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## The Promise and Peril of Local Election Administration

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# The Promise and Peril of Local Election Administration

Richard Briffault



*Local election officials played a critical role in facilitating free and fair elections in 2020.*

The administration of elections in the United States—including elections for federal office—is highly decentralized.

Fundamental election law decisions—such as registration and voter identification requirements, and early in-person voting and vote-by-mail rules—are **made** by the state legislature, but the actual conduct of elections is handled almost entirely by local governments.

Local officials **register** voters, process absentee ballot applications, design ballots, recruit and train poll workers, manage early voting and election day operations, acquire, maintain and secure voting equipment, and count, canvass, and report the results. In most states, local officials also **pay** for most of the costs.

The Florida 2000 presidential election—which involved the infamous locally **designed** “butterfly ballot” and the inconsistent local treatment of disputed ballots that led to *Bush v. Gore*—called attention to the shortcomings of local election administration. As a result, the trend since 2000 has been to **increase** the states’ role in running elections.

The 2020 election, by contrast, underscored the value of local election administration. Much of the success of the election—record-high turnout **facilitated** by a massive, unheralded shift to early and mail-in voting undertaken in the midst of a once-in-a-century pandemic, with few Election Day problems and no security breakdowns or **proven** fraud—is attributable in large measure to the work of state and local election officials. With the vast majority of election officers **working** at the local level, they deserve the lion’s share of the credit.

Local administrators proved to be resilient, innovative, and attentive to local circumstances and concerns. They quickly **adapted** to the extraordinary circumstances of 2020 by finding new ways and places to vote, addressing the public health concerns posed by voting in traditional polling places, and **recruiting** tens of thousands of new and younger poll workers to replace the older workers most at risk from COVID-19.

Most strikingly, local officials around the country demonstrated a commitment—sometimes **tested** in court—to make it easier for eligible voters to vote. These local efforts, in turn, have triggered a backlash, with a number of states **enacting** new laws to curb local powers and subject local elections officers to new restrictions, burdensome requirements, and penalties.

Many local elections officials, particularly in urban areas, **displayed** an impressive commitment to democracy by pushing the limits of and occasionally challenging legal

restrictions to make it easier for eligible voters to overcome obstacles posed by the interplay of the pandemic and state election laws.

Local elections officials **used** their knowledge of their communities and their connections to local schools, businesses, and other community institutions to **recruit** poll workers, obtain resources to fund safety precautions, **find** new venues for COVID-19-safe polling sites, and **support** voter education.

To facilitate the massive shift to vote-by-mail and to deal with voter concerns about polling places, local officials **developed** new programs or expanded old ones for drop boxes, curbside voting, mobile voting units, 24-hour voting, voting fairs in parks, and satellite voting centers. Existing state laws **authorized** some of these actions; others **occupied** legal gray areas, as neither explicitly authorized nor explicitly prohibited. In some instances, local election officials **clashed** with state officials who sought to block local democracy enhancing actions.

Notable local efforts to make voting easier, along with hostile state pushbacks, **occurred** in Arizona, Iowa, and Texas, all involving local efforts to expand the availability of vote-by-mail.

In Arizona, the Maricopa County Recorder **sought** to mail absentee ballots to all voters for the March 2020 primary. In addition, the Recorder worked to include in the instructions provided with absentee ballots permission for voters to strike out a mistake and **complete** the correct oval rather than treat the ballot as spoiled and apply for a new one, as state law provides. To increase accessibility for certain voters, the Recorder also fought to **provide** assistance by video rather than in-person to certain disabled voters. The Recorder lost on the first two of these initiatives but **prevailed** on the third.

In Iowa, the state's chief elections officer, the Secretary of State, **engaged** in a protracted battle with three county auditors to block their efforts to “pre-populate” voters’ absentee ballot application forms with certain information already in the county auditors’ computerized databases —the voter’s date of birth, home address, and voter identification number.

This pre-population had been the practice in Iowa until June 2020 when the legislature **required** voters to provide all the information themselves. The auditors



explained that the new law had **led** to a “prevalence of incorrect or incomplete request forms,” **leading** to more work for their already overwhelmed offices and likely increased rejections of applications from younger and minority voters.

In Texas, local officials, often led by the Harris County Clerk, repeatedly **clashed** with the Governor, Attorney General, or Secretary of State over local efforts to expand access to the ballot.

Local elections officers in Texas **sought** to mail absentee ballot applications to all voters. They also **supported** an unsuccessful measure to have susceptibility to COVID-19 considered a “disability” that would make voters eligible to use absentee ballots, and they **challenged** the governor’s directive limiting the number of drop boxes to one per county, regardless of the county’s population or size.

Notwithstanding, or, perhaps because of, these local democracy-promoting efforts in 2020, many states have since **adopted** new laws aimed at undermining local election administration.

Many of these laws **target** the very pro-voter measures taken by local boards last year by **prohibiting** election officials from sending absentee ballot applications to voters who did not request them, **limiting** the number, availability, or location of early voting places and drop boxes, and barring mobile, drive-through, curbside, or 24-hour voting.

Several states now **prohibit** local elections offices from accepting private donations—donations that had been critical to funding local actions last year—or **impose** burdensome new reporting requirements.

Most significantly, a number of states now **authorize** the imposition of fines or criminal penalties for local actions deemed inconsistent with state law and provide for the removal of local officials and their replacement by state designees. Indeed, state officials in Georgia recently **launched** the process, just authorized by a law passed earlier this spring, to replace the Fulton County election board.

It would be a mistake to overstate the benefits of local election administration. Local boards **can** be incompetent or **taken** over by ideologues, and interlocal inconsistencies in the application of election rules can be troubling. And state level officials, such as the secretaries of state in the battleground states of **Michigan**, **Nevada**, and **Pennsylvania**, also took important actions to make it easier to vote.

Nevertheless, the 2020 election demonstrates the value of a significant local role in running elections, much as the last year's state-local election litigation and this year's state legislative pushback against local democracy-advancing efforts underscore the troubling degree of politicization of the electoral process in the United States.



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This essay is part of a seven-part series, entitled *Regulating Elections in the United States*.

Tagged: Election 2020, Elections, Local Regulation, Voting