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THE VIRUS AND THE VOTE: HOW TO PREVENT THE INFECTION OF OUR ELECTION

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One of the perils of working in the field of election law in the last twenty years is that every election cycle seems to bring with it a new crisis. The crises do not seem to replace each other, though; they simply pile up and place greater weight on an increasingly fragile system. Voting technology, long polling place lines, voter suppression, disinformation, and foreign interference each enjoy their five minutes of intense fame in a given election, and government policies mitigate them to some extent. But these originally novel concerns then become familiar and persistent dangers in the election threat portfolio.

When I delivered this keynote speech at the conference at Ohio State on January 17, the threat du jour (or rather *de l'année*) was disinformation. Experts had, by then, expended countless hours thinking about how to address widespread lies—of foreign or domestic origin—intended to disrupt the 2020 election. We were preparing to fight the last voting war, in which Russian agents hacked and leaked emails, manipulated social and legacy media to foment division, and sought to change voters' decisions on whether to vote and whom to vote for. The social media companies, we were told, were prepared for this now-familiar onslaught, or at least they had developed tools and measures to address the problems of 2016. But the threat had evolved so that attribution had become more difficult with the lines between foreign and domestic interference becoming blurrier in this new world, as had the distinctions between advertising and organic posts, journalism and propaganda, campaigns and outsiders, bots and humans.

It is a sign of our through-the-looking-glass times that I can now be nostalgic for the moment when all we needed to fear was foreign takeover of the U.S. electoral system or widespread voter-targeted disinformation. These fears and their predecessors, still remain, of course. But COVID-19 eclipsed all the known-knowns and known-unknowns of election threats, as it did everything else in our social, economic and political lives. Or at least, that was the case until the murder of George Floyd and the related protests temporarily moved the virus below the fold in the newspaper.

Eclipsed might not be the right word though, because the pandemic has made all of the extant election administration threats all the more severe. The cyber infrastructure of the electoral system—from the voting machines to election night reporting systems—still remains vulnerable. In fact, the move to vote-by-mail adds more technology to the voting process in some states as their online voter registration systems become more central to the election and they need quickly to acquire new machines (scanners, sorters and the like) that they have not used before. The threat of polling place mismanagement that could lead to long Election Day lines has not disappeared—in fact, it has now become deadly. The specter of disinformation over the voting process now expands to include that related to the COVID-election nexus, as election officials prepare for lies on everything from false outbreaks and polling place closures to vote-by-mail myths and misdirection on how to vote under pandemic conditions. Moreover, all of these complex, combined stresses occur in a context of unprecedented political polarization over the most basic principles of American democracy, voting, and elections.

In times like these—and in truth, there are no times like these—it may be helpful to break down the overwhelming problem into its component parts. Recognizing that we cannot “solve” the novel election-related problems the pandemic poses, society can still try to mitigate some of the downside risks to the democracy and take the pandemic off the list of existential threats for the 2020 election.

To be clear, it does not have to be this way. Other countries have run successful elections in the midst of the pandemic, and the United States could too. South Korea, for example, recently ran a national election without incident.¹ Voters complied with social distancing, used hand sanitizer, wore masks and gloves, and had their temperature taken in sanitized polling places.² Even those positive for COVID-19

¹ Sangmi Cha, *South Korea: No New Domestic Coronavirus Cases, No Transmission from Election*, WORLD ECON. F. (Apr. 30, 2020), <https://www.weforum.org/agenda/2020/04/south-korea-domestic-coronavirus-transmission-election-covid19/>.

² Hyonhee Shin, *South Korea Holds Elections Under Strict Safety Measures Amid Coronavirus Pandemic*, WORLD ECON. F. (Apr. 15, 2020),

were shuttled to separate, more secure polling stations. So, it can be done with proper resource allocation, national leadership, and a nonpartisan, management-centered approach to elections.

Certain inherent features of the U.S. electoral system, however, make a rapid transition to “healthy elections” very difficult. First, the extreme decentralization of election administrative authority prevents a coordinated, national approach to the challenge. The Constitution accords primary authority to the states to run national elections, with potential for Congressional override.³ That authority is delegated further, on many important questions of election administration, to roughly ten thousand local jurisdictions. Although states will make important policy decisions regarding vote-by-mail and other issues, many of the critically important administrative decisions for the upcoming elections will be made at the local level.

Second, the election-related decisions made at the state and federal level are often entrusted to officials elected or appointed on a partisan basis, and election policy preferences in the United States are increasingly assuming a partisan structure. On the one hand, this point is a familiar and obvious one: Republicans and Democrats disagree over critical questions of election policy, just like almost every other political issue. Given that the President is also the most prominent voice in most of these debates, his position on issues such as vote-by-mail reverberates throughout the political system, constraining choices co-partisans can make. However, decentralization often counters this extreme polarization at higher levels, as local officials exercise discretion to address voter concerns within the boundaries of what the states permit. Moreover, in some cases, previous decisions set boundaries on the effect of polarization in election policy. For example, Utah’s decision in 2016 to move to predominantly mail-balloting is not one the state’s heavily Republican government appears

<https://www.weforum.org/agenda/2020/04/south-korea-parliamentary-election-pandemic-coronavirus-covid19>.

³ See U.S. CONST. art. I, § 4; *id.* art. II, § 1.

ready to undo.⁴ The Republican-run states of Georgia, Iowa, Nebraska and West Virginia are also planning to send absentee ballot applications to all voters.⁵ So while the parties have hardened their positions on many issues, the farther one goes down the election administration hierarchy, the less polarized officials seem to be. Nevertheless, when partisans can place a thumb on the scale for their favored candidate, they are often in a position to do so.

Third, the U.S. is not unique in this regard, but our reliance on volunteers to staff polling places and serve as the point of contact for voters places great stress on the system when those volunteers are unavailable. Poll worker and polling place shortages are perhaps the greatest constraints the pandemic places on Election Day voting. Half the nation's poll workers are over the age of 61—the population most at risk from the virus.⁶ A large share of that existing workforce will not serve this year, so jurisdictions desperately need to find new workers, who will require both classical poll worker training as well as new training on how to deal with COVID-19 in the polling place.

One might also add a fourth structural feature: American elections are the most complicated in the world. Americans vote for more offices and ballot measures, are divided into more overlapping districts, and experience greater diversity in balloting between jurisdictions. Some jurisdictions administer elections in over a dozen languages. Some states run their elections on multiple voting technologies. The combined effect of this complexity is that the system is not well-suited to responding to a shock, like that presented by the pandemic, in a

⁴ See Robert Gehrke, *Vote by Mail Isn't Nearly as Scary as Coronavirus. Just Ask Us Utahns*, SALT LAKE TRIB. (Apr. 8, 2020), <https://www.sltrib.com/news/2020/04/08/robert-gehrke-vote-by/>.

⁵ Joseph Marks & Tonya Riley, *The Cybersecurity 202: Trump Is Trying to Make Mail Voting a Partisan Issue. It's Not in Many States.*, WASH. POST: POWERPOST (May 22, 2020), <https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2020/05/22/the-cybersecurity-202-trump-is-trying-to-make-mail-voting-a-partisan-issue-it-s-not-in-many-states/5ec6aa1588e0fa6727002729/>.

⁶ Carrie Levine, *Elderly Poll Workers Run U.S. Elections. But COVID-19 Will Keep Legions Home.*, CTR. FOR PUB. INTEGRITY & NBC NEWS (May 13, 2020, 6:14 AM), https://www-nbcnews-com.cdn.ampproject.org/c/s/www.nbcnews.com/news/amp/ncna1205761?fbclid=IwAR1ata3yJBS8wfXPaZ5-Mu85uDv_thYHuTWJGVPcCMqg62o7HWpchnhuts4.

concerted fashion in a short period of time. When it comes to absentee and mail voting, for example, it is not enough just to “mail everyone a ballot”—officials need to make sure that they mail the right ballot to the right person at the right address.

To be concrete, the pandemic’s challenge to the electoral system concerns how to alter the mode of voting to ensure social distance for tens of millions of people. This requires both a massive shift to absentee and mail balloting and reconfiguration of polling places to ensure social distance. Many difficult logistical challenges need to be overcome. Elsewhere, MIT Professor Charles Stewart, III and I discuss at a high level the steps necessary to make the transition to “healthy elections.”⁷

Here, I want to put forward ten concrete proposals that governments, private industry and civil society can advance to deal with the election-related effects of the pandemic. For the most part, these proposals deal with the “people, places, and things” necessary to move to mail balloting and safe polling places, but some recommendations deal with development of new procedures and systems. Each grows from a recognition that whatever we do, it must be done immediately—meaning it must be initiated well before we know the status of the virus on Election Day. We cannot wait until August or September before the country mobilizes to run an election under pandemic conditions.

1. If not more money, then free postage, fully funded poll workers, and PPE for election workers.

Congress needs to provide adequate funding to allow jurisdictions to meet the unexpected election-related costs of the pandemic. In the CARES Act, Congress appropriated \$400 million for election-related aid to the states.⁸ Much more is needed to facilitate the staffing and

⁷ Nathaniel Persily & Charles Stewart III, *Ten Recommendations to Ensure a Healthy and Trustworthy 2020 Election*, LAWFARE (Mar. 19, 2020, 4:33 PM), <https://www.lawfareblog.com/ten-recommendations-ensure-healthy-and-trustworthy-2020-election>.

⁸ CARES Act, Pub. L. No 116-136, H.R. 748, 250 (2020).

equipment purchases to ensure all eligible voters who wish to vote can do so without risking their health. Indeed, given the tightening of state budgets due to the COVID-related recession, even more money is needed on top of that specifically earmarked for COVID-response for states to pull off anything resembling a normal election. The Brennan Center estimates the cost at around \$2 billion.⁹

If Congress proves unwilling to make such an investment, it could still facilitate the provisions of in-kind assistance that might be just as valuable. First, it could underwrite all postage costs related to election mail. Doing so would subsidize the postal service at a time when it needs the money, remove much of the cost to jurisdictions that accompanies vote-by-mail and absentee balloting, and ensure that no voter needs to place postage on any of the mail related to voting. (Fun fact: Even in those states that do not provide voters with prepaid envelopes for absentee balloting, the postal service will still deliver them if they are placed in the mail.¹⁰) Not only do voters receive and transmit many ballots by mail, but all the sample ballots, voter education materials, and related applications (for registration and mail balloting) are often distributed through the mail. Neither voters nor the local jurisdictions should be placed on the hook for postage related to these costs.

Second, Congress needs to provide the personal protective equipment (PPE) necessary for voters and poll workers. It can draw from the oft-described federal stockpile to provide a one-time allocation of face shields, masks, gloves, and sanitizer to the states.¹¹ This will ensure that the states do not compete against each other, as they have with ventilators and PPE, for election related protections.

⁹ Edgardo Cortés et. al., *Estimated Costs of Covid-19 Election Resiliency Measures*, BRENNAN CTR. FOR JUST. (Apr. 18, 2020), <https://www.brennancenter.org/our-work/research-reports/estimated-costs-covid-19-election-resiliency-measures>.

¹⁰ E.g., Mark Niese, *Mailed Ballots in Georgia Will Be Counted, Even Without a Stamp*, AJC (Apr. 14, 2020), <https://www.ajc.com/news/state--regional-govt--politics/mailed-ballots-georgia-will-counted-even-without-stamp/4P04UcxpZuJ1jZVXgDbixO/>.

¹¹ See generally U.S. Dep't Health & Human Servs., *About the Strategic National Stockpile*, PUB. HEALTH EMERGENCY, <https://www.phe.gov/about/sns/Pages/about.aspx> (last updated Apr. 16, 2020).

Third, Congress could provide funding for hazard pay for poll workers and rent payments for polling places. Especially since mail balloting has become a political football at the national level, defraying the costs of polling places and poll workers should meet with bipartisan support. All appropriate federal facilities, as well, should be made available to local election officials to be used as polling places.

2. Establish a national poll worker corps.

States need to do everything they can to address the widespread shortfall in poll workers. To be sure, they should try to mobilize students, teachers, all public employees, and any number of other groups to volunteer on Election Day. Election officials will tell you, however, that they are facing a crisis when it comes to personnel for Election Day and early voting. Their most reliable volunteers, most of whom are over the age of 60, are sending the message that they will not be available this year, because of risks to their health. Most recently, officials in Anchorage, Alaska reported that they lost ninety-five percent of their regular election workers.¹² Local election officials need to know now that they will have access to a dependable work force to staff polling places on Election Day and at early voting centers and to assist in the logistics for mail balloting.

For its primary, Wisconsin called in the National Guard at the last minute to provide critical assistance at the polls.¹³ Many polling places might not have opened, but for the mobilization of 2400 members of the Wisconsin National Guard.¹⁴ The Guard, which serves under the

¹² James Brooks, *With Elections Looming, Alaska Faces a Shortage of Poll Workers Because of COVID-19 Concerns*, ANCHORAGE DAILY NEWS (June 14, 2020), https://www.adn.com/politics/2020/06/14/with-elections-looming-alaska-faces-a-shortage-of-poll-workers-because-of-covid-19-concerns/?utm_campaign=wp_the_daily_202&utm_medium=email&utm_source=newsletter&wpsrc=nl_daily202.

¹³ See Joe Trovato, *In a First for Wisconsin National Guard, Citizen Soldiers and Airmen Serve as Poll Workers Across Wisconsin on Election Day*, WIS. DEP'T MIL. AFF. (Apr. 7, 2020), <https://dma.wi.gov/DMA/news/2020news/20053>.

¹⁴ Nathaniel Persily & Tom Westphal, *To Save the Election, Call in the National Guard: How to Safeguard the November Vote Despite Coronavirus*, N.Y. DAILY NEWS (Apr. 08, 2020), <https://www.nydailynews.com/opinion/ny-oped-to-save-the-election-call-in-the-national-guard-20200408-zuud3aiu4bfixnokwiseugeu4-story.html>.

Governor, merely provided support to the civilian authorities. They were in plain clothes, unarmed, and did not show up in military vehicles. They also served in the communities in which they lived, to the extent possible. Kentucky also employed the National Guard to assist in its recent primary elections.

The recent protests and violence in the wake of the murder of George Floyd, along with the concomitant crackdown by police and the National Guard, has made mobilization of the Guard for election purposes quite difficult. The last thing we need right now is any hint of militarization of polling places. The risk of violence at polling places is probably already higher than it has been in recent memory in the United States. If the Guard becomes an even more familiar force in quelling protests and supplementing police authority, their role in elections might become even more controversial.

Although the Guard might still be available as a last resort, there are other classes of government workers who could be mobilized to deal with this crisis. Federal, state, and local governments should provide paid leave for Election Day to any employee who serves as a poll worker. Especially in states where Election Day is a school holiday, teachers should be paid to serve as poll workers. Moreover, universities should cancel classes for Election Day or at a minimum, excuse absences for students who serve as poll workers. Unless we find a substitute work force for the existing elderly corps of poll workers, election officials will be shutting down polling places for lack of people to work them.

3. Mandate schools serve as polling places.

Apart from closing polling places due to poll worker scarcity, election officials also face a shortage of adequate facilities to serve as polling places. Some of the most frequently used sites—such as schools, senior living centers, and firehouses—are taking themselves out of commission. Those in control of these sites cannot guarantee that on November 3, they will be amenable to seven hundred strangers walking through their facilities. Other existing facilities cannot guarantee social distancing, because they do not have sufficient space

to ensure six feet between voters waiting in line or between voting machines inside the polling place. As a result, some election officials have reported losing up to half of their polling places.

Schools are the most ubiquitous polling places. Fully one third of voters cast their ballots in schools.¹⁵ If they are taken out of commission, we will have a full-on crisis with respect to polling places. More importantly, schools are uniquely accessible both for people with disabilities and for maintaining social distance. They often have large parking lots, auditoriums, gymnasiums, and sports fields. Few other types of facilities are as ubiquitous and accessible.

Some states mandate that schools be made available on Election Day. All states should guarantee now that schools will be available as polling places this November, and that they will contain drop boxes for mail ballots to be deposited. If it means canceling school for November 3, then so be it. Even before the pandemic, having Election Day be a school holiday was one of the recommendations of the Presidential Commission on Election Administration.¹⁶

4. Eliminate lines in polling places.

Since the 2012 Election and the subsequent Report of the Presidential Commission on Election Administration (PCEA) (for which I was Research Director), much attention has been paid to preventing long polling place lines. The Commission put forth recommendations and tools to reduce lines, which were then further developed by the Bipartisan Policy Center in a program in collaboration with Professor Charles Stewart III.¹⁷ The fight against long lines has proven never-

¹⁵ Mike Kennedy, *Recommendation: Keep Using Schools as Polling Places*, AMERICAN SCHS. & U. MAG. (Jan. 22, 2014), <https://www.asumag.com/facilities-management/maintenance-operations/article/20851548/recommendation-keep-using-schools-as-polling-places>.

¹⁶ PRESIDENTIAL COMM'N ON ELECTION ADMIN., THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION 33 (2014), https://www.eac.gov/sites/default/files/eac_assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf.

¹⁷ MATTHEW WEIL, CHARLES STEWART III, TIM HARPER & CHRISTOPHER THOMAS, THE 2018 VOTING EXPERIENCE: POLLING PLACE LINES (2019), <https://bipartisanpolicy.org/report/the-2018-voting-experience/>.

ending, though, with each election containing hot spots in some areas of the country, often explained by a combination of mismanagement, faulty turnout predictions, and simple bad luck as machines break down or poll workers fail to show up.

Long lines, which had previously served as an indicator of a nuisance or an administrative breakdown, now present a public health threat. If voters in November are forced to stand in lines akin to what some voters in Wisconsin and Georgia experienced in their primaries, then we can safely assume that many will simply turn away while others might contract the virus. Election officials need to signal now that measures will be taken to ensure that voters will not need to risk their health in order to vote.

These risks to health from long lines are completely unnecessary: no voter should ever need to wait in a line to vote. One of the recommendations buried in the PCEA Report was for jurisdictions to explore the idea of allowing voters to “take a number” in order to vote.¹⁸ Commissioners had come to this realization after spending a day at Walt Disney World in Orlando, and watching how the Park had altered its line protocols for certain rides. Many are familiar with the Fast Pass, in which a rider schedules a ride for a particular time and then can jump the line when it is his or her turn. In other rides, such as Dumbo’s Flying Circus, riders are given a buzzer that will notify them when it is their turn to ride. In the interim, kids can spend time in a playground adjoining the ride. The system is similar to what you see in restaurants when a device buzzes when your table is ready.

Nothing so involved is necessary for polling places. We need only follow the same model we see at deli counters around the nation: Take a number when you arrive, which will specify either your place in line or a time when you should return. Once receiving a number, a voter need not wait nearby the registration desk, but rather can wait outside the polling place until called, receive a text when ready, or return at the specified time. No special equipment is necessary; the poll workers could just tear off sheets of paper. Simple solutions like this will allow

¹⁸ PRESIDENTIAL COMMISSION ON ELECTION ADMIN, *supra* note 17, at 37.

voters to vote in the way to which they are accustomed but maintain social distance in ways familiar to their life outside of the polling place.

5. Local election officials must coordinate with their local post offices immediately.

Election mail is different than normal mail. In fact, the U.S. Postal Service has an entire “kit”¹⁹ and dedicated website²⁰ for election mail. Jurisdictions that do not have experience with high volumes of mail balloting need to ascend a steep learning curve very quickly. They must, therefore, engage with their local postal officials to alert them of their plans for the fall. If they are outsourcing the mailing of election-related materials to a vendor, they need to make sure that the vendor realizes election mail will be treated differently than other types of mail they are accustomed to sending.

Failures to adequately partner with the postal service could prove disastrous in the fall. Mail that is not designated as “election mail” might be returned and therefore not reach the voters in time. Apparently, that is what happened in the Wisconsin primary with some share of the ten thousand mail ballots that voters never received because they were sent using normal commercial mail processes.²¹ In addition, failing to designate ballots as election mail might prevent them from receiving postmarks, which are often required by state law to verify that they were mailed on-time. Expert tip—when a piece of mail is placed in the system it will still be marked with an orange bar code that contains within it data as to the date, even if no postmark prints the date specifically on the mail. State statutes that specify a postmark qualification for mail ballots must be updated to include

¹⁹ *Election Mail Kit & Resources*, U.S. POSTAL SERV., <https://about.usps.com/election-mail/election-mail-resources.htm> [<https://perma.cc/S4F2-YZHR>].

²⁰ *Election Mail*, U.S. POSTAL SERV., <https://about.usps.com/gov-services/election-mail/> [<https://perma.cc/LCY7-AU76>].

²¹ Nick Corasantiti & Stephanie Saul, *Inside Wisconsin's Election Mess: Thousands of Missing or Nullified Ballots*, N.Y. TIMES (Apr. 9, 2020), <https://www.nytimes.com/2020/04/09/us/politics/wisconsin-election-absentee-coronavirus.html>

these other methods by which the postal system designates dates on a piece of mail.

In short, election mail involves more than dropping thousands of envelopes on your local post office without notice. Although we ordinarily do not think of the United States as having a national election authority, in an election in which more than seventy million people vote by mail, the postal service becomes that election authority. The local jurisdictions need to treat it as such, even while understanding that its funding is in doubt and it is undergoing great strain as an institution.

6. Tech companies must take on the responsibility of supporting the election administration infrastructure.

Amazon, Google, and Facebook provide essential services during the pandemic, and the election is no exception. Each company has a unique responsibility to do what it can to make sure the election is run as smoothly as possible under the circumstances. As Americans spend more and more time in front of screens and less time in the locations where the critical pre-election activities would normally take place, the democracy-protecting responsibilities of the tech platforms have become even weightier.

If the United States had a functional and coordinated national response, a federal agency like the Election Assistance Commission would manage the election administration supply chain and deliver to local jurisdictions everything they need to run a healthy election. Some non-governmental organizations, such as Business for America, are attempting, in small ways, to fill that void.²² But no company is better situated than Amazon to handle the massive supply chain challenges that the pandemic poses for election officials. The company already has a special website for first responders and other government

²² *Vote Safe in 2020*, BUS. FOR AM., <https://www.bfa.us/> [<https://perma.cc/69AN-BWG5>].

officials responsible for responding to the pandemic.²³ Election officials should have access to that as well. This section of the website should include both the generic COVID-related products (sanitizer, masks, gloves, face shields, plexiglass barriers), as well as (to the extent feasible) the kinds of materials specifically appropriate for elections, such as pens for optical scan ballots or disinfectant for voting machines.²⁴

Google has a different responsibility. They have historically partnered with the Voting Information Project²⁵ (VIP), now run by Democracy Works, to provide data about polling place locations, ballot information, and voter registration procedures. Those portals and tools, including the Civic Information API,²⁶ are more critical now than ever, and they are more difficult to get right than ever before. They need to invest heavily in those tools. They also need to add a ballot drop-box finder to the tool so voters with mail ballots know where they could drop them off. (I understand Democracy Works is doing just that.) These tools, the quality of which is always dependent on the completeness of the data jurisdictions make available, face increased challenges as jurisdictions make significant, last-minute changes to polling place locations over the next few months.

Facebook also makes use of similar data in its Election Information Page,²⁷ but for the most part it forwards users to the state's websites. Facebook, like Google, needs to take a more active role in facilitating voter registration and absentee ballot applications. The platform will

²³ *COVID-19 Supplies on Amazon Business*, AMAZON BUS., <https://business.amazon.com/en/work-with-us/healthcare/covid-19-supplies> [<https://perma.cc/YR6W-5SLQ>].

²⁴ See Alexa Corse & Robert McMillan, *Voting by Mail in November? States Need to Prepare Now*, WALL STREET J. (May 23, 2020, 9:00 AM), <https://www.wsj.com/articles/voting-by-mail-in-november-states-need-to-prepare-now-11590238800?redirect=amp&fbclid=IwAR2TdXD-zAO9c7c32xFhbLaTG2m2PvmocAc6aPV6heYbjFA50docUlvLpQA#click=https://t.co/B1oLkyUbO7> [<https://perma.cc/A8R4-K7Q2>].

²⁵ VOTING INFO. PROJECT, <https://www.votinginfoproject.org/> (last visited June 1, 2020).

²⁶ *Civic Information API*, GOOGLE, <https://developers.google.com/civic-information> [<https://perma.cc/754H-NF2Q>].

²⁷ *Election Information on Facebook*, FACEBOOK, <https://www.facebook.com/ElectionInfo/> (last visited June 1, 2020).

be one of the major ways that voters receive election information (let alone candidate advertising) this election. It needs to provide generous free advertising to local election jurisdictions to target voters with messages related to registration, mail balloting, and polling place locations. It also needs to facilitate messaging from local election officials who are trying to recruit poll workers. As it rolls out state-specific pages for the election, it must also include in its COVID Information Center²⁸ election-specific messaging from local officials related to volunteering, voter registration, and even supply chain requests.

7. Local election administrators desperately need management tools to help predict mail and polling place turnout.

More than anything else, the pandemic has injected uncertainty into the electoral process. This uncertainty can be paralyzing for officials who need to make procurement and planning decisions now for the general election. No one knows what the status of the virus will be come November, however. Indeed, one of my greatest fears is that election officials will become complacent if rates of infection drop over the summer, only to be met by a resurgent pandemic in October right before the election.

In the fog of the pandemic, it becomes especially difficult for election administrators to plan for how many voters will vote by mail, how many will vote early in-person, and how many will vote on Election Day. A great deal hinges on officials' ability to make these predictions. It is all well and good to insist that administrators put everything in place for total vote-by-mail and massive Election Day turnout "just to be safe," but these officials live in a world of scarce resources in which dedicating money, people, and time toward one mode of voting comes at the expense of some other aspect of the system.

²⁸ *Coronavirus (COVID-19) Information Center*, FACEBOOK, https://www.facebook.com/coronavirus_info/?page_source=notif_coronavirus_updates¬if_id=1589832881305430¬if_t=coronavirus_update&ref=notif (last visited June 1, 2020).

This problem is not new to the pandemic, of course. Election officials make difficult resource tradeoffs all the time, and some will plan poorly in a given election. The problem for this election is that significant planning and procurement decisions need to be made now, and we have little evidence to go on as to the critical factors that will affect election administration in November.

Everything seems up in the air. We do not know how many poll workers or polling places will be available. We do not know how many people will be shifted to vote-by-mail and how many will prefer to vote in person. Indeed, given the stalling of voter registration efforts due to COVID, we have little understanding as to whether the normal pace of registration will emerge before the election.

We need election officials and management scientists to work together to develop the tools to help plan for these decisions for the fall. It might involve large surveys of the relevant population, as well as experiments in the remaining primaries and special elections over the summer. All of this will only give a blurry view of what to expect, however. Jurisdictions that misallocate resources may find themselves without sufficient numbers of mail-in ballots, same-day ballots, polling places, or poll workers.

8. Don't forget about disinformation.

As I noted at the beginning of this essay, pundits tend to focus on one theme for each election. For the 2020 Election, the disinformation theme was quickly replaced by COVID as the shiniest attention-grabbing object. The disinformation threat never went away, however. In fact, the pandemic magnifies the disinformation threat and places greater responsibility on governments and platforms to combat it.

Although we should expect 2016-style disinformation about the candidates and campaigns, the type of pandemic-related election disinformation that should receive the greatest attention concerns false claims about the voting process. Before the pandemic, platforms were already removing disinformation that clearly misled voters over voting

procedures — e.g., “you can vote on a Wednesday” or “text this number to have your vote counted.” The pandemic expands the range of such messages that might intentionally mislead voters.

As the voting process becomes more complicated due to measures adopted to deal with COVID, bad actors can more easily muddy the information waters so as to confuse voters on how to vote correctly. It is easy to confuse new mail voters about the necessary procedure to apply for an absentee ballot and to vote it correctly. For example, voters who have no experience voting by mail might be surprised to learn they need to sign the outside of the envelope.²⁹ It would be quite easy to stoke fear in voters’ minds about the potential loss of anonymity that might come from that or to mislead them into thinking they do not need to sign the exterior envelope. Similarly, one can imagine a whole host of Election Day misinformation about the emergence of a pandemic hotspot near a polling place, stories that a poll worker or voter contracted COVID, or rumors that members of the National Guard, the police, or random gangs were engaging in aggressive actions toward voters. Finally, after Election Day, as mail ballots require more time for counting, a greater window of opportunity exists for those falsely alleging fraud to cast doubt on the results before they are announced.

As with disinformation generally, the best response may be to “flood the zone” with responsible information. Election officials are often outmatched, however, by political operatives who strategically time their messaging to achieve the greatest confusion. Mass education of voters as to how the election will be conducted is more important this year than in any previous election. All media organizations—TV, radio, print, and internet—have a responsibility to amplify the voices of officials running the process and to educate voters on how, when, and where to vote. The social media companies, in particular, need to treat COVID-election disinformation the same way they are now treating COVID disinformation, in general: that is, to limit its reach

²⁹ See e.g., *Voting by Mail*, LEAGUE WOMEN VOTERS CAL., <https://cavotes.org/vote/how-vote/voting-mail> [<https://perma.cc/8BZB-9GCV>].

and to develop machine learning to flag COVID-related vote-suppressive content when it is posted.

9. Don't forget about cybersecurity.

Just as we cannot forget about the foreign and domestic threats to the information environment, we cannot overlook the lingering security threats to the election cyber-infrastructure.³⁰ Here, too, the pandemic adds to these problems and exacerbates them. As with life in general under the pandemic, in which we all increasingly rely on our screens and devices, an election system that relies ever more on technology provides greater opportunities for malicious actors to probe, hack, and cause doubt in our election system.

In particular, the security of the online voter registration system, the voter registration databases, and the mail ballot system become even more critical in this election. Paper voter registration drives and door-knocking campaigns are virtually nonexistent during the pandemic. Therefore, a disproportionate share of voter registration activities must be conducted online. Hacking of that online system is not beyond the capabilities of foreign or domestic adversaries. The Department of Homeland Security has made great strides in the last three years dealing with the critical infrastructure of the election system and its various cyber components. But as states make rapid and significant changes to their systems to deal with the changes forced by the pandemic, each change needs to be scrutinized for security vulnerabilities.

The same is true of the voter registration databases and the other databases containing information as to who requested and returned mail ballots.³¹ These databases serve as the backbone for all election-related mail. Penetrations of them to alter their data or performance

³⁰ Alex Zaheer & Tom Westphal, *Don't Let COVID-19 Eclipse Election Security Concerns*, LAWFARE (May 7, 2020, 8:00 AM), <https://www.lawfareblog.com/dont-let-covid-19-eclipse-election-security-concerns>.

³¹ Franklin Foer, *Putin Is Well on His Way to Stealing the Next Election*, ATLANTIC (June 2020), <https://www.theatlantic.com/magazine/archive/2020/06/putin-american-democracy/610570/>.

could have outsized downstream effects at the critical junctures when ballots are cast through the mail. Other technology, such as that involved in scanning mail envelopes and ballots, printing the bar codes on mail ballots, or reporting results on election night can also raise security concerns. At each stage in the lifecycle of a ballot, state and local officials must consider how new technology will be audited and penetration-tested to improve resiliency against a cyber-attack.

10. Do not call the winner until almost all votes are counted.

An election run predominantly through mail is different than any other presidential election the United States has experienced. Most importantly, because of tens of millions of ballots not yet counted on election night, the winner may not be known until days later. Responsible media organizations need to resist the urge to call the election on election night if the result is in doubt and wait a few days until almost all of the ballots are counted.³²

Reporters need to educate themselves and the public as to what election night (and the days afterward) might entail. The process of opening, scanning, verifying, and counting millions of mail ballots can take days even when the process works perfectly. Many votes will be received well after Election Day, especially in the states that allow votes to count if they are postmarked by Election Day. The signature verification process³³ for mail ballots, unknown to most voters, will hold in limbo hundreds of thousands, if not millions, of ballots for a week after Election Day, as local authorities seek to contact voters whose ballots were questioned because of a signature mismatch or missing signature. Voters usually have an opportunity to cure these deficiencies in a timely manner, which will also add to the timeline.

³² See AD HOC COMM. FOR 2020 ELECTION FAIRNESS & LEGITIMACY, FAIR ELECTIONS DURING A CRISIS: URGENT RECOMMENDATIONS IN LAW, MEDIA, POLITICS, AND TECH TO ADVANCE THE LEGITIMACY OF, AND THE PUBLIC'S CONFIDENCE IN, THE NOVEMBER 2020 U.S. ELECTIONS (2020), <https://www.law.uci.edu/faculty/full-time/hasen/2020ElectionReport.pdf>.

³³ See STAN. LAW SCH. LAW & POLICY LAB, SIGNATURE VERIFICATION AND MAIL BALLOTS: GUARANTEERING ACCESS WHILE PRESERVING INTEGRITY A CASE STUDY OF CALIFORNIA'S EVERY VOTE COUNTS ACT (2020), https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/SLS_Signature_Verification_Report-5-15-20-FINAL.pdf.

Of course, the foreseeable delays due to mail ballot verification and counting are quite apart from what might happen if campaign lawyers get a hold of the process and litigate the validity of the vote in the days soon afterward. We are already seeing the claims of fraud in an effort to work the election refs and shape public perceptions. In an environment like this, election officials will be under greater pressure to deliver results as fast as they can. They need to do whatever they can to report accurate results as quickly as possible. But accuracy needs to take precedence over speed. Responsible media organizations need to give election officials the space they need to avoid errors in the rush to announce a winner.

The 2020 election presents unprecedented challenges to local election administrators and voters alike. These challenges are surmountable. We are seeing some states successfully run their primaries and special elections, and other countries around the world have run safe elections. If they have the proper resources and time to plan, the professionals who run our elections at the local level can pull this off.

But that is a big “if.” Time is running out and the resources do not appear to be forthcoming. Election officials need to plan by mid-July as to which polling places will be open and what equipment needs to be procured. They need to know how many poll workers will be available to work on Election Day and in early voting centers.

Great uncertainty remains as to how Americans will vote in November. It is possible that Americans will learn over the next four months how to live with the virus and adapt basic social and economic activities to social distancing. Elections might not be that different.

However, the United States has never had to shift its system of election administration on such a massive scale in such a short period of time. We need to prepare for the worst and hope for the best. The lack of federal leadership and the partisan polarization that accompanies this shock make the transition particularly difficult. All who care about the validity of this election and the legitimacy of whoever emerges victorious need to join in the effort to create a healthy and safe 2020 Election.