

# ELECTION ADMINISTRATION IN AMERICA – PARTISAN BY DESIGN

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## **Introduction:**

The United States is one of the few countries in the western world in which partisans run the election administration system.

There is virtually no firewall between electoral competitors and electoral administrators, leaving the voting public at the mercy of shifting partisan currents. The escalating controversies over election outcomes – over who won and who lost and whether the system is rigged – would not be possible but for the fact that the system is ALREADY profoundly partisan. As Edward Foley, director of the election law program at Ohio State University's Moritz College of Law describes it:

*We allow partisans to run the system both in the front end of the process and at the back end, and this is particularly problematic at the back end when you have a close election.<sup>1</sup>*

The 2020 Presidential election brought the issue of how America's elections are run into sharp focus. Everyday Americans' concerns over ensuring fair administration of the right to vote were amplified and manipulated. Partisanship at every level-local, state and federal -- has shaken Americans' trust in the entire system. How can voters trust our electoral system if they think the people in charge are playing for one team or the other?<sup>2</sup>

The vulnerability of partisan administration of elections has been apparent since at least 2000, when the Supreme Court's *Bush v. Gore* decision ended an embroiled Florida recount that decided the Presidential election. A close election in Ohio in the 2004 Presidential race almost led to a similar recount that would have involved state election boards and judges evaluating the same "hanging chads" that fueled the 2000 Florida recount. America's system of election administration has come under increasing scrutiny over the past two decades, while public trust in that system has deteriorated.

Since the 2020 Presidential election, Republican legislators in numerous "red states" have taken steps to tighten their grip on voting and election procedures. At the same time, Democratic legislators, in the states they control, have worked to jigger the system to their advantage. As Russell Berman notes in *The Atlantic*:

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<sup>1</sup> Jeremy Hobson, [What Can Florida Do To Improve Its Voting System Before 2020?](#) WBUR, November 19, 2018.

<sup>2</sup> For a discussion of how nonpartisan election administration works independently from party politics in Canada for example, see: *Nonpartisanship Works*, Election Reformers Network 2021, <https://electionreformers.org/nonpartisanship-works/>

*“Although Democrats like to call out Republicans for trying to suppress voting, the states they control in the Northeast make casting a ballot more difficult than anywhere else.”*

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Both sides have had initiatives rejected by the courts on the grounds that they are too partisan and insufficiently neutral. Thus, a question is raised: How shall democracy-minded Americans who are frustrated with partisanship and who value a healthy and dynamical approach to managing our economic, social, cultural and international policies respond to the “line in the sand” strategies of the governing parties? Has the time come to assert a new set of rules and paradigms that reject party control of the electoral process and rest on a different set of process needs?

Rules for how the two major parties-Democratic and Republican-control the participation and administration of our country’s elections are ingrained at every level of each state’s electoral code. Secretaries of State serve parties, not the public. In many states poll worker positions are limited to party members and are oftentimes appointed by sitting members of the legislature. In even more states, if you are not a registered Republican or Democrat, you are prohibited from serving on the state or local boards of elections as an election judge.

The role of election administrators is significant. They oversee all aspects of conducting elections and implementing election policies and procedures at the state and local level. On the local level, election administrators determine who can vote, where they can vote, and how they can vote. Their responsibilities include maintaining voter registration lists, drawing precincts, selecting polling place sites, procuring equipment, recruiting, and training poll workers, canvassing the vote, and evaluating and implementing improvements to the electoral process itself. At the state level, election administration covers a spectrum of election-related logistics, including the maintenance of the state-wide voter registration file and the implementation of federal and state laws and policies concerning elections. This can include ballot design, polling place hours, and provisional ballot use.

A recent report<sup>4</sup> by the Carter Center highlights the threat to our democracy partisan control of election administration poses, finding that it:

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<sup>3</sup> Russell Berman, *The Blue States that Make it Hardest to Vote*, Retrieved from: <https://www.theatlantic.com/politics/archive/2021/04/democrats-voting-rights-contradiction/618599/>. April 15, 2021.

<sup>4</sup> Johnson, Kevin, *New Models for Keeping Partisans out of Election Administration*, The Carter Center, Feb, 1, 2022.

*Essentially communicates that it is only the two leading political parties whose interests should be considered in state elections administration, not election officials, not voters, and not independent or third-party candidates.*

Many of those now waving flags over the partisan character of election administration would have you believe this is a new phenomenon.<sup>5</sup> It is not new, and it was not established overnight. It's the organic outgrowth of a system with no firewalls, based on a flawed concept of parity and the self-serving construct that bipartisanship is equivalent to nonpartisanship.

### **Parity, not Independence**

Political parties are designed to compete with each other to win elections. That is their core purpose. At every juncture, when permitted to do so, the parties design rules to ensure the other party is not advantaged. That is the basis of parity. Party parity has become the foundational principle of America's electoral process. This premise is "baked in" at the very top: the Federal Election Commission. The FEC is the nation's designated protector of election integrity at the federal level. The six members of the Commission are appointed by the President (after approval by each party's leaders) and confirmed by the Senate. Every other federal regulatory commission has an odd number of commissioners, so that the body can function and pass rulings efficiently and decisively. The FEC has six commissioners, three Democrats and three Republicans, as the specifies that no more than three members of the FEC can belong to one party, ergo, the FEC is a bipartisan power-sharing entity. It is designed to ensure that neither party has an advantage. It also ensures that a) enforcement is virtually impossible because crucial votes end in a 3-3 tie, and b) independents, the largest self-identified bloc of voters in the country, have no representation.

At the state and county level, most boards of elections follow the FEC model. Each major party is granted 50% control of the regulatory body, thus ensuring that no party can "game" the rules or the outcome of an election. As long as states were politically diverse, and most Americans were members of the two major parties, this model functioned - albeit imperfectly.<sup>67</sup>

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<sup>5</sup> [A Democracy Crisis in the Making. How State Legislatures are Politicizing, Criminalizing, and Interfering with Election Administration.](#) Protect Democracy, States United Democracy Center and Law Forward. April 2, 2021.

<sup>6</sup> Joshua Ferrer, Igor Geyn, and Daniel M. Thompson, [How Partisan Is Local Election Administration?](#), 2021.

<sup>7</sup> Richard Hasen, [Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown](#), 62 WASH. & LEE 1. REV. 937 (2005).

The more recent breakdown of this increasingly vulnerable system results from two long term trends in American politics-the rise of the independent voter and the increasing stratification of states into supermajority control by one of the two major parties. The “partisan parity” paradigm now serves to erode public trust and intensify partisan gamesmanship, which in turn further erodes public trust.

### **Why Partisan Parity Doesn't Work**

Today, we are witnessing a major realignment of political affiliation in the United States. Democratic party membership reached its zenith in 1964 at 51% and has been declining ever since. Republican Party membership grew to a high of 31% in 1990 and has since declined.<sup>8</sup> Independent voters are now the fastest growing group of registered voters in the country. They are the largest or second largest group of voters in half the states in the country that register voters by party. This growth is across all regions of the United States. At current rates of growth, independent voters will become the largest or second largest group of registered voters in 24 of the 30 states that require registration by party by 2035.<sup>9</sup> What's more, the Gallup polling organization has found that between 40% and 50% of Americans self-identify as independents regardless of the registration requirements in a particular state.

An election system based on major party parity, now completely shuts out a quarter to a half of the voting population in each state from playing a role in any aspect of the administration of the franchise -putting election administration into the hands of an increasingly small-and increasingly partisan - set of actors.

Combine that with the fact that many more states and counties are dominated by one-party supermajorities than in the past. That means Republican dominated states are becoming more Republican and Democratic Party dominated states are becoming more Democratic. Very few states with political equilibrium exist anymore. An election administration system based on major party parity itself has become ill-suited to this political reality.

As The Economist recently declared:

*Partisan election administration is a greater worry today than voter suppression.*<sup>10</sup>

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<sup>8</sup> Pew Research Center, *Trends in Party Identification*, 2015. <https://www.pewresearch.org/politics/interactives/party-id-trend/>

<sup>9</sup> [\*The Next Great Migration: The Rise of Independent Voters\*](#). John Opdycke and Jeremy Gruber. Open Primaries, 2020.

<sup>10</sup> [\*The Real Risk to America's Democracy\*](#), The Economist July 2021.

## **THOSE WHO MAKE THE RULES, RULE**

You might imagine that if you were to read through the electoral code of any particular state, you would find a dry recitation of rules for how elections should be conducted to ensure a fair and impartial outcome. You would be wrong. Rather, the electoral code of every state is ripe with rules for how the two major parties-Republican and Democrat-prioritize their power at the exclusion of everyone else. There has been some focus of late on how states choose their top election official, usually the Secretary of State.<sup>11</sup> Very little research, though, has focused on how major party interests are “privileged” throughout the entirety of election administration at the state level-an important and broader distinction from some studies that have focused solely on “exclusion” of voters.

We reviewed the electoral codes of all thirty states with partisan voter registration systems where party membership or alignment is built into the registration process. Key findings include:

- 27 of the 30 States Restrict or Privilege Boards of Elections, Canvassers or Related Boards to Major Party Members.
- 27 of the 30 States Restrict or Privilege Poll Workers/Watchers/Inspectors/Registrars to Major Party Membership.
- 11 of 30 States Restrict or Privilege Election Judges to Major Party Membership.
- 16 of 30 States Privilege Access to Voter Data to Major Party Members.
- 12 of 30 States have Campaign Finance Laws that Privileges Major Party Members.
- 19 of 30 States Privilege Major Parties in Voter Registration

### **[Partisan in State Electoral Codes- Interactive Map Highlights](#)**

**(For a full accounting of the various partisan makeups of state electoral codes see [State by State Excel file](#))**

### **Conclusion:**

Everyone recognizes that in sports, the competing teams should not control the umpires or referees. Through a complicated process over many decades, that is exactly what we have in the United States. The two major political parties--in parity--control every aspect of

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<sup>11</sup> Ballotpedia, [Secretary of State by state](#).

electoral rule making and administration, despite the fact that most Americans would prefer a nonpartisan system of election administration.<sup>12</sup>

Nonpartisan election administration is the norm in most western democracies. Electoral agencies are legally and administratively shielded from political party organizations and actors. The officials tasked with establishing polling sites and counting the votes represent the government, not the parties.

We hope this report offers some context for the depth of the problem America is facing. A partisan election system that requires party parity to ensure fairness is vulnerable to manipulation, now more than ever. There is a growing consensus that nonpartisan redistricting commissions and campaign finance enforcement are necessary to ensure democratic outcomes. It is critical that we enlarge this conversation to include nonpartisan administration of our elections to ensure that election officials are not making discriminatory determinations of who gets on the ballot, who gets to vote, how voter rolls are purged and how votes are counted.

No amount of reform will fully address the vulnerability of our election system to partisan manipulation until we address the very partisan structure of election administration itself.

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<sup>12</sup> Alvarez, R. M., & Hall, T. (2005). [\*Public Attitudes about Election Governance\*](#). University of Utah Center for Public Policy and Administration and the Caltech/MIT Voting Technology Project.