays or disputes about the outcome of the election. For more information, read the Task Force paper, *A State Legislature Cannot Appoint Its Preferred Slate of Electors to Override the Will of the People After the Election*.

Critical Point: After Election Day, a state legislature cannot simply substitute its preferred slate of electors for the results of the popular vote.

The **Appendix** to this roadmap provides a chronological overview of the presidential election process and potential inflection points.

CONCLUSION

Free and fair elections are a cornerstone of our democracy. We all have a role to play in securing the opportunity for all eligible voters to participate in the general election and have their votes counted, maximizing public confidence in the results, and ensuring that the country sees a peaceful transition or continuation of power in January. Understanding the election process and the unprecedented challenges the nation may face this year is an important place to start.

About the National Task Force on Election Crises

The National Task Force on Election Crises is a diverse, cross-partisan group of more than 50 experts in election law, election administration, national security, cybersecurity, voting rights, civil rights, technology, media, public health, and emergency response. The mission of the nonpartisan National Task Force on Election Crises is to ensure a free and fair 2020 presidential election by recommending responses to a range of potential election crises. The Task Force does not advocate for any electoral outcome except an election that is free and fair. The recommendations of the Task Force are the result of thoughtful consideration and input from all members and therefore do not fully reflect any individual Task Force member's point of view—they are collective recommendations for action. More information about the Task Force, including its members, is available at <https://www.electiontaskforce.org/>.

APPENDIX: PRESIDENTIAL ELECTION PROCESS

