

# Ethical Standards for Election Administration

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This report was prepared by a bipartisan group of government officials, and election professionals, lawyers, and scholars, convened at the invitation of The American Law Institute. This effort was led by the project's Research Director Charles Stewart III of the Massachusetts Institute of Technology, and Co-Chairs Bob Bauer of New York University School of Law and Ben Ginsberg of the Hoover Institution. A complete list of the participants can be found on page 2 of this report.

## Foreword

We have been privileged to work with a distinguished group of current and former election officials and experts in election administration, who collaborated over many months in producing this report, *Ethical Standards for Election Administration*.

Election administration is an emerging profession whose members, spread throughout thousands of voting jurisdictions, perform a core service to our democracy. Their work has never been easy, as all of us involved with election administration issues over the years have well understood.

Their work has become significantly more difficult as our contentious politics have clouded much of what they do with misunderstanding and distrust. These challenges have made clear that they may—and typically do—lack the full range resources they need. Yet they more than make up the difference with expertise, experience, hard work, and a profound commitment to getting the job done for the American voter.

While much of the work of this community of administrators is prescribed by law, a significant portion of what they do to prepare for and conduct elections depends on their sound professional judgment and integrity. Ethical standards play a vital role in preparing for and conducting elections. State and local ethics laws provide some guidance in codes that apply to all their government officials. Election officials, like other public servants, take oaths of office; and those who belong to professions, like the law, must attend to additional ethical requirements. Moreover, election officials around the country have strong personal convictions that supply ethical direction in the performance of their duties.

However, as election officials gain both significant public visibility and scrutiny, this is the time for identifying the ethical standards unique to this profession, wherever it is practiced, to transparently show the public that their actions are fair, professional, transparent. In other words, to identify national standards for election officials that provide guidance in the administration of voting throughout the country. The American Law Institute graciously provided a forum for a working group's consideration of such standards, resulting in this *Ethical Standards for Election Administration* it is releasing today.

The *Ethical Standards* sets out seven principles discussed in detail in the report along with the basis for each. It is the hope of the working group that these principles provide the professional election administration community with a common vocabulary for communicating the moral underpinning of their work; assist in the training of the next generation of officials; and help guide officials in carrying out their responsibilities when the law does not supply the answer and public scrutiny is keenest. These principles also supply the grounds for specific standards of conduct that reflect these principles and put them into practical effect.

We are grateful to the ALI, and to the working group's drafting and advisory committees, whose members are listed below. We are confident that their hard work has resulted in a valuable contribution to the never-ending work of improving and enhancing public confidence in the conduct of our elections to public office.

We also want to thank the President of the ALI, David F. Levi, and then-Director Richard L. Revesz, who convened this group in October 2022. Current ALI Director Diane P. Wood and the ALI team of Deputy Director Eleanor Barrett, Chief Communications and Marketing Officer Jennifer Morinigo, and ALI Law Fellow William Tadros also provided valuable support. David Schulman and Rachel Green, both law students at New York University, provided invaluable research assistance to this project.

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## Executive Summary

Elections in the United States are conducted by dedicated election officials committed to ensuring fairness, accuracy, accessibility, and security. For most election officials, ethical standards are based on personal ethical convictions, commitment to abide by state ethics laws, and dedication to follow their oath of office. While no unified set of ethical principles exists in the field, some state associations and training programs address ethics, and the National Association of Election Officials (the Election Center) maintains a set of standards for its members.

Articulating ethical principles for election officials offers numerous advantages.

1. It provides a shared vocabulary to communicate the moral basis for election conduct to voters.
2. It aids in training new officials by reinforcing the broader purpose of election administration as a profession.
3. It helps internalize values that can guide officials when facing external pressures or unclear election laws.

Election officials already adhere to various ethical principles and codes of conduct, such as state ethics laws and oaths of office. However, none specifically address the unique circumstances of election administration. Consequently, there is a collective obligation for election officials to define and adopt ethical principles and codes tailored to their profession.

After reviewing existing principles in public service and election administration, we recommend seven core principles for adoption by the profession:

1. **Adhere to the law.** Election officials have a duty to administer the law as written and interpreted by the relevant authorities.
2. **Protect and defend the integrity of the election process.** Election officials have a duty to ensure the integrity of elections and to safeguard against unfounded attacks on the integrity of the election process.
3. **Promote transparency in the conduct of elections.** Election officials have a duty to make election administration transparent to the public.
4. **Treat all participants in the election process impartially.** Election officials have an obligation to treat all participants in the electoral process impartially, including voters, candidates, citizens, and political committees.
5. **Demonstrate personal integrity.** Election officials have a duty to conduct themselves honestly and forthrightly in all interactions with superiors, peers, candidates, campaign officials, and the general public.

6. **Practice the highest level of ethics and stewardship.** Election officials have a duty to expend public funds carefully and foster respect among employees and volunteers.
7. **Advance professional excellence.** Election officials have a duty to stay informed about election laws and new developments in election management.

These principles should be accompanied by a corresponding set of standards of conduct that reflect realistic scenarios encountered by election officials at different levels of election administration. For instance, to implement the principle of adherence to the law, a county election director might be directed to seek legal counsel when the law is ambiguous, while a polling place officer might be directed to seek guidance from the local election office when the official is uncertain how to handle a situation at the polls. To implement the principle of practicing the highest level of ethics and stewardship, procedures could be developed in the local election office to encourage an open expression of views and “whistleblower” protections, whereas for temporary election workers, it would be important to spell out clearly how they should respond if they encountered a breach of ethical principles or law while voting was being conducted.

Proposals to enhance the ethical integrity of election administration in the United States have included ending the common practice of selecting senior election officials through elections, especially partisan ones. However, the deeply ingrained adversarial system, often tied to partisanship, is unlikely to be changed soon. Moreover, the same ethical standards apply to all election officials, regardless of how they are selected. Laws and practices, therefore, need to be established that allow election officials to provide notice of potential conflicts of interest and to recuse themselves from decisions that pose a conflict or appearance of conflict. Counterintuitively, conflicts of interest may be most evident in local jurisdictions, especially smaller ones.

Given the decentralized nature of U.S. election administration, state associations of local officials are best positioned to articulate and educate their members on ethical principles. Notably, the Election Center has integrated ethical principles into its certification program.

While ethical principles should guide the passage of state election law, their content should not be legislatively mandated. Enforcement of ethical principles is a serious matter, and organizations adopting such principles should carefully consider enforcement actions, ranging from informal correction to expulsion, always keeping due process rights in mind.

# Introduction

Elections are zero-sum—someone must win, and someone must lose. For a democracy to function with the consent of the citizenry, elections must be conducted fairly and according to the law.

State and local election officials are the stewards of democracy responsible for conducting these fair, lawful elections. Election laws inform the public about the rules of the game, provide guidance for how elections are conducted, establish the standards that provide evidence that proper procedures were followed, and demonstrate to the public that the results were correct. Clearly written laws and transparent administration help make up the foundation for elections to be considered legitimate.

Not all election laws are written clearly; not all voters pay attention to the independent evidence that demonstrates the correctness of an election result. In this context, how can the public be assured that an election was conducted fairly and lawfully?

Although the integrity of elections is guaranteed through multiple overlapping processes, an important tool to assure the public of the legitimacy of elections is the knowledge that those conducting elections adhere to high ethical standards. The internalization of these standards helps guide the behavior of officials when laws are ambiguous or they feel pressured to bend decisions to favor one outcome over another. The knowledge that ethical principles guide those who conduct elections can assure the public that the unobserved parts of the election process are conducted fairly. And election officials can reference these principles when explaining their actions to the public.

In the past few years, the need for election officials to articulate the general ethical principles that guide their work has grown among election officials and the public at large. This report provides a framework to understand and communicate those principles to the public.

The consideration of ethical standards for election officials starts with considering standards for public officials and professionals more generally.

The issue of ethics is an old one in the conduct of elections, as it is with all aspects of public administration. Like all public servants, election officials owe the public honesty, hard work, impartiality, transparency, fiscal accountability, competence, and respect. These values should be embraced by anyone in public service and, indeed, by anyone who works outside of public service.

The rise of professionalism in American society around the turn of the twentieth century coincided with an interest in identifying general principles to guide the behavior of members of these professions—attorneys, physicians, accountants, etc.—regardless of where they worked and which particular laws and regulations guided them. Among the qualities identified in these professional ethical standards were integrity, confidentiality, competence, objectivity/impartiality, accountability, respect for others, and social responsibility.

Particular qualities are emphasized in different professions. For instance, the preamble to the ABA’s Model Rules of Professional Conduct states that “in all professional functions a lawyer should be competent, prompt and diligent[;]” keep confidences; conform to the requirements of the law; and seek to improve access to the legal system.<sup>1</sup> The American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct highlight beneficence and nonmaleficence (seek to do good; do no harm); fidelity and responsibility; integrity; justice; and respect for people’s rights and dignity.<sup>2</sup> The American Institute of CPAs requires members to “act with integrity, objectivity, due care, competence, fully disclose any conflicts of interest . . . , maintain client confidentiality, disclose to the client any commission or referral fees, and serve the public interest when providing financial services.”<sup>3</sup>

Like the law, psychology, and accounting, election administration is a profession, but it is an emerging profession.<sup>4</sup> Election officials certainly have been subject to specific laws, typically passed by state legislatures, and have sworn oaths to uphold the law and the Constitution.<sup>5</sup> And, of course, individual election officials have been guided by personal ethical principles in determining how to apply those laws to concrete circumstances. But for most of the nation’s history and in most of the nation, election officials have not been bound to a codified set of ethical duties.

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<sup>1</sup> MODEL RULES OF PRO. CONDUCT Preamble 4 (AM. BAR ASS’N 2019).

<sup>2</sup> ETHICAL PRINCIPLES OF PSYCH. AND CODE OF CONDUCT General Principles (A)-(E) (AM. PSYCH. ASS’N 2017).

<sup>3</sup> *Professional Responsibilities*, AICPA, <https://us.aicpa.org/interestareas/personalfinancialplanning/resources/practicecenter/professionalsresponsibilities> (last visited Jan. 11, 2024).

<sup>4</sup> MITCHELL BROWN & KATHLEEN HALE, *The Evolution of Professionalism in the Field of Election Administration*, in THE FUTURE OF ELECTION ADMINISTRATION 103, 110, 111 tbl. 7.1 (Mitchell Brown et al. eds., 2020); U.S. PRESIDENTIAL COMM’N ON ELECTION ADMIN., THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION 18 (2014).

<sup>5</sup> However, most of the laws binding election officials are not derived from ethical principles. For instance, fixing Election Day is based on a mix of historical, cultural, and political factors, not on general moral principles. Some laws, such as those guaranteeing a secret ballot, can be justified on ethical grounds, but the tie between ethics and the law is often left implicit. Even if some election laws can be motivated by general ethical principles, the question for election officials is not the motivation behind the passage of the laws, but rather, the behavior of the election officials as they enforce those laws.

As it grows into a full profession, the question arises: what are the ethical duties of election officials? Or, perhaps more practically, which professional ethical principles should guide the profession of election administration as officials implement election laws?

A starting point to answer these questions are the principles that guide all public servants. The American Society for Public Administration identifies eight principles its members pledge to adhere to. Those principles are advancing the public interest, upholding the Constitution and law, promoting democratic participation, strengthening social equity, fully informing and advising, demonstrating personal integrity, promoting ethical organizations, and advancing professional excellence.<sup>6</sup>

It might be sufficient to stop here and inquire whether additional, distinct principles are needed for public servants who oversee elections. If not, then all we would need to do is specify standards of conduct that apply specifically to election officials, as distinct from other public servants.<sup>7</sup>

An example of how the existing ethical principles that apply to all public servants also speak to issues facing election officials relates to relationships with election system vendors. Voting system vendors play a significant role in the investment decisions of election officials and the operations of many election offices. Contracts for purchasing and maintaining equipment can constitute the greatest single-source expenditure for an election department. These types of relationships are in the wheelhouse of most state ethics laws. Standards of conduct directed to vendor relations would be justified in light of the ethical principles that public servants should demonstrate personal integrity and advance the public interest.<sup>8</sup>

However, there are important ways in which election administration is distinct from other areas of public administration. Most importantly, the decisions of election officials can affect who exercises political power over the governed. Their decisions can determine who is certified to run for office, who can vote, and which votes are included in the results. Their communications with the public can enhance or diminish confidence in the electoral process. Thus, while most public officials act in

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<sup>6</sup> *Code of Ethics*, AM. SOC'Y FOR PUB. ADMIN., <https://www.aspanet.org/ASPA/ASPA/Code-of-Ethics/Code-of-Ethics.aspx> (last visited Jan. 24, 2024).

<sup>7</sup> Below we define the distinction between a set of ethical principles and standards of conduct. See Section 2.

<sup>8</sup> In the Practices to Promote the ASPA Code of Ethics guide, ASPA's members are directed to "[g]uard against using public position for personal gain or to advance personal or private interests[.]" "[z]ealously guard against conflict of interest or its appearance[.]" and "[c]onduct official acts without partisanship or favoritism." Practices to Promote the ASPA Code of Ethics, AM. SOC'Y FOR PUB. ADMIN., <https://www.aspanet.org/Common/Uploaded%20files/ASPADocs/ASPA%20Code%20of%20Ethics-2013%20with%20Practices.pdf> (last visited Jan. 11, 2024) [hereinafter ASPA Code of Ethics].

prescribed areas of public policy, election officials are the gatekeepers guarding over who exercises that authority.

Therefore, in articulating ethical principles that apply to election administration, it is important to emphasize those features that are generally distinct from public administration or are highlighted in election administration. One example is the principle of impartiality, which should be the ethical duty of any public official in a democratic society. However, the fact that many election officials have identifiable partisan affiliations highlights this principle for election administration.

## The electoral environment of election officials complicates the development of ethical principles for election officials

One particular feature of election administration as practiced in the United States complicates ethical considerations further: political accountability in a partisan electoral environment. Either directly or indirectly, all election officials are accountable to the electoral process, and for most, this involves party nomination.<sup>9</sup> The vast majority of secretaries of state, who are most often a state's chief election official, have been elected after garnering the nomination of a political party.<sup>10</sup> The same practice also regularly pertains to local election officials. Even when an election official is appointed, that appointment typically comes from an official who is an identified partisan. And, of course, an election official who gains office through a nonpartisan election is still elected.

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<sup>9</sup> It is often claimed that this feature of electoral accountability is unique to the United States, but one reading of the research suggests that the United States may be less different in this regard than often claimed. In peer democratic societies, "independent" election management boards still are generally appointed by and are accountable to elected officials. For instance, questions about the independence of the United Kingdom's Electoral Commission have been raised in light of the passage of the Elections Act by Parliament in 2022. See William James, *UK Election Watchdog Warns New Law Could Impact Its Independence*, REUTERS (Feb. 21, 2022), <https://www.reuters.com/world/uk/uk-election-watchdog-warns-new-law-could-impacts-it-independence-2022-02-21/>. Carolien Van Ham and Holly Ann Garnett distinguish between formal and de facto independence of national election management bodies. See Carolien van Ham & Holly Ann Garnett, *Building Impartial Electoral Management? Institutional Design, Independence and Electoral Integrity*, 40 INT'L POL. SCI. REV. 313 (2019).

<sup>10</sup> As of November 18, 2023, the website of the National Association of Secretaries of State indicates that 40 of the 50 state secretaries of state serve as the chief election officer. All secretaries of state, regardless of selection method, are identified by political party. States that designate neither the secretary of state nor lieutenant governor the chief election officer are Delaware, Hawaii, Illinois, Maryland, New York, North Carolina, Oklahoma, South Carolina, Virginia, and Wisconsin. Washington, D.C. also does not designate the secretary of the District of Columbia as the chief election officer. See Rosters of Secretaries of State/Lieutenant Governors, NAT'L ASS'N OF SEC'Y OF STATE, <https://www.nass.org/memberships/secretaries-statelieutenant-governors> (last visited Nov. 22, 2023).

States vary in the degree to which election officials are allowed, or even expected, to engage in partisan activity. At one end of the continuum are officials who are chosen on a non-partisan basis and enjoined against overtly partisan activity.<sup>11</sup> At the other end are states whose officials are selected on an explicitly partisan basis.<sup>12</sup> Elements of this continuum are most interestingly in evidence in multi-member election boards. The former Wisconsin Government Accountability Board is at the non-partisan end of the spectrum.<sup>13</sup> At the other end are the thirteen states with an odd number of voting members, thus guaranteeing a majority for one of the major parties.<sup>14</sup>

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<sup>11</sup> Even though enjoined against partisan activity, appointed non-partisan election officials may still be enrolled or registered with a political party on the voter registration rolls.

<sup>12</sup> On the history and current practice of partisan-based oversight of elections, which she terms “adversarial election administration,” see Rebecca Green, *Adversarial Election Administration*, 101 N.C. L. REV. 1077 (2023).

<sup>13</sup> The Wisconsin Government Accountability Board (GAB) was created in 2007 under a bill with broad bipartisan support—it was unanimously supported by Republicans in the state legislature and opposed by only two Democrats. Its creation was spurred by a series of campaign finance scandals in the state which led to a combination of the previous State Elections Board and the State Ethics Board. According to the leading account of the GAB’s creation, “[w]hile election administration was not exactly an afterthought, it was not the primary consideration that motivated the legislature to create the GAB.” Daniel P. Tokaji, *America’s Top Model: The Wisconsin Government Accountability Board*, 3 UC Irvine L. Rev. 575, 578 (2013); see also STEPHEN F. HUEFNER ET AL., FROM REGISTRATION TO RECOUNTS: THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES (2007). The GAB consisted of six members who had to be former state judges. Tokaji, *America’s Top Model: The Wisconsin Government Accountability Board*, 578. Three of the original board members were chosen by the state assembly and the other three were chosen by the state Senate, both on a majority vote of the chamber. *Id.* at 579. Because each chamber was controlled by a different party, this was seen as a way to balance the partisan composition of the board, although members themselves were unaffiliated with the parties. *Id.* Subsequent members were confirmed by the Senate by a two-thirds vote. *Id.*

The GAB lasted less than a decade. Its pursuit of a campaign finance case against Republican Governor Scott Walker prompted a Republican-controlled legislature to conclude that the board was too unaccountable, leading to its dissolution in 2016, in favor of a two more politically accountable bodies, the Wisconsin Elections Commission and the Wisconsin Ethics Commission. Katelyn Ferral, *As the Government Accountability Board Ends, What’s the Future for Wisconsin Campaign Finance Regulation?*, THE CAP TIMES (Jun. 20, 2016), [https://captimes.com/news/local/govt-and-politics/as-the-government-accountability-board-ends-whats-the-future-for-wisconsin-campaign-finance-regulation/article\\_77041945-36c2-5163-9120-fc807b0a37b6.html](https://captimes.com/news/local/govt-and-politics/as-the-government-accountability-board-ends-whats-the-future-for-wisconsin-campaign-finance-regulation/article_77041945-36c2-5163-9120-fc807b0a37b6.html). The Wisconsin Elections Commission, in turn, became embroiled in a series of partisan controversies related to the conduct of the 2020 presidential election, which led to a protracted effort to depose the executive director of the commission. Harm Venhuizen, *GOP-led Wisconsin Senate Votes to Fire Nonpartisan Official Targeted by 2020 Election Skeptics*, AP (Sept. 14, 2023, 2:11PM PST), <https://apnews.com/article/wisconsin-senate-meagan-wolfe-elections-firing-62a0ec656530c740934b03083b3e3b11>.

<sup>14</sup> Al Vanderklipp, *Which States Have Election Commissions or Boards*, ELECTION REFORMERS NETWORK (Apr. 29, 2021), <https://www.electionreformers.org/articles/which-states-have-election-commissions-or-boards>. The 13 states with an odd number are Arkansas, Delaware, Georgia, Kentucky, Maryland, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. In addition, four states have an even number of members: Illinois, Indiana, New York, and Wisconsin.

The document “Ethics and Standards for Election Officials and Employees,” issued by the Maryland State Board of Elections, states that members of local boards of elections “are often expected to be active in both partisan and non-partisan political affairs.”<sup>15</sup> It goes on to note that “[h]owever, there are appropriate and inappropriate times and places for such political activity. Election officials must exercise the authority vested in them independent of partisan pressures.”

The presence of election officials on the ballot and their political association with partisan groups and candidates adds complications to ethical considerations that are unique to the profession of election administration. In the end, the Gordian Knot that arises because of the electoral accountability of election officials cannot be cut completely, which creates limits for what ethical principles and standards of conduct can accomplish. Therefore, this puts a premium on clarity and transparency in election administration—clarity of laws, so that election officials and the public know what is required of them, and transparency in execution, so that the public can judge for themselves that officials have acted appropriately.

Because election administration faces distinct ethical issues, developing a particular ethics code is necessary for election officials. However, we do not dismiss the value of developing standards of conduct that link more general ethical principles to the particular context of election administration.

## The lack of adequate resources can interfere with election officials fulfilling their ethical duties

Many professions that have developed ethics codes are powerful economically and politically. Research into the origin of these ethics codes has established that they have helped reinforce the status of these professions.<sup>16</sup> Election officials can hardly be described as powerful economically and politically. This disadvantage in political power has important implications for developing ethics codes for election administration. One such implication is that election officials face an uphill battle developing a robust set of ethical principles and standards of conduct because the larger political process may not support full adherence to the code.

Further complicating matters, adherence to ethical principles and standards of conduct requires the expenditure of public funds—funds that are often lacking.<sup>17</sup> The impecunity of election offices has two implications for the development and execution of ethical principles in election administration. First, adherence to ethical

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<sup>15</sup> STATE OF MD. ETHICS AND STANDARDS FOR ELECTION OFF. AND EMP. (MD. STATE BD. OF ELECTIONS 2023) (emphasis added).

<sup>16</sup> Andrew Abbott, *Professional Ethics*, 88 AM. J. OF SOCIO. 855, 858 (1983).

<sup>17</sup> Charles Stewart III, THE COST OF CONDUCTING ELECTIONS (2022).

principles requires the resources to support the behavior implied by those principles. Elections are a core function of government and cannot be outsourced. When election officials do not have the resources to follow through on their ethical obligations, the public can incorrectly conclude that the officials are behaving unethically when, in fact, their political superiors are to blame for the failure to support ethical behavior. Second, election officials can be put in a position where they feel called upon to perform the impossible, given the resources at their disposal, which can put them in a public position of defensiveness.

## Ethical principles should be timeless, but the present moment makes ethics more salient

The discussion to this point has argued that the profession of election administration is distinct enough from other positions of public trust that it requires a purpose-built ethics code. This code should be timeless. At the same time, it is no coincidence that this report is being written following the 2020 election, nor that others have also taken up the subject.<sup>18</sup>

At the broadest level, elections have become as polarized as they have been in American history; large segments of American society view the prospect of an electoral defeat in existential terms.<sup>19</sup> At a national level, partisan majorities in both Houses of Congress are as narrow as they have ever been, as are margins in the national popular vote for President.<sup>20</sup> Small numbers of votes can be seen as the difference between winning and losing in an endless stream of high-stakes elections. Candidates and their supporters vie fiercely for every vote.

In this context, it is natural for candidates, parties, and their supporters to “play the refs,” that is, to try to influence election officials to achieve electoral advantage. Overwhelmingly, when election officials have been pressured to overlook the law in

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<sup>18</sup> See Derek Tisler et al., *How A Renewed Code of Ethics Can Strengthen the Election Administration Profession*, 2 J. OF ELECTION ADMIN. RSCH. & PRAC. 17 (2023). In addition, the Election Center, which adopted a code of ethics in 1997, is currently undertaking a project to re-engage its members on the issue of ethics.

<sup>19</sup> Michael Dimock & Richard Wike, *America is Exceptional in the Nature of Its Political Divide*, PEW RSCH. CTR. (Nov. 13, 2020), <https://www.pewresearch.org/short-reads/2020/11/13/america-is-exceptional-in-the-nature-of-its-political-divide/>.

<sup>20</sup> Drew Desilver, *Narrow Majorities in U.S. House Have Become More Common But Haven't Always Led to Gridlock*, PEW RSCH. CTR. (May 5, 2023), <https://www.pewresearch.org/short-reads/2023/05/05/narrow-majorities-in-u-s-house-have-become-more-common-but-havent-always-led-to-gridlock/>; *Presidential Election Margin of Victory*, AM. PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/statistics/data/presidential-election-mandates> (last visited Nov. 22, 2023).

recent years, they have held firm to their legal and ethical responsibilities. But holding fast to these principles has come at an emotional cost to election officials.<sup>21</sup>

While a code of ethics adopted specifically for election officials will not lower the pressure of the political atmosphere, it can provide a lodestar that can guide the behavior of election officials and create expectations among the public about how officials should behave.<sup>22</sup>

## Ethical principles apply to election officials at all levels of responsibility but in different ways

This report addresses the ethical standards of those responsible for conducting elections in the United States. No single model guides how election administration is organized and staffed in the United States, so we should be clear about who should be covered by these standards.

The individuals who administer elections can be divided into three large groups, which may overlap in a particular state or locality. As used in this report, an “election administrator” has supervisory responsibility for conducting elections on a day-to-day basis. At the state level, this might be an Election Director who reports to a Secretary of State, or an Executive Director who reports to a Board of Elections. At the local level, this might be an elected county Supervisor of Elections, or the director of an elections department appointed by a city clerk. Because election offices are typically organized hierarchically, we use the term senior election administrator to refer to those in a jurisdiction with ultimate authority for administering an election in that jurisdiction. A non-senior election administrator is someone with management authority in an election office, usually a larger one, whose authority is limited in scope.

An “election worker” is a paid employee or volunteer who reports to an election administrator to perform a specified task associated with conducting an election or elections. This might include a full-time clerical employee in a state or local election office or a poll worker who staffs an in-person polling place during early voting.

An “election board member” has some oversight role to play in the conduct of elections but does not play a role in directly administering elections on a day-to-day basis. This may be a county board of elections that hires a director to conduct elections in that county, a county commission that certifies election results, or a state canvassing board.

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<sup>21</sup> *The EVIC/Reed College 2023 LEO Survey Report*, ELECTIONS AND VOTING INFO. CTR. (Nov. 16, 2023), [https://evic.reed.edu/2023\\_leo\\_survey\\_report/](https://evic.reed.edu/2023_leo_survey_report/) [hereinafter *EVIC/Reed College Report*].

<sup>22</sup> Tisler, et al., *supra* note 18, at 20.

The standards we propose in this report apply to all three groups of people in different ways. (We discuss this issue in Section 3.) We use “election official” as an umbrella term to include election administrators, election workers, and election board members as a collective. There is not complete uniformity throughout the country in using these terms, although we have endeavored to minimize confusion of terminology in this report.

## How this report is organized

The remainder of this report elaborates on the topics introduced here. Section 1 reviews the ethical landscape that currently encompasses the field of election administration. Section 2 discusses how other professions and the academic literature have approached the topic of developing ethical principles, introducing the distinction between ethical principles and standards of conduct that arise from those principles. An issue that regularly appears in discussions of election official ethics is how to square the ethical expectations of election administrators with the political process that selects them. We cover that topic in Section 3. Section 4 delineates a set of principles appropriate for adoption by election officials and provides examples of behavioral rules that flow from those principles. Section 5 addresses who should adopt ethical principles for the election administration profession and how they might be enforced. In Section 6, we conclude with four high-level recommendations intended to further the effort to increase the visibility of ethical principles in election administration.

## 1. Existing Ethical Expectations of Election Officials

Election officials are subject to four sources of authority when it comes to ethical expectations: (1) general ethics laws, (2) oaths of office, (3) ethical principles associated with other professions to which they may belong, and (4) ethics laws specific to election officials. These authorities may be adopted by any level of government and utilize a variety of enforcement mechanisms. For example, election officials are often subject to the enforcement of general election laws and state ethics laws by the courts and state ethics commissions. Ethical principles applied to election officials may be sanctioned by censure or expulsion, on the one hand, or may not be sanctionable at all.

## 1.1. General state ethics laws

The past half-century has seen a steady growth of state ethics laws applied to public servants, legislators, judges, and those who serve in executive capacities.<sup>23</sup> The most obvious manifestation of this growth is the number of state ethics commissions. As of 2021, the National Conference of State Legislatures reports that 47 states and the District of Columbia had some form of state ethics commission.<sup>24</sup>

The one comprehensive survey of state ethics codes in the academic literature was published in 1981 by Steven W. Hays and Richard R. Gleissner, who collected codes of ethics from each state and coded them concerning administration and enforcement and their content.<sup>25</sup> Addressing the content of the codes, Hays and Gleissner concluded that “[t]he most striking finding . . . is that ‘code of ethics’ is a misnomer. State ethical codes are, in almost every instance, no more than conflict-of-interest statutes and/or financial disclosure provisions.”<sup>26</sup> Almost all of them included six major “shall-not” conflict-of-interest provisions: accept gifts, use one’s position to secure special privileges, disclose confidential information, use state resources for private purposes, sell or cause to be sold to a state agency through an entity in which they hold a private interest, and receive compensation that might impair independence.<sup>27</sup>

We have not reproduced Hays and Gleissner’s research, but we have examined the websites of numerous state election commissions and the guidance from state and local election officials. This less comprehensive examination confirms the impression from the earlier research that state ethics laws are still almost entirely focused on requiring financial disclosure, prohibiting conflict of interest, and controlling the misuse of one’s public position.

State election officials are subject to these general ethics laws as state employees. Whether local officials, including temporary election workers, are subject to these state laws is less certain.<sup>28</sup> The non-applicability of state election laws to local

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<sup>23</sup> Kayla Crider & Jeffrey Milyo, *Do State Ethics Commissions Reduce Political Corruption? An Exploratory Investigation*, 3 UC IRVINE L. REV. 717 (2013).

<sup>24</sup> *State Ethics Commissions: Powers and Duties*, NAT’L CONF. OF STATE LEGISLATURES (Jul. 23, 2021), <https://www.ncsl.org/ethics/state-ethics-commissions-powers-and-duties>.

<sup>25</sup> Steven W. Hays & Richard R. Gleissner, *Codes of Ethics in State Government: A Nationwide Survey*, 10 PUB. PERSONNEL MGMT. 48 (1981).

<sup>26</sup> *Id.* at 53.

<sup>27</sup> *Id.* at 54.

<sup>28</sup> For instance, North Carolina state ethics laws generally do not apply to local employees. Norma Houston, *State Ethics and Lobbying Laws – When Do They Apply to Local Government Lobbying?*, COATES’ CANONS NC LOC. GOV’T L. (Mar. 27, 2011), <https://canons.sog.unc.edu/2011/04/state-ethics-and-lobbying-laws-when-do-they-apply-to-local-government-lobbying/>. In California, local governments often establish their own ethical standards, despite extensive state legislation. *Local*

governments has led some local governments to adopt their own ethics laws. All told, the wide variety of practices across the country makes it impossible to generalize about the applicability of state ethics laws to local government employees, including election officials.

When we place these state ethics codes alongside the approach to ethical principles discussed below in Section 2, state ethics codes are not, in fact, ethics codes. Instead, they are codes of conduct based on a set of ethical principles that are typically implicit.

## 1.2. Oaths of office

Many states require an oath from their election officials, from the secretary of state to the temporary election worker. Research by James F. Bowman and Jonathan P. West shows that almost all state officials in the United States must take an oath that follows a precise script and that the oaths almost uniformly swear to support the U.S. and state constitutions and to discharge one's duties faithfully. The U.S. Election Assistance Commission's 2023 report on state election-worker laws notes that more than half of states have oath requirements for temporary election workers.<sup>29</sup>

An oath is an important moral event in the history of an individual, especially in a pluralistic society, where there are numerous religious and philosophical starting points from which an individual can derive their own ethical norms.<sup>30</sup> By forming the oath around a pledge to defend the Constitution, which is the preeminent symbol of American political values, an official acknowledges a common source of authority for their actions.

As an example of the types of oaths taken specifically by election officials, the South Dakota code requires each "precinct superintendent, precinct deputy, and precinct assistant of the election and counting boards" to take the following oath before performing their Election Day duties:

I, A.B., do solemnly swear (or affirm) that I will perform the duties of precinct superintendent (or precinct deputy or precinct assistant) according to law and the best of my ability and that I will studiously endeavor to prevent fraud, deceit, and abuse and that I will act in an impartial manner in conducting the election about to be held.<sup>31</sup>

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*Agency Ethics Codes*, INST. FOR LOC. GOV'T, <https://www.ca-ilg.org/ethics-codes> (last visited Dec. 9, 2023).

<sup>29</sup> U.S. ELECTION ASSISTANCE COMM'N, STATE-BY-STATE COMPENDIUM: ELECTION WORKER LAWS AND STATUTES (2023) [hereinafter *State-by-State Compendium*].

<sup>30</sup> JOHN A. ROHR, *ETHICS FOR BUREAUCRATS: AN ESSAY ON LAW AND VALUES* 69 (2d ed. 1989).

<sup>31</sup> S.D. CODIFIED LAWS §12-15-9 (Westlaw through 2023 Regular Sess. and Sup. Ct. Rule 23-17).

Violation of the oath is a Class 1 misdemeanor. Members of recount boards also swear (or affirm) that they “will, to the best of my ability, impartially perform the duties of recount board member in good faith according to law, and that I meet the qualifications to serve as a member of the recount board.”<sup>32</sup> Finally, tabulation center employees swear that they “will perform the duty of tabulating the ballots according to law and the best of my ability and that I will studiously endeavor to prevent fraud, deceit, and abuse in tabulating the ballots I am about to count.”<sup>33</sup>

The prevalence of oath requirements in American constitutions and statutes generally speaks to the cultural importance of oaths as a mechanism for reinforcing in the mind of the officeholder the solemnity of the occasion. Oaths also serve as a signal to the public that the official has taken on a responsibility that elevates them from the everyday responsibilities of citizens. Oaths are not self-enforcing, however. In some cases, violation of an oath may be a criminal offense (as illustrated by the South Dakota precinct worker oath); in others, it may be the basis of removing someone from office; in still others, no sanction may be prescribed.

The greatest value of an oath is likely related to the solemnity of the occasion when the oath is administered. For senior elected officials, it is common for the oath to be administered by a prominent, senior official—by the Chief Justice of the United States in the case of the U.S. President or a judge in the case of a county commissioner—at a public ceremony where speeches and other programming underscores the seriousness of the occasion.

Notably, the Election Center’s Standards of Conduct for Elections/Registration Officials is recited by graduates of the Election Center’s Certified Elections/Registration Administrator (CERA) certification program and labeled as “my personal pledge to freedom, democracy and my profession.”<sup>34</sup> In other words, its ethical principles are recast as an oath recited in a large gathering as new members mark the elevation of their professional accomplishments.

It is easy to dismiss oaths as empty gestures. However, if an oath is administered in a solemn ceremony and not perfunctorily, it can have a profound emotional effect on those taking the oath, as well as on those witnessing the event, therefore reinforcing a wider societal embrace of the values underlying the oath. Therefore, we recommend not only that election workers at all levels be required to recite an oath

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<sup>32</sup> S.D. ADMIN. R. 5:02:19:11 (Westlaw through rules published in the S.D. register dated Dec. 27, 2023).

<sup>33</sup> S.D. ADMIN. R. 5:02:09:14 (Westlaw through rules published in the S.D. register dated Dec. 27, 2023).

<sup>34</sup> *Professional Education Manual*, ELECTION CTR. (Mar. 26, 2020), <https://www.electioncenter.org/professional-education-program/2020/Professional-Education-Program-Manual-Released-2020-03-26.pdf> (last visited Jan. 19, 2024).

to defend the law and the Constitution, and to discharge their duties impartially, but that the recitation not be done casually.

Nonetheless, an oath of office does not replace the articulation of ethical principles and codes of behavior. Oaths of office are generally embodied in statute and, if enforceable, are enforceable through the courts or administrative procedures. As we argue below, ethical principles need to be developed and monitored by the profession of election administration. However, as long as the legal requirements of election officials are developed with professional ethical principles in mind, oaths can reinforce those principles.

### 1.3. Ethical principles of other professions to which election officials belong

Many election officials are members of professions with ethical principles and standards of conduct with teeth. The most notable of these professions are the law<sup>35</sup> and accounting.<sup>36</sup> Of these two, the ethical standards associated with the law are more binding and, in extreme cases, may provide a route for sanctions when election-specific ethics codes prove inadequate to the wrongdoing.

Although it is possible to imagine, for instance, an election official who was also an attorney being sanctioned and disbarred for behavior undertaken in their capacity as an election official, rather than their law practice, the possibility of sanctions is not the main reason principles articulated by other professions are relevant to election administration. As we argue below, one of the greatest values of ethical principles lies in internalizing them through professional education and reinforcing those principles by the profession. This means that election officials who are also members of other professions with well-developed ethical principles and codes of conduct are likely to come into election administration with a foundation of ethical training that can be built upon.

### 1.4. Ethics laws and rules specifically for election officials

Finally, in a few states, election officials are also subject to ethics laws, rules, or codes specific to their positions. Florida has led the way on this front, developing the

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<sup>35</sup> Jeanne F. Backof & Charles L. Martin, Jr., *Historical Perspectives: Development of the Codes of Ethics in the Legal, Medical, and Accounting Professions*, 10 J. OF BUS. ETHICS 99 (1991).

<sup>36</sup> A review of ethical principles of major accounting associations—the American Institute of Certified Public Accountants, the Information Systems Audit and Control Association, the International Ethics Standards Board for Accountants, the Institute of Internal Auditors, and the Association of Certified Fraud Examiners—reveals that the principles that appear in all codes are independence and objectivity, and confidentiality and privacy. A majority of these codes also include principles on competency, due diligence, professional care, integrity and honesty, public/stakeholder interest, and acts discreditable.

most extensive set of such laws and codes. Under Florida law, supervisors of elections, in virtue of their being “constitutional officers,” must complete four hours of ethics training each calendar year that “addresses, at a minimum, s. 8, Art. II of the State Constitution [which sets out the ethical duties of public officials and employees], the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of [the] state.”<sup>37</sup>

Beyond this legal requirement, the Florida Supervisors of Elections (FSE), the professional association of the state’s supervisors of elections, has its own seven-point Resolution and Statement of Ethics, the aim of which is to ensure public confidence in the state’s elections and “to reaffirm [the association’s] commitment to the highest standards of personal integrity, honesty, and competence.”<sup>38</sup> Among the specific commitments made by the FSE in its statement of ethics are to non-partisanship, fealty to the law, the efficient use of resources, avoiding engaging in activity that creates a conflict of interest, keeping abreast of legal and non-legal developments that touch on the electoral process, cooperating with other government agencies, and working to improve state and federal laws dealing with voter registration and elections.<sup>39</sup>

In partnership with the Florida Institute of Government at Florida State University, the FSE has also created the Florida Certified Election Professionals (FCEP) Program, an educational program for election officials that consists of 30 courses totaling 120 hours, covering topics such as election law, voter registration, voter outreach and education, and, most notably, ethics and liability.<sup>40</sup> In the ethics and liability course, participants not only learn about the key concepts of ethical behavior in public service, as determined by the FSE, and the relevant state disclosure forms, they also assess personal character and responsibility and analyze the warning signs of potential ethical compromises.<sup>41</sup> Those who complete the FCEP coursework and participate in a statewide primary and general election cycle are eligible for the Master Florida Certified Election Professional/Vendor designation,

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<sup>37</sup> FLA. STAT. 112.3142(2)(a) (Westlaw current with laws, joint and concurrent resolutions and memorials in effect from the 2023 Special B and C Sessions and the 2023 first regular session).

<sup>38</sup> *FSE Mission*, FLA. SUPERVISORS OF ELECTIONS, <https://www.myfloridaelections.com/About-Us/Mission> (last visited Nov. 21, 2023).

<sup>39</sup> *Id.*

<sup>40</sup> *See Florida Certified Election Professionals (FCEP)*, FLA. SUPERVISORS OF ELECTIONS, <https://www.myfloridaelections.com/Certification-Training/FCEP> (last visited Nov. 21, 2023) [hereinafter *FCEP*]; *see also Florida Certified Election Professional Program Student Manual*, FLA. SUPERVISORS OF ELECTIONS, <https://www.myfloridaelections.com/portals/fsase/Documents/FCEP/FCEP%20Student%20Manual%2005.2020.pdf> (last visited Jan. 14, 2024) [hereinafter *Student Manual*]. The FSE has also created a four-hour ethics program that supervisors of elections can take to fulfill their ethics requirements under Fla. Stat. 112.3142(2)(a).

<sup>41</sup> *Student Manual*, *supra* note 40, at 12.

which can be renewed every two years by taking a course on the history of elections in Florida, on civic engagement, or on redistricting and reprecincting.<sup>42</sup>

Like their Florida counterparts, Ohio's election officials are also subject to several position-specific ethics provisions. As is the case with all of the state's public servants, the members and employees of Ohio's boards of elections must comply with the Ohio Ethics Law<sup>43</sup>— which sets out, among other things, the financial-disclosure requirements, confidentiality policies, and conflict-of-interest restrictions that govern the state's officials and workers—as well as related statutes dealing with peculation.<sup>44</sup> Additionally, like all state employees, those of Ohio's boards of elections must abide by the prohibition, contained in Ohio's election laws, on the solicitation of contributions by public employees while performing their official duties or while in areas of a public building where official business is conducted.<sup>45</sup>

However, unlike other state officials and workers, the members and employees of the state's boards of elections are also subject to the Ethics Policy promulgated by the Ohio Secretary of State. Not only does that policy set out training and reporting requirements for the members and employees of the boards of elections, it also prohibits them from engaging in a range of political activities<sup>46</sup> and directs them to avoid activities *and associations* that would create an appearance of impropriety, would undermine public confidence in the state's elections officials, or would interfere with the carrying out of official duties by other elections officials. Among the list of activities to be avoided on the ground that they create an appearance of

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<sup>42</sup> See *FCEP*, *supra* note 40, at 10, 18.

<sup>43</sup> OHIO REV. CODE. ANN. § 102 (West current through File 15 of the 135<sup>th</sup> General Assembly (2023-2024) and 2023 Statewide Issues 1 and 2 (November Election)).

<sup>44</sup> See OHIO REV. CODE. ANN. §§ 2921.42, 2921.43 (West current through File 15 of the 135<sup>th</sup> General Assembly (2023-2024) and 2023 Statewide Issues 1 and 2 (November Election)) (peculation-related statutes). A state Ethics Commission, which consists of three members of each of the two major political parties, is authorized both to receive and to initiate complaints regarding conduct that allegedly violates the Ohio Ethics Law or the criminal statutes dealing with peculation. See OHIO REV. CODE. ANN. §§ 102.05, 102.06(A) (West current through File 15 of the 135<sup>th</sup> General Assembly (2023-2024) and 2023 Statewide Issues 1 and 2 (November Election)).

<sup>45</sup> See OHIO REV. CODE. ANN. § 3517.092(D)(1).

<sup>46</sup> The list of prohibited political activities varies depending on whether one is a precinct election official, a category which includes rovers, scouts, and other similar, temporary election workers. Board members and employees who are not precinct officials are, for instance, prohibited from serving as a caucus coordinator for any presidential candidate at a congressional district caucus to select delegates and alternates to a political party convention, whereas precinct election officials may. See ETHICS POL'Y §§ B(3), C (OHIO SEC'Y OF STATE), <https://www.ohiosos.gov/globalassets/elections/eoresources/general/ethicspolicy.pdf> (last visited Jan. 24, 2024). That said, certain types of conduct are prohibited regardless of one's position. For instance, no member or employee of an Ohio board of elections may wear or distribute campaign paraphernalia at the office of the Secretary of State, the office of the board of elections, or at any polling place, nor may they engage in political activity while on board of elections time. See *Id.* at §§ B(3)(c)–(d), C(3)–(4).

impropriety are participating in the consideration of a matter in which they have a personal or economic interest, such as reviewing a petition of a committee seeking a referendum to repeal a zoning ordinance affecting the property of a family member, and writing letters to the editor of a newspaper in favor or against any candidate or issue, where one's position as an Ohio elections official is identified.<sup>47</sup> Nor is the Secretary of State Ethics Policy the only source of position-specific restrictions on election officials. Ohio's election laws also limit the circumstances under which a member or employee of a board of elections may be a candidate for office.<sup>48</sup>

In Colorado, county clerks are subject to a self-imposed set of ethics provisions. Per the Bylaws of the Colorado County Clerks Association (CCCA), the organization's mission is threefold: to promote best practices, to encourage the use of technology, and to support "appropriate" state legislation, i.e., legislation that improves on and brings uniformity to the administration of the office of County Clerk and Recorder of the State of Colorado and county governance, more generally.<sup>49</sup> In its statement of objectives, the Bylaws also make clear the organization's commitment to encouraging high standards among state elected officials, not just county clerks, and fostering goodwill with the public. Members of the CCCA who violate the spirit of the Association's mission statement, or their oaths of office, are subject to a sanctioning process we discuss in Section 5.2.

Finally, through the profession's largest nongovernmental organization, the Election Center, election officials have promulgated a set of principles and a code of conduct for themselves.<sup>50</sup> Members of the Election Center pledge to follow an 11-point code that includes a commitment to: excellence and competence through continuing education on the elections process; protecting public confidence in the fairness and accuracy of elections; providing voters with an equal opportunity to participate in elections; resisting efforts to subordinate the electoral process to personal and partisan interests; fiscal responsibility; and innovation within the confines of the law.<sup>51</sup>

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<sup>47</sup> *Id.* at § B(4).

<sup>48</sup> See OHIO REV. CODE ANN. § 3501.15 (West current through File 15 of the 135<sup>th</sup> General Assembly (2023-2024) and 2023 Statewide Issues 1 and 2 (November Election)).

<sup>49</sup> COLO. CNTY. CLERKS ASSN., *Bylaws of the Colorado County Clerks Association* arts. II, III (Jan. 2023).

<sup>50</sup> The National Association of Election Officials (the Election Center) is a nonprofit 501(c)(3) organization that is dedicated to continued professional education and whose purpose is to "promote, preserve, and improve democracy." *About Us*, ELECTION CTR., <https://www.electioncenter.org/about-us.php> (last visited Jan. 24, 2024).

<sup>51</sup> *Professional Education Manual*, *supra* note 34.

## 2. From the General to the Specific: Ethical Principles and Standards of Conduct

Professions that have engaged in the most thorough thinking about the role of ethics have generally distinguished two types of considerations that work together to help guide behavior in a beneficial direction: ethical principles (also referred to at times as “ethical standards”) and standards of conduct. These two are virtually universal—organizations that enact general ethical principles typically elaborate on them by specifying how they apply in practice to large categories of behavior. Some professions go further by creating a third category, practice-based guidance, to provide even greater specificity in certain circumstances.

Ethical principles are aspirational. They are generally limited in number and ground more detailed standards of conduct and applications to particular cases. They are stated in general terms, apply to all members of a profession regardless of rank or position, and rely heavily on moral suasion to be realized. Suppose we apply these three characteristics of ethical principles to election administration. In that case, ethical principles for election officials should be stated as a small number of attributes that those in the profession should strive to embody and rely as much—if not more—on officials internalizing these principles through education for compliance than on formal sanctions.

In contrast, standards of conduct guide behavior within particular professional settings. They use prescriptive rather than aspirational language. As such, they answer the “so what?” question of the general principles, which can seem abstract (because they are). They match a set of general principles to the types of situations that professionals may commonly find themselves in and clarify how professionals should behave in those specific situations.<sup>52</sup>

If we apply this distinction between ethical principles and standards of conduct to election administration, standards of conduct flow from the principles and are tailored to more specific settings, such as counting votes, certifying petitions, and purchasing voting equipment. Different positions would also have different standards of conduct, depending on their authority and specific circumstances. For instance, standards of conduct for a county board of elections would likely differ from those for poll workers, even if the general ethical principles were identical. It would be appropriate for a standard of conduct to specify sanctions or avenues of redress when the standard is violated.

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<sup>52</sup> The Elections Group, a consulting firm that works nationwide to advance the election administration profession, has published a helpful guide to standards of conduct for election workers, although it does not explicitly link those standards to overarching ethical principles as defined here. See *Standards of Conduct for Election Workers*, THE ELECTIONS GRP. (Jun. 15, 2022), <https://electionsgroup.com/resource/standards-of-conduct-for-election-workers/> (last visited Jan. 15, 2024).

Finally, applying principles and standards of conduct is complicated by gray areas, unique circumstances, and potential conflict between different principles. The most developed systems of ethical guidance have procedures to develop authoritative guidance about what professionals should do in cases such as these.<sup>53</sup>

We often see procedures for addressing specific circumstances within state ethics laws, in which the ethics commission or similar authority may issue advisory opinions or guidance.<sup>54</sup> Providing such guidance serves (at least) four purposes: to develop case law further, to ensure similar behavior when similar circumstances arise, to provide officials who are striving to act ethically with the resources to do so, and to provide protection for officials who must act in situations where ethical principles or standards of conduct are unclear.

The academic literature<sup>55</sup> and the practice of many professional societies explicitly link together ethical principles and standards of conduct, although the terminology varies. Among professional societies delineating both principles and standards of conduct are the American Bar Association,<sup>56</sup> the American Institute of CPAs,<sup>57</sup> the American Dental Association,<sup>58</sup> the American Psychological Association,<sup>59</sup> and the American Medical Association.<sup>60</sup> Closer to the world of election administration, this structure is seen in the code of ethics for the American Society for Public Administration.<sup>61</sup>

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<sup>53</sup> Within election administration, a common vehicle used to clarify ambiguities or fill in holes in the law are directives issued by the state's chief election official, which are legally binding in some states but not in others. An example of a binding collection of directives is the Arizona Elections Procedures Manual. See *2023 Elections Procedures Manual*, ARIZ. SEC'Y OF STATE, [https://apps.azsos.gov/election/files/epm/2023/20231230\\_EPM\\_Final\\_Edits\\_406\\_PM.pdf](https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf) (last visited Jan. 15, 2024). In our view, such a set of directives is valuable in clarifying the law that election officials have a legal and ethical obligation to follow, but it is not identical to a clarification of ethical principles as discussed in the text.

<sup>54</sup> See, e.g., OHIO REV. CODE. ANN. § 102.08 (West current through File 15 of the 135<sup>th</sup> General Assembly (2023-2024) and 2023 Statewide Issues 1 and 2 (November Election)).

<sup>55</sup> See Elizabeth M. Kelly, et al., *When Rules Are Not Enough: Developing Principles to Guide Ethical Conduct*, 14 BEHAV. ANALYSIS IN PRAC. 491 (2021).

<sup>56</sup> AM. BAR ASS'N, *supra* note 1.

<sup>57</sup> AICPA, *supra* note 3.

<sup>58</sup> PRINCIPLES OF ETHICS & CODE OF PROF. CONDUCT (AM. DENTAL ASS'N 2023).

<sup>59</sup> ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT (AM. PSYCH. ASS'N 2016).

<sup>60</sup> CODE OF MED. ETHICS (AM. MED. ASS'N).

<sup>61</sup> *Code of Ethics*, *supra* note 6.

### 3. The Special Issue of Elected Election Officials

The United States is distinct in having so many election officials and choosing so many of them through election. The most visible elected election officials are secretaries of state, but officials are elected at all levels of election administration.<sup>62</sup> Selecting election officials through election reinforces the view that election to public office emanates from the people and that the actions of election officials should be responsive to the people.

However, the philosophy of accountability to the public can be in tension with professionalization and its aim to align behavior with neutral ethical principles.<sup>63</sup> This tension is potentially created through two mechanisms. First, electoral accountability gives rise to a situation in which there is a direct conflict of interest between the regulator and the regulated. It is a centuries-old maxim of Western law that no one should be a judge of their own cause. And yet, the elected election official can be thrust precisely into this circumstance, by design. Second, because elected election officials must rely on segments of the electorate in order to gain office—whether it be partisans in a primary or campaign contributors—questions can be fairly raised about whether such officials can judge the causes of certain others fairly.

Electing election officials is common in the United States. According to the National Association of State Legislatures, 33 secretaries of state are elected.<sup>64</sup> And in the remaining 17 states and the District of Columbia, the chief election official is appointed by a board of elections in seven states and the District of Columbia, by the governor in six states, and by the legislature in the remaining four.<sup>65</sup> According

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<sup>62</sup> As far as we know, there is no comprehensive accounting of how election officials are selected for all levels of election administration in the United States. The National Conference of State Legislatures (NCSL) reports information about how state and local elections are administered, including the identity of each state’s chief election official and whether the position is elected or appointed, plus information about the organization of local (i.e., county or municipality) administration. The NCSL does not report on which local administrators are elected or appointed. See *Election Administration at State and Local Levels*, NAT’L CONF. OF STATE LEGISLATURES (Dec. 22, 2023), <https://www.ncsl.org/elections-and-campaigns/election-administration-at-state-and-local-levels> (last visited Jan. 24, 2024).

<sup>63</sup> Félix Grenier & Anne Mévellec, *Training Local Elected Officials: Professionalization Amid Tensions between Democracy and Expertise*, 14 J. OF LOC. SELF-GOV’T 33 (2016); Debra W. Stewart, *Professionalism vs. Democracy: Friedrich vs. Finer Revisited*, 9 PUB. ADMIN. Q. 13 (1985). To some degree, this tension is similar to the two classical views of representation, the “trustee” and “delegate” views. See Heinz Eulau, et al., *The Role of the Representative: Some Empirical Observations on the Theory of Edmund Burke*, 53 AM. POL. SCI. REV. 742 (1959); HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* (1967).

<sup>64</sup> NAT’L CONF. OF STATE LEGISLATURES, *supra* note 62. This figure includes two lieutenant governors who serve as the chief election official.

<sup>65</sup> *Id.* These appointed officials go by a variety of titles, most commonly Secretary of State/Commonwealth (7 states).

to research conducted by the Elections and Voting Information Center, 57% of local election officials are elected, with local officials being most likely to be elected in the smallest jurisdictions and to be appointed in the largest.<sup>66</sup> In at least one state, Pennsylvania, even the top precinct officials are elected.<sup>67</sup>

Not only are most chief local election officials elected, roughly half of them are nominated in partisan primaries or otherwise endorsed by political parties.<sup>68</sup> The association of a partisan label with an election official can raise the question of whether the official's actions favor that official's partisan team, even if the official himself or herself is not on the ballot.<sup>69</sup> It could be argued that this narrows down the segment of "the people" to whom the elected election official is responsible for their continuation in office. Even if this is not the case in practice, it can raise doubts in the minds of voters whether election laws are being applied evenhandedly. It is perhaps unsurprising that the 2022 Survey of the Performance of American Elections found that nearly 80% of respondents favored selecting election officials on a nonpartisan basis—a degree of support that was virtually identical for Democrats and Republicans.<sup>70</sup>

### 3.1. Elected and partisan election administration are core features of American election administration

It is common to remark that in the United States, election officials<sup>71</sup> at the state and local levels tend to be elected, whereas, in other countries, they tend to be

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<sup>66</sup> Paul Manson, et al., Staffing the Stewards of Democracy: Gender, Race, and Representative Bureaucracy 18 (paper presented at the 2021 annual meeting of the Midwest Pol. Sci. Ass'n), [https://evic.reed.edu/wp-content/uploads/2022/11/Staffing-the-Stewards\\_MP2021.pdf](https://evic.reed.edu/wp-content/uploads/2022/11/Staffing-the-Stewards_MP2021.pdf). An older (2006) study by David Kimball and Martha Kropf of the same subject, based on administrative data, found that local election authorities were elected by voters in 61% of local jurisdictions; elected by boards of elections in 2%; appointed by boards of elections in 22% and appointed by an individual in 15%. They also found that election by voters were more common in small jurisdictions. David C. Kimball & Martha Kropf, *The Street-Level Bureaucrats of Elections: Selection Methods for Local Election Officials*, 23 REV. OF POL'Y RSCH. 1257, 1261 (2006).

<sup>67</sup> *Become a Poll Worker*, PA. DEP'T OF STATE, <https://www.vote.pa.gov/Resources/Pages/Be-a-Poll-Worker.aspx> (last visited Jan. 15, 2024).

<sup>68</sup> Kimball & Kropf, *supra* note 66, at 1261.

<sup>69</sup> In a recent law review article, Rebecca Green argues that the presence of *rival* partisans in charge of the election process "increases transparency, enhances accountability, and (in theory) improves public trust in outcomes. Rival partisans populate election administration for the same reason we rely on the adversarial process in court: adversarialism leads to outcomes in which members of the public are more likely to abide." Green, *supra* note 12, at 101.

<sup>70</sup> Charles Stewart III, HOW WE VOTED IN 2022: A TOPICAL LOOK AT THE SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS 35 (2023).

<sup>71</sup> This discussion is primarily relevant in considering the chief election official at either the state or local level. Subordinates are election officials, too, as are poll workers. Many of the principles discussed here pertain to these positions, too. For the sake of clarity, however, this discussion focuses

appointed.<sup>72</sup> Furthermore, American election officials are often elected on a partisan basis, whereas the norm in comparable democratic countries is to insulate election officials from partisan politics.

In considering the ethical challenges facing election officials in the U.S., some advocate for appointing chief election officials rather than electing them or, at the very least, electing them on a nonpartisan basis.<sup>73</sup> There are strong arguments supporting these views. However, simply shifting chief election officials from being elected to being appointed would not eliminate ethical challenges or the appearance of ethical problems. In a democracy, all power derives from the citizenry; therefore, all election officials owe their positions in some way to the electoral process, even if only indirectly. Therefore, even appointed and non-partisan election officials are not fully insulated from the electoral environment.

In the United States, when a state election official is appointed, as in 18 states, they are either appointed by someone who was elected, running under a partisan label, or a state legislative chamber in which all members bear a partisan label. Even the Wisconsin Government Accountability Board (GAB), which was considered the most administratively independent and nonpartisan state electoral body in the U.S. before it was abolished in 2016, was appointed by the Wisconsin governor and confirmed by the state senate.<sup>74</sup>

The dissolution of the Wisconsin GAB illustrates the difficulty, if not impossibility, of separating election administration from suspicions of partisan intent, at least in the contemporary United States. In a recent law review article, Professor Rebecca Green notes that partisan election administration, including balancing election administration in a bipartisan fashion, goes back nearly 200 years.<sup>75</sup> This partisan balancing has led to a system of adversarial election administration that still permeates the system of American election administration.

Accordingly, any attempt to develop a statement of ethical principles and standards of conduct for election administration must take into account the partisan and electoral contexts in which American election administration is currently conducted. Fortunately, experience has shown that election officials who have been elected

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on state and local officials who have ultimate administrative responsibility for elections at those levels.

<sup>72</sup> See Tokaji, *supra* note 13, at 575.

<sup>73</sup> Liz Kennedy, *Millions to the Polls: Non-Partisan Election Administration*, DEMOS (Feb. 18, 2014), <https://www.demos.org/policy-briefs/millions-polls-non-partisan-election-administration> (last visited Jan. 24, 2024); Grace Gordon, et al., *The Dangers of Partisan Incentives for Election Officials*, BIPARTISAN POL'Y CTR. (Apr. 6, 2022), <https://bipartisanpolicy.org/report/the-dangers-of-partisan-incentives-for-election-officials/> (last visited Jan. 24, 2024).

<sup>74</sup> See Tokaji, *supra* note 13, at 578-79, 583.

<sup>75</sup> See Green, *supra* note 12.

after being nominated by a party can uphold general ethical principles such as the rule of law, integrity, impartiality, and transparency. Ethical principles for election officials can accommodate the legitimacy of honest policy differences over election policy that may be associated with partisan affiliations without endorsing officials using their offices to further their party's hold on political power.

### 3.2. The same ethical principles apply to election officials regardless of their selection method

Irrespective of the selection method—whether by election or appointment on a partisan, bipartisan, or nonpartisan basis—the same ethical principles apply to all election officials.<sup>76</sup> However, once the ethical principles are applied in specific settings, the standards of conduct that follow from those principles may differ, depending on various factors.

For instance, consider the ethical principle of impartiality. In a local jurisdiction where the election official is elected, it would be appropriate to apply the principle of impartiality to those cases in which the official's election is at issue. Examples of decisions that would cause a conflict for the elected election official include rulings on the acceptability of signatures on nomination petitions or whether challenged votes should be counted during the canvass or a recount. In these cases, it might be appropriate for standards of conduct to mandate recusal from making decisions affecting one's candidacy and to make clear a priori who would be entrusted with the decision instead.

Some states already require recusals under certain circumstances or at least provide a framework for how voluntary recusals could work. Florida's rules for its county canvassing boards—which are composed of three members, the county supervisor of elections, a county court judge (who is the chair), and the chair of the county board of county commissioners—provide an example.<sup>77</sup> Florida's canvassing boards have several duties related to ensuring the integrity of elections, ranging from overseeing public logic and accuracy testing, to deciding whether to count vote-by-mail ballots, to certifying election results.<sup>78</sup> No member of the canvassing board,

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<sup>76</sup> As the philosopher of ethics Michael Davis has expressed more generally, a code of ethics must be “(1) be a code of *ethics*; (2) apply to members of a *profession*; (3) apply to *all* members of that profession; and (4) apply *only* to members of that profession. Michael Davis, *What Can We Learn by Looking for the First Code of Professional Ethics?*, 24 THEORETICAL MED. AND BIOETHICS 433, 433 (2003).

<sup>77</sup> FLA. STAT. ANN. § 102.141(1) (West current with laws, joint and concurrent resolutions and memorials in effect from the 2023 Special B and C Sessions and the 2023 first regular session).

<sup>78</sup> *Canvassing Board Membership and Activities*, FLA. DIV. OF ELECTIONS (Aug. 2023), <https://soe.dos.state.fl.us/pdf/DE%20Guide%200020-%20Canvassing%20Board%20Membership%20and%20Activities%20Final%20202308.pdf> (last visited Jan. 24, 2024).

including the supervisor of elections, may serve if they are a “candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed[.]”<sup>79</sup> It is up to the canvassing board member themselves to determine if they are an “active participant” in another’s campaign, although the state’s understanding of this provision of state law includes activities such as publicly endorsing a candidate, holding a campaign sign, or wearing a campaign tee-shirt.<sup>80</sup>

Kentucky approaches the issue of recusal differently. The county board of elections consists of four members: the county sheriff, the county clerk, and two members appointed by the state Board of Elections.<sup>81</sup> Kentucky’s statute specifies that the sheriff shall not serve in a year in which she or he is a candidate but shall instead recommend a replacement. In contrast, the county clerk has the option to serve in a year in which she or he is a candidate. Should the clerk decide not to serve, however, they also recommend a replacement.

While it may be preferable to require a clerk to step aside from the county board if they are a candidate, the important thing here is that state law at least provides a mechanism that legitimizes the practice of recusal and specifies how it should be handled. It is better for a state to pass a law specifying all aspects of recusal for election officials who wish to avoid the appearance of partiality than to have it happen on an ad hoc basis, or not be available at all.

A jurisdiction with an appointed election official presents different issues regarding an ethics code reinforcing the principle of impartiality. Most narrowly considered, if the official is appointed, there may be no need for standards of conduct to address issues such as nomination petitions and recount challenges for the official. However, because the election official is likely to be appointed by a superior, elected official, it may be appropriate for standards of conduct to address conflicts of interest when the appointing authority’s election is involved. Another policy choice that could help insulate appointed officials from pressures, or perceived pressures, to improperly accommodate their appointing authority would be to grant civil service protections to appointed election officials.

In the end, the same ethical principles apply to all election officials. How they are applied in practice through a standard of conduct will vary.

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<sup>79</sup> FLA. STAT. ANN. § 102.141(1) (West current with laws, joint and concurrent resolutions and memorials in effect from the 2023 Special B and C Sessions and the 2023 first regular session) (emphasis added).

<sup>80</sup> Letter from Donald L. Palmer, Dir., Fla. Div. of Elections, to Judge Zeller, Cnty. Court Judge, Broward Cnty. (Oct. 15, 2009), <https://opinions.dos.state.fl.us/searchable/pdf/2009/de0907.pdf> (last visited Jan. 24, 2024).

<sup>81</sup> KY. REV. STAT. ANN. § 117.035(2)(a) (West current through the 2023 Regular Session and the Nov. 8, 2022 election).

### 3.3. Conflicts may be most acute at lower levels of election administration and in smaller jurisdictions

While ethical conflicts can arise at all levels of election administration, it might be thought that those that occur at the local level are less consequential and easier to resolve, given their more limited scope. For several reasons, however, this claim may not prove true, including, but not limited to, the lower visibility of local election administration, the sorts of decisions that local election officials make, and resource constraints.

For many years, the greatest media attention was focused on state-level decisions, even though in almost all states, elections are conducted locally. However, this is changing as political actors recognize the key decisionmaking roles of local election officials and apply pressures that sometimes invite violations of the law or ethical principles.<sup>82</sup> Therefore, because local elections will likely give rise to most instances of conflicts of interest (actual or perceived), specifying how ethical principles are to be implemented at the local level is a high priority.

Nonetheless, in focusing on local election administration, one must be mindful that most local election officials serve very small jurisdictions. In the 2022 federal election, 25% of local election jurisdictions accounted for 90% of all votes cast, meaning that the remaining 75% of jurisdictions accounted for only 10% of the vote.<sup>83</sup> The average jurisdiction had 17,380 voters; the median had 2,660. In many of these jurisdictions, the election office has only one permanent employee—the local election official.<sup>84</sup> In many small jurisdictions, recusal, which we have emphasized, may be impractical. No one in the jurisdiction may be qualified to step in, and a neighboring jurisdiction may be just as small and straining to meet local demands with a single permanent staff member. In these circumstances, it may be necessary for state law to allow the local official to officially acknowledge a conflict, or appearance thereof, while making a decision necessary for the conduct of an election. At the same time, in most states, the local canvassing board is multi-member, regardless of the size of the jurisdiction, which provides a system of checks-and-balances in scrutinizing actions of the local election director.

This focus on smaller jurisdictions does not deny that decisions made by state election officials, especially the state’s chief election official, can have high visibility and affect how all local officials implement the law. The appearance of a conflict or other ethical lapse at the highest levels of election administration can cast doubt in

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<sup>82</sup> Notable recent examples include criminal proceedings involving local election officials in Mesa County, Colorado; Coffee County, Georgia; and Cochise County, Arizona.

<sup>83</sup> *Election Administration and Voting Survey 2022 Comprehensive Report*, U.S. ELECTION ASSISTANCE COMM’N (Jun. 2023), [https://www.eac.gov/sites/default/files/2023-06/2022\\_EAVS\\_Report\\_508c.pdf](https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf).

<sup>84</sup> *EVIC/Reed College Report*, *supra* note 21, at 10.

the voters' minds about the entire electoral process. However, the visibility of decisions made at the state level can help hold state officials to their ethical duties. And the fact that state officials have potentially greater flexibility to allow expert subordinates to step in when a conflict arises can help state election officials navigate conflicts more readily.<sup>85</sup>

In the end, the same general ethical principles apply to all election officials, regardless of the scope of their authority or the size of the jurisdiction they serve. Challenges in helping officials meet their ethical obligations will occur at all levels of government and not just at the top.

## 4. Ethical Principles to Guide Election Officials

In this section, we pursue two paths. First, we address the use of state ethics codes, which are most commonly the only formal ethical guidance given to election officials in a state. We conclude that these state ethics codes, while valuable for regulating public servant behavior in the area of financial dealings, are inadequate for specifying the broader set of ethical obligations that election officials face. Second, jumping off of the ethical principles identified by the American Society for Public Administration, we identify seven ethical principles that appear apt to be applied to the profession of election administration. These ethical principles are generally embodied in the existing ethical statements of election administration bodies, such as the National Association of Election Officials (the Election Center) and a few state associations. However, the overlap is not 100%.

### 4.1. State ethics codes as they apply to election administration

As discussed above, all states have laws prohibiting financial misconduct, conflicts of interest, and abuse of power by public officials. Most states do not explicitly motivate these ethics laws by articulating overarching ethical principles. Instead, they directly state what public officials are prohibited from doing and how those officials shall comply with specific provisions of the law.

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<sup>85</sup> Another factor to be borne in mind concerning the potential ethical conflicts facing state election officials is that in each state, the state election director—that is, the official who manages a state's elections on a day-to-day basis—is appointed, not elected. As suggested in this discussion, appointment of the state election director does not totally insulate him or her from ethical conflicts arising out of partisan affiliation with the chief election officer, such as a secretary of state, but it does provide a buffer between the practical administration of elections and electorally-derived partisan pressures. In this regard, the state-level apparatus may be better designed to insulate against undue partisan pressures than that which exists at the local level, where the local election director often does not have a subordinate professional who can stand between partisan pressures and election administration.

Still, it is easy to see how the prohibitions that appear in state ethics laws arise from more general ethical principles of public service. For instance, the principle of advancing the public interest would seem to support the types of financial regulation these codes contain.

Existing state ethics laws, reinforced by other regulations, would seem well suited in most cases for regulating the types of financial and personnel issues that often draw the public's attention to government as a whole. The largest expenditures made by local election offices are contracts for voting equipment and printing. These contracts can reach millions every election cycle for even a medium-sized jurisdiction. The performance of these contracts brings election officials into regular contact with vendors and their staff, which can bring to mind a number of issues, such as favoritism and campaign donations.

Election officials are subject to general procurement laws to avoid ethical challenges that can arise in vendor relationships. North Carolina is a rare example of a state that has adopted a special set of rules about the relationships between state, county, and municipal election officials and their vendors. These rules were adopted by the State Board of Elections in 2005 to guide employees as they "adhere to the highest ethical standards and . . . avoid even the appearance of impropriety or a conflict of interest which may undermine the public interest or compromise the public's trust." Noting that these rules reinforce more general state and federal laws, the North Carolina vendor code prohibits things such as improperly disclosing information, engaging in ex parte communications, and seeking financial favors.<sup>86</sup> It also clarifies that some activities, such as accepting reimbursement for attending conferences, are allowed under certain circumstances.<sup>87</sup>

Yet, state ethics laws, as necessary as they are, are insufficient to cover the full range of ethical issues that confront the election administration profession. As discussed in Section 1.1, state ethics laws mostly focus on financial misconduct and misuse of power for personal financial gain. These are important matters for public service, but they are not at the heart of election administration and its mission to conduct elections impartially and in keeping with the law. In addition, state ethics laws tend to leave higher-level principles implicit, jumping immediately into restrictive rules and financial-disclosure requirements. State ethics laws overall take a very narrow focus, reducing ethics to "staying out of trouble," fail to address how public officials should consider their obligations to the public and others in government more generally, and ignore the opportunity for ethical principles to hone the moral sensibilities of public servants.<sup>88</sup>

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<sup>86</sup> *Prohibited Acts under N.C. State Board of Elections Voting Systems Vendor Code of Ethics*, N.C. STATE BD. OF ELECTIONS, (Oct. 21, 2005),

[https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Vendor%20Code%20of%20Ethics%20\(6%20pages\).pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Vendor%20Code%20of%20Ethics%20(6%20pages).pdf).

<sup>87</sup> *Id.*

<sup>88</sup> Rohr, *supra* note 30, at 63.

For that reason, we widen the focus of our inquiry and first examine the full range of ethical principles that might apply to election officials.

## 4.2. Ethical principles as they apply to public service in general

Election officials are public officials. Therefore, starting with a more general discussion of ethical principles for public service is useful.

An interest in codifying ethical principles is associated with the explosion of professional associations during the Progressive Era. In public administration, the first ethics code was adopted in 1924 by the City Manager's Association, now the International City/County Management Association (ICMA).<sup>89</sup> Congress's passage of the Code of Ethics for Public Service in 1958 is another milestone.<sup>90</sup> Most widely known and influential, however, is the code of ethics adopted in 1984 by the American Society for Public Administration (ASPA), consisting of principles the organization believed all public servants should advance.<sup>91</sup> The code was revised in 2013.<sup>92</sup>

Because of the professional standing of ASPA, it is useful to start with this general code of ethics to see the degree to which the ethical issues confronting election administration are a special case of public administration and the degree to which these issues can best be thought of as distinct to election administration.

The eight ASPA ethical principles are as follows:<sup>93</sup>

1. **Advance the public interest.** Promote the interests of the public and put service to the public above service to oneself.
2. **Uphold the Constitution and the law.** Respect and support government constitutions and laws, while seeking to improve laws and policies to promote the public good.

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<sup>89</sup> On the history of ethical codes in public service more generally, see Guy B. Adams, *Administrative Ethics and the Chimera of Professionalism: The Historical Context of Public Service Ethics*, Jeremy F. Plant, *Codes of Ethics*, & James S. Bowman, *From Codes of Conduct to Codes of Ethics: The ASPA Case*, in *HANDBOOK OF ADMINISTRATIVE ETHICS* (Terry L. Cooper ed., 2d ed. 2000).

<sup>90</sup> H. Con. R. 175, 85th Cong. (1958).

<sup>91</sup> Bowman, *supra* note 89, at 341.

<sup>92</sup> See *Code of Ethics*, *supra* note 6.

<sup>93</sup> *Id.*

3. **Promote democratic participation.** Inform the public and encourage active engagement in governance. Be open, transparent and responsive, and respect and assist all persons in their dealings with public organizations.
4. **Strengthen social equity.** Treat all persons with fairness, justice, and equality and respect individual differences, rights, and freedoms. Promote affirmative action and other initiatives to reduce unfairness, injustice, and inequality in society.
5. **Fully inform and advise.** Provide accurate, honest, comprehensive, and timely information and advice to elected and appointed officials and governing board members, and to staff members in your organization.
6. **Demonstrate personal integrity.** Adhere to the highest standards of conduct to inspire public confidence and trust in public service.
7. **Promote ethical organizations.** Strive to attain the highest standards of ethics, stewardship, and public service in organizations that serve the public.
8. **Advance professional excellence.** Strengthen personal capabilities to act competently and ethically and encourage the professional development of others.

Each of these eight principles—or perhaps slightly revised versions—seems applicable to election administration. Indeed, we can almost match one-to-one these ASPA principles with the “Standards of Conduct for Elections/Registration Officials” that was promulgated by the Election Center in 1997.<sup>94</sup> (See the following table.<sup>95</sup>) Indeed, only one of the ASPA principles—to fully inform and advise—does not have an obvious Election Center counterpart.

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<sup>94</sup> ELECTION CTR, *supra* note 34, at 14.

<sup>95</sup> This table matches ASPA principles directly with the Election Center Standards of Conduct. In its “Practices to Promote the ASPA Code of Ethics,” it is clear that many of its principles are overlapping, so that each of the Election Center Standards of Conduct could be matched up with more than one ASPA principle. *See* ASPA Code of Ethics, *supra* note 8.

ASPA Principle <sup>96</sup>	Election Center Standards of Conduct
Advance the public interest. Promote the interests of the public and put service to the public above service to oneself.	I have the courage and stamina to protect the public's interest from manipulation for personal or partisan gain while respecting the rights of all.  I am flexible and innovative within the framework of the law in carrying out my duties on behalf of the public's interest.
Uphold the Constitution and the law. Respect and support government constitutions and laws, while seeking to improve laws and policies to promote the public good.	I uphold the Constitution of the United States and the laws, policies, and court decisions of federal, state and local jurisdictions.
Promote democratic participation. Inform the public and encourage active engagement in governance. Be open, transparent and responsive, and respect and assist all persons in their dealings with public organizations.	I dignify voters by providing equal opportunity to participate in the democratic process.  I manifest a positive role in community relations by being accessible and receptive to both individuals and groups.
Strengthen social equity. Treat all persons with fairness, justice, and equality and respect individual differences, rights, and freedoms. Promote affirmative action and other initiatives to reduce unfairness, injustice, and inequality in society.	I am responsible for just and equitable treatment of the general public, elected officials and members of my profession.
Fully inform and advise. Provide accurate, honest, comprehensive, and timely information and advice to elected and appointed officials and governing board members, and to staff members in your organization.	[No parallel]
Demonstrate personal integrity. Adhere to the highest standards of conduct to inspire public confidence and trust in public service.	I am accountable for maintaining public confidence in honest and impartial elections which I conduct in a fair, efficient and accurate manner.  I maintain the highest level of integrity in performing all duties of my profession. <sup>97</sup>
Promote ethical organizations. Strive to attain the highest standards of ethics, stewardship, and public service in organizations that serve the public.	I conduct all fiscal responsibilities with wisdom and integrity, and am accountable for all funds and resources committed to my charge.  I maintain a productive and efficient operation through a well-managed elections environment.
Advance professional excellence. Strengthen personal capabilities to act competently and ethically and encourage the professional development of others.	I commit to excellence and competence by maintaining the highest level of knowledge of expertise in the elections process through continuing education and self-evaluation.

<sup>96</sup> *Id.*

<sup>97</sup> Earlier versions of the standards declare that “I endeavor to maintain the highest level of integrity...” See *Professional Education Manual*, ELECTION CTR. (Jul. 2012), <https://www.electioncenter.org/PEP%20Manual%20Revised%20July%202012.pdf> (emphasis added).

The ASPA principles are also echoed in the resolution adopted by Florida’s Supervisors of Elections in 1999 (and reaffirmed in 2006) as their “Resolution and Statement of Ethics.”<sup>98</sup> However, three ASPA principles do not seem to be reflected in the Florida statement—promote democratic participation, strengthen social equity, and fully inform and advise.<sup>99</sup>

If the ASPA’s principles are a good starting point for delineating a specific set of ethical principles for election administration, then the primary tasks are to (1) express the general principles in a way that highlights their applicability to election administration, (2) identify additional principles that are left out of the ASPA principles, (3) provide examples of what standards of conduct would look like that followed these principles, and (4) clarify principles so that they are easy to grasp and avoid overlap.

### 4.3. Ethical principles for election administration

The remainder of this section recasts these general principles into statements that seem well-suited for election administration and suggests ways in which standards of conduct can further articulate the principles. How these principles are applied will vary by the level of government and the specific parameters of state law. We illustrate how these principles might be implemented in practice through standards of conduct adopted at the state or local level. However, these illustrations should be understood as examples and not a prescription for how these principles should be implemented in practice.

The seven principles we identify are:

1. Adhere to the law
2. Defend the democratic process
3. Promote transparency in the conduct of elections
4. Treat all participants in the political process impartially
5. Demonstrate personal integrity
6. Promote ethical standards
7. Advance professional excellence

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<sup>98</sup> See FLA. SUPERVISORS OF ELECTIONS, *supra* note 38; Email from Amy Farrington, Exec. Dir., Fla. Supervisors of Elections, to Charles Stewart III, Professor of Pol. Sci., Mass. Inst. Tech. (Apr. 27, 2023, 10:51 EDT) (on file with author).

<sup>99</sup> The following are the Florida Supervisors of Elections Principles (paired with the ASPA principles): Put loyalty to the highest ethical principles above loyalty to persons, political officials, political parties, or government departments (advance the public interest); comply with all laws and regulations and impartially apply them (uphold the Constitution and the law); use county funds and resources efficiently, including materials, equipment, and time (promote ethical organizations); avoid any interest or activity that is in conflict with the conduct of official duties (demonstrate personal integrity); strive for personal excellence and professional development by keeping up to date on state and federal laws, court opinions, Division of Elections opinions, Attorney General opinions and emerging issues facing the electoral process (advance professional excellence); work to improve federal and state laws dealing with elections and voter registration (uphold the Constitution and the law); and effectively and efficiently work with other governmental agencies, political subdivisions, and other organizations in order to serve the public good (advance the public interest).

If we lay these seven principles against the eight ASPA principles, we see that they largely correspond, although their ordering is slightly different and some of the principles are expressed differently. We have listed “adhere to the law” first because this is the rock on which election officials ground their authority. We have combined ASPA’s first, third, and fifth principles— “advance the public interest,” “promote democratic participation,” and “fully inform and advise”—into a single principle of “defend the democratic process.” The third principle, “promote transparency in the conduct of elections,” is not highlighted by ASPA, although it is discussed as a part of the principle to promote democratic participation. The fourth principle, “treat all participants in the political process impartially,” highlights those aspects of ASPA’s principle to “strengthen social equity” that pertain to treating voters, candidates, and parties impartially. The last three principles are essentially the same as ASPA’s, although we specify how they apply specifically to election administration.

#### 4.3.1. Adhere to the law

Election officials have a duty to administer the law as written and interpreted by the relevant authorities.

This principle seems obvious and is likely the first principle most election officials would name if asked. Election officials do not make the laws that govern elections. The law, which includes state and federal constitutions, administrative procedures, and judicial rulings, represents the authoritative social judgment about how elections will be conducted in a specific jurisdiction. The legitimacy of elections rests on them being conducted according to the law. If citizens believe election laws are regularly broken, they can begin to doubt whether officials are governing them legitimately.

The election official’s duty is to implement the law, even when the official disagrees with it. However, adherence to the law is not always straightforward. Laws may be worded imprecisely, emergencies may occur, and the laws may conflict in a given situation. Senior election officials also must manage their offices within budgetary constraints imposed by funding authorities, which may require them to prioritize how vigorously they can implement particular laws or rules. Still, the legitimacy of the actions of election officials is based on the knowledge that their actions are anchored to an unwavering commitment to follow the law—and a commitment to accede to the judgment of superior officials or courts when there is a disagreement about the law.

The unwavering commitment to the law makes this principle not just the first on the list but the principle to which officials strive the hardest to adhere. Adherence to the law must prevail when principles compete or seem to compete.

Some citizens occasionally call on election officials to respond to a “higher law,” in opposition to what these citizens perceive to be tyranny by superior executive and

judicial officials. An insistence that election officials respond to a so-called higher law in these circumstances is an invitation to violate the principle of adherence to the law. An election official who faces calls to respond to a higher law or believes an action would violate ethical or legal standards has other options, however, most notably seeking legal advice from higher authorities, including the courts. Once all legal avenues have been exhausted, if an election official still believes that following lawful instructions is adherence to tyranny, they should resign.

In developing standards of conduct that flow from this principle, it is important to bear in mind the role the official is playing. For a county election director, for instance, it may be sufficient to specify that the director is responsible for following the letter of the law and seeking and accepting guidance from legal counsel when there are ambiguities. For a poll worker, the standard of conduct might include directions to follow the instructions of superior polling-place officers and of the county office and to seek advice from the county election office when the official is uncertain what to do in light of a legal claim.

#### 4.3.2. Protect and defend the integrity of the election process

Election officials have a duty to ensure the integrity of elections and to safeguard against unfounded attacks on the integrity of the election process.

The purpose of elections is to give the people a voice in the halls of power. The legitimacy of elections rests on adherence to the laws and the Constitution, but that is only the beginning. As we have experienced throughout our history, the integrity of the elections system, as a conduit of the people's voice, can itself come under attack. The quality and legitimacy of elections can decline even when those laws remain unchanged.

The principle that election officials protect and defend the integrity of the election process calls attention to officials' obligation not only to ensure that elections are conducted fairly and according to the law, but also to work to ensure that unfounded attacks on the fair functioning of election laws are unsuccessful.

These attacks can take many forms and magnitudes. Most dramatic are organized campaigns of misinformation that baselessly attack the integrity of the process. But seemingly minor occurrences can also undermine integrity, such as when a private group gives incorrect information to a potential voter during a voter registration drive or when an election worker fails to offer a provisional ballot to a voter whose registration is in question.

The past decade has alerted the election-administration community to how, in the context of an increasingly fractured media environment, voters can be misled about matters big and small about the conduct of elections. This incorrect information,

whether concocted to misinform or repeated innocently by mistake, ripples across the information environment.

Because of their knowledge of the system and obligation to ensure that elections are conducted fairly, election officials have a special duty to be aware of threats to the election process that exist in the larger environment, especially the information environment. They also have a duty to act to counteract these attacks to the best of their abilities.

Of course, election officials cannot defend the integrity of the election process on their own. It would be unreasonable to suggest that officials are the sole bulwark against attacks on the integrity of elections. But it is also clear that willing partners in protecting the integrity of the election process can effectively join in the cause only with the active engagement and leadership of election officials.

This principle does not mean that election officials must become reflexively wedded to the status quo or obscure parts of the election system that could be improved. Indeed, most other principles we have identified pull in the opposite direction. However, a good-faith, robust debate about how best to conduct elections cannot occur if the information environment has been poisoned by chaos injected by bad actors who intend to destroy the system.

The standards of conduct that arise from this principle affect all levels of election administration. However, they all begin with the requirement that officials be educated about the law and how it is to be implemented.<sup>100</sup> For managers of election offices at the state and local levels, this principle implies actions such as joining with other officials to become aware of threats, sharing information about common threats, and developing best practices to counter threats. It also involves communicating with the public to counter incorrect information. For election workers, standards of conduct might include working diligently with voters to troubleshoot problems at polling places and quickly referring voters with detailed questions about the process to more experienced and knowledgeable officials.

#### 4.3.3. Promote transparency in the conduct of elections

Election officials have a duty to make election administration transparent to the public.

Election officials have a responsibility to demonstrate to the public and candidates that elections are run fairly and according to the law; the public should not have to

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<sup>100</sup> This is consistent with the last of our seven principles—advance professional excellence—although in this context, education is in service of the principle of protecting against threats to the election process.

rely solely on trust to conclude that an election was correctly conducted. Within the bounds of the law, election officials have an obligation to make the workings of the electoral process observable to the public. This means not only accommodating election observers and publishing election results in a timely fashion, but also inviting the public to monitor their behavior.

Election officials are assisted in following this principle by state laws that regulate how elections will be conducted. American election laws have always emphasized mutual accountability rooted in an adversarial legal system.<sup>101</sup> However, the late nineteenth century saw an explosion of laws and practices intended to communicate broadly with the public about how elections were conducted. Manifestations of these practices seem obvious to us today. They include posting election results at polling places as soon as they become available and guaranteeing that representatives of the candidates or the general public can observe the counting of ballots.

Numerous societal trends over recent decades have increased the demand for transparency even further. At the same time, technology has made it easier to demonstrate directly to the public how the election was conducted at every stage of the process, ranging from placing 24-hour live-streaming cameras in election-equipment storage vaults to releasing election-related records after the election.

Of course, transparency comes at a cost. It costs money and takes staff time to compile and publish election results and to respond to public records requests. It takes facilities, planning, and money to provide designated spaces for observers to watch the various activities that constitute administering an election. And what appears to be transparency to one person may seem like an invasion of privacy to another.

The principle of transparency can lead to different implications for election officials at all levels. This principle calls on senior election officials not only to follow the minimum requirements of the law, but to advocate for the resources needed to meet these requirements. It calls on senior officials to communicate with the public about all aspects of elections. For a poll worker, implications might include the expectation that they ungrudgingly accommodate those who wish to observe voting in a polling place according to the state's election-observer law.

#### 4.3.4. Treat all participants in the election process impartially

Election officials have an obligation to treat all participants in the electoral process impartially, including voters, candidates, citizens, and political committees.

A key requirement for elections to be considered fair is that all participants have been treated impartially. To use the old sports metaphor, all the actors must be

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<sup>101</sup> Green, *supra* note 12.

given access to a level playing field. To use another old sports metaphor, election officials are the referees who must not show favor to any of the contestants (or spectators, for that matter).

Election laws are the primary instrumentality through which this impartiality is achieved.<sup>102</sup> Nonetheless, election officials are responsible for scores of decisions subject to second-guessing by the public and candidates, such as whether to accept signatures on nomination petitions, where to locate in-person polling places, and which public-information requests to prioritize.

Because elections are competitive and zero-sum, the public and candidates may interpret decisions made by election officials that aid or hinder a candidate as being the result of personal bias, even when they are not. This interpretation is even more likely when the official is known to have partisan ties and the decision favors the party with which the official is associated.<sup>103</sup>

Both actual and perceived partiality can undermine the trustworthiness of elections. The actions of election officials that are most likely to raise questions about impartiality are those in which the official might be seen as having a personal interest in the decision.<sup>104</sup> The most obvious case of this is when the official is on the ballot and a decision must be made that affects how the election is conducted—for instance, when the election official must certify the validity of signatures on a nomination petition.

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<sup>102</sup> For instance, minor political parties may face barriers to ballot access not faced by the two major parties, but that is an inequality sanctioned by the political process. It is not the result of a failure to adhere to the principles of election administration.

<sup>103</sup> One of the difficulties in judging the motivations of election officials when they make decisions that seem to favor one party over the other is that such decisions might be based on legitimate policy commitments—what some would call “ideology”—that are aligned with one of the two major parties. As Daniel Tokaji argues, “. . . there is nothing inherently objectionable in election officials making decisions that are consistent with their ideology. Democrats generally think it most important to expand access, while Republicans tend to focus on ensuring integrity by preventing fraud. There can be honest ideological differences over which value is more important. There can also be legitimate differences about the effects that a particular practice will have, with perceptions shaped in part by ideological predilections.” Daniel P. Tokaji, *Lowenstein Contra Lowenstein: Conflicts of Interest in Election Administration*, 9 ELECTION L. J. 421, 434 (2010).

<sup>104</sup> It is important to note that perceptions of partiality can occur because people either have an incorrect understanding of the law or disagree with a law that an election official is enforcing. For instance, although a voter may be instructed to sign and date their absentee ballot when returning it, state law or a court decision might require ballots that are lacking a date to be counted. Someone who believes that “non-daters” tend to come disproportionately from one political party might regard this law or decision as favoring that party and thereby conclude that an election official was acting with partiality when he or she carried out the law. Situations like this alert us to the fact that election officials operate in an environment in which some people will incorrectly claim partiality on the part of the election official. It is in moments like this where it is important to articulate the election official’s first duty, to follow the law.

In devising a code of conduct that reinforces this principle, the natural remedy to consider in many cases is recusal. If a decision directly affects the decisionmaker, the most direct way to remove the conflict is to remove the decisionmaker from the decision. However, recusal is often easier said than done. Recusing oneself in favor of a subordinate or other official may only shift suspicions to another official. In very small election offices, there may not be another official to whom a decision might be referred. Although some states have statutes that mandate or facilitate recusal in these situations, it appears that most do not.

As we have previously discussed, because the decisions made by election officials have the force of law, it is important that states pass legislation that addresses the recusal of election officials. At the very least, states should create a framework within statute that allows election officials to recuse themselves when there is a conflict of interest or the perception of one. For small jurisdictions, this may involve allowing a senior official in one county to recuse in favor of a senior official in another.

An alternative to recusal could be formally disclosing a conflict when it arises. This would be especially useful in situations where recusal is impracticable or inappropriate. Disclosure is one way an election official can provide evidence to the public that they take seriously their obligation to treat everyone impartially.

Another issue that frequently arises with election officials that can raise questions about impartiality is partisan activity. This issue has led many to propose that election officials be barred from all partisan activity and be chosen on a non-partisan basis. We addressed this issue at some length earlier in this report, in Section 3.1, and reiterate that we are taking as given the partisan and electoral contexts in which American election administration is currently conducted. That said, two points are worth emphasizing even within such a context.

First, even when election officials are selected in a partisan process, they have an obligation to act impartially with respect to the political parties. Second, state laws must be mindful of the conflicts that arise because of partisan activities by election officials, including those required for them to gain election in many states. State laws should be written so that officials who wish to abstain from engaging in activities typically expected of partisan officials—for instance, contributing to or endorsing candidates—can do so without harming their ability to be reelected or reappointed.

The principle of impartiality has different ethical implications for election workers, especially temporary election workers. Temporary election workers, who staff polling places and assist in back-office work during peak election seasons, are often hired on a partisan basis. Indeed, most states require some sort of partisan

consideration in the recruitment and deployment of temporary election workers.<sup>105</sup> The purpose of these partisan considerations is not to encourage partisan bias in the polling places as elections are being conducted. Rather, it is to ensure that the parties are not cut out of having sympathetic workers in polling places who can watch over other workers while performing their election-related duties.

Temporary election workers, especially new workers, who are recruited on a partisan basis may not understand that although their appointment is based on a system of partisan balance, they are to act impartially in conducting their duties. It is therefore important that this principle of impartiality be reinforced through training and standards of conduct.

#### 4.3.5. Demonstrate personal integrity

Election officials have a duty to conduct themselves honestly and forthrightly in all interactions with superiors, peers, candidates, campaign officials, and the general public.

Like professionals of all sorts, election officials are obligated to deal honestly with those they work with and serve. Election administration is public service. Serving as an election official is not intended to be a means to aggrandize the official's wealth, power, or social standing.

In many ways, the personal-integrity principle is no different for election officials than other public officials. As we have already noted, relationships with vendors are one area that deserves special attention in translating the personal-integrity principle into action. (See Section 4.1.) In addition to contracts with vendors for the supply and maintenance of voting equipment, other services are regularly outsourced to private companies. For instance, ballot printing is a highly specialized, exacting service that few local jurisdictions can afford to maintain in-house. Therefore, printing—one of the top operating expenses for conducting elections—is usually bid out to a vendor.

Relationships with vendors are a natural matter to be handled by state procurement and ethics laws. Nonetheless, it may be appropriate for states and localities to promulgate rules that address the special circumstances involving election office/election vendor relations, as has been done in North Carolina.<sup>106</sup>

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<sup>105</sup> As of 2020, 40 states required some sort of partisan consideration in the appointment of temporary election workers. State-By-State Compendium, *supra* note 29; *see also* Green, *supra* note 12.

<sup>106</sup> N.C. STATE BD. OF ELECTIONS, *supra* note 86.

#### 4.3.6. Practice the highest level of ethics and stewardship

Election officials have a duty to expend public funds carefully and foster respect among employees and volunteers.

Election officials not only have a duty to ensure that elections are conducted fairly and in accordance with the law, they also have a responsibility to ensure that behavior within the election office and polling place adheres to high ethical standards. As with several of these ethical principles, the principle of ethics and stewardship applies generally to public service. However, there is a special problem if an election office is viewed as spending public funds wastefully, staff are mistreated, or the concerns of poll workers about how polling places are being run are summarily dismissed or covered up. If an election office does not have its own house in order, how can it convince the public that elections are properly run?

It is also important to distinguish between the work done in a central election office and that done in the field when voters are casting ballots. To simplify somewhat, the work of election officials in preparing for an election involves formulating plans where the presence of alternative views can benefit the planning process. On Election Day, the focus turns to implementation within a narrow and unforgiving time window.

Thus, standards of conduct for a central office might include procedures to encourage an open expression of views and “whistleblower” protections for employees who bring concerns to superiors. Standards of conduct could also specify how office staff are trained in ethical principles and how those principles are made visible regularly. For temporary election workers who staff polling places, early voting sites, tabulation centers, and the like, it is important that the applicable standards of conduct reinforce adherence to the rule of law (Principle # 1) while making clear how they should respond if they believe there has been a breach of ethical principles or the law while voting is being conducted. Election workers should not be left to feel that their only recourse to observing an ethical or legal shortcoming is to take matters into their own hands.

#### 4.3.7. Advance professional excellence

Election officials have a duty to stay informed about election laws and new developments in election management.

Like any profession, the work of the election official is ever evolving. New laws are passed, new business systems are implemented, new challenges emerge, and new practices are developed that can help to improve access, security, and efficiency. It is the responsibility of election officials to stay up to date about these new developments. Beyond that, it is the duty of election officials to encourage others to continue improving the practice of election administration and to educate themselves about advances in the field. Part of this responsibility extends to mentoring new entrants to the field and encouraging others to enter the profession.

This final principle can be seen as being entailed by all the principles articulated before it. Because the principal duty of an election official is to adhere to the law, it is incumbent upon officials to know what the law is. Beyond that, the other duties of election officials are considerable, and no one official can figure out how best to meet all those obligations alone. Learning from others about best practices for working with the public, managing election offices, and meeting the long list of legal and public obligations is essential for elections to be run well.

This is one principle that election officials do not have to do alone. In almost every state, there are regular meetings of local election officials. These meetings are opportunities to hear from state officials about changes to the law, and they often provide opportunities for local officials to share successful strategies for managing challenges they have faced (formally and informally) and for hearing from invited experts about new approaches to election administration. A relatively easy way for a local election official to fulfill the mandate of this ethical principle is to be active in their state association and to encourage it to take seriously ethics education.

Election workers, too, have a responsibility not just to learn the procedures associated with their position but to learn how to implement those procedures efficiently and in a manner that is welcoming to voters, while still communicating the seriousness of the voting process. Experienced election workers play an important role in mentoring new workers about giving voters a sense of confidence and welcome while still following all the procedures required for voting.

Considering all the duties that election officials must perform, working to advance the profession can seem daunting. The most direct way to encourage the advancement of professional excellence is to institute training and continuing-education requirements for election officials—especially senior election officials who exercise formal authority over conducting elections—that are consistent with other professions.

An indirect way is to encourage professional advancement by giving a boost in pay to election officials who complete certification programs. Louisiana is an example of a state that follows this approach through its Louisiana Voter Registration Administrators' Certification Program.<sup>107</sup> This program was established “to formalize and recognize the professional standards of registrars of voters, chief deputy registrars, and confidential assistants to registrars of voters in the state.”<sup>108</sup> This statute provides that eligible officials who complete the Certified Elections Registration Administrator (CERA) program, which is offered by the Election Center in partnership with Auburn University, are eligible to receive a seven percent increase in their annual salary. The statute further ties continued receipt of this salary supplement to regular renewal of the certification.

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<sup>107</sup> LA. STAT. ANN. § 18:59.4 (Current through the 2023 First Extraordinary, Regular, and Veto Sessions).

<sup>108</sup> *Id.*

## 5. Whose Ethical Principles?

In this report, we have reviewed the larger context in which ethical principles are articulated by professions and suggested how specific ethical principles might be applied to the profession of election administration. The professionalization of election administration and the development of ethical principles are inextricably linked. The final topics to consider are related—how should ethical principles in election administration be articulated, and how should they be enforced?

### 5.1. Developing and Promulgating Ethical Principles

Election administration differs from many other professions in that no licensure requirement is generally associated with serving as an election official. This creates three challenges concerning the adoption, dissemination, and enforcement of the standards: articulation, acceptance, and enforcement.

By articulation, we mean stating the principles so they can guide election officials, inform the public about how election officials conceive of their roles and the standard against which to evaluate the conduct of election officials, and guide policymakers as they pass election laws.

By acceptance, we mean providing election officials with the opportunity to be educated in a set of clearly articulated ethical principles and the behavior that flows from them and to affirm adherence to the principles.

By enforcement, we mean setting out how to investigate cases where the principles or codes of conduct that flow from them have been violated, and identifying the corrective action or sanctions that can be administered.

The closest thing to election official licensure in the United States is achieving Certified Elections/Registration Administration (CERA) status through the Election Center and Auburn University. Becoming certified requires a pledge to adhere to a set of ethical principles we have previously identified.<sup>109</sup> However, only about 1,500 election officials have acquired CERA certification in the United States, and there is no process to investigate failures to adhere to these standards or to sanction those who violate the standards.

Because professional certification is not required to serve as an election official, and because only a few states actively provide incentives for officials to acquire certification, it is necessary to look elsewhere if the goal is to broaden the acceptance of ethical principles in election administration. In the United States, state associations of local election officials are likely the most appropriate venue to articulate and disseminate ethical principles to the profession. Because of the

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<sup>109</sup> Although we endorse the ethical principles articulated by the Election Center as responsive to the spirit of our report, we note that the two sets of principles do not overlap completely.

federated nature of American election administration, it is appropriate for state associations to adopt statements about ethical principles and their application in their state. Connecticut has done this by adopting the CERA standards as its own.<sup>110</sup>

It is tempting to suppose that writing a set of ethical principles into state law would achieve the goals of articulation, acceptance, and enforcement set out here. However, we recommend against writing ethical principles into statute. First, professional ethical standards are most properly maintained by the professions themselves, partly as a check against state power. State election laws should not conflict with the ethical obligations of election officials, and election officials should advocate against conflicting laws. Nonetheless, the articulation and evolution of ethical principles signify professional autonomy that serves the public interest. Second, writing ethical standards into statute books invites the association of criminal penalties with lapses in those standards. Certainly, election officials should be subject to laws prohibiting fraud and corruption in election administration, but as we have noted, ethical principles are not limited to the topics of fraud and corruption.

To the degree that lapses in ethical standards, as opposed to failure to adhere to the law, should be punished, they should rarely result in criminal sanctions, and the punishment should usually concern the relationship of the official to the profession, not to the punitive power of the state. Appropriate sanctions for most ethical lapses are discussed in the next section.

## 5.2. Enforcing Ethical Principles

A natural question arises about how ethical principles should be enforced. The first thing to note is that the purpose of ethical principles is to highlight in the minds of officials and voters the foundation on which the implementation of election laws is based. Failure to adhere to these principles can be subject to a number of actions, ranging from managerial correction to expulsion from a professional association.

For a professional association, such as a state association of election officials, enforcing ethical principles is a sensitive topic that deserves careful consideration. On the one hand, a professional code without an enforcement mechanism can become a toothless tiger and create cynicism about the code itself. On the other hand, enforcement proceedings can be divisive and time-consuming for professional organizations with small budgets and volunteer officers. Sanctioning a member for a violation of ethical standards can furthermore open the association to legal challenges that the association is unprepared to meet.

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<sup>110</sup> *Code of Ethics*, REGISTRARS OF VOTERS ASS'N OF CONN., <https://www.rovac.org/index.php?page=Code-of-Ethics> (last visited Jan. 19, 2024).

Obviously, if an association of election officials adopts a sanctioning process to enforce its ethical principles, it must be designed with members' due process rights in mind. The very accusation of an ethical lapse carries with it negative publicity for the accused official; being found responsible for the lapse would have serious professional and personal consequences.

In addition, complaint processes must be designed so that they do not become a vehicle to harass election officials. The complaint process must be designed to quickly dismiss bad-faith or nuisance charges while allowing serious charges to be handled fairly.

The Colorado County Clerks Association (CCCA) provides the most developed process for sanctioning ethical lapses among local election officials that we have come across. Its bylaws establish an ethics committee to receive complaints when “a member violates the spirit of the CCCA mission statement or their oath of office.”<sup>111</sup> The Ethics Committee first reviews the complaint, and if it is found to have merit, it is referred to the entire Association membership. The Association’s full membership may decide on a course of action that involves removing the member from Association membership, revoking membership privileges for a period of time, censure, or no action. The CCCA Executive Board must issue a public statement if a member is removed from membership; it may release a public statement if other decisions are reached but is not required to do so.

Protections in the enforcement procedures include: (1) Ethics Committee membership being composed of an equal number of Democrats, Republicans, and Unaffiliated members, if possible, representing each region of the state; (2) both the complainant and subject having the right to address both the Ethics Committee proceeding and the hearing of the entire membership; (3) participation in the investigation and the all-member meetings being restricted to member Clerks and closed to outsiders, including staff; (4) any action by the full membership having to be approved by 60% of members participating in the proceeding; and (5) timeliness requirements for notifying the subject of the complaint of the charges (within 48 hours of the complaint’s receipt), convening the CCCA Ethics Committee (30 days), and reporting back the Ethics Committee’s determination to the entire membership (30 days).

The purpose of ethical principles is to guide the behavior and professional development of the profession and to communicate to the public the standards to which the profession aspires. The sanctioning of professionals should be rare if an association has done its job of socializing ethical principles among its members.

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<sup>111</sup> COLO. CNTY. CLERKS ASSN., *Bylaws of the Colorado County Clerks Association* art. IX(C), (Jan. 2023).

## 6. Conclusion

Election administration is a profession dedicated to the free and fair conduct of elections. Members of the profession have an obligation to follow high ethical standards and to advocate for laws that are consistent with those standards.

With rare exceptions, election officials already act ethically in their personal and professional capacities. Indeed, there have been numerous instances in the past few years when officials have acted courageously to defend those principles.

Still, there are good reasons to be more explicit about these principles than has been the case in the past. First, there is value in communicating with the public about how election officials approach their jobs. Conducting elections is more than a clerical job that produces a paycheck. Reference to ethical principles is one way that election officials can frame their approach to translating the dry letter of the law into plans for voting that enfranchise voters and engender trust in the system.

Second, there is value in educating new people in the profession. For those just entering the field, whether as an executive or an election worker, having a set of ethical principles can help orient one to the ethos of what makes elections different from other endeavors. It can provide the framework to inspire recruits to excel beyond the base requirements of the position.

Finally, embracing a set of explicit ethical principles within election administration can help guide the profession when advocating for improvements to the process and can guard against policy changes that might degrade voter access and system security. Ethical principles can also give policymakers the vocabulary necessary to discern appropriate policy and administrative changes.

The purpose of this report has been to provide an independent review of the state of ethical principles for election administration and to position that review within the larger context of professional development. This review has led us to four high-level recommendations.

First, the ethical principles outlined in Section 4.3 of this report provide a concise summary of the principles election officials currently follow or should be expected to follow. It would benefit everyone who works in elections to reflect on these principles and consider how they are or could be incorporated into their everyday work.

Second, associations of election officials at the state and local level should consider the principles outlined in Section 4.3 as a starting point for adopting their own statements about ethical principles.<sup>112</sup> The conversation itself is likely to be healthy,

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<sup>112</sup> We are aware that not all states have active associations of election officials. Needless to say, we believe there are many advantages to having formal associations beyond the promulgation of ethical

as individual members of these associations consider how their collective work contributes to a common goal. The result should also address directly how these principles will be incorporated into the association's activities, including, but not limited to, educational programming.

Third, election offices at all levels of government should consider adopting written codes of conduct consistent with the ethical principles proposed in this report. Some election offices have already done this, but most have not. State and local ethics laws cover important topics of financial dealings, but they are not at the heart of election administration. Very few enter the field of elections, at any level of responsibility, having previously worked in elections. An explicit elections code of conduct would be useful in orienting newcomers, especially temporary election workers.

Fourth, careful attention should be paid to the oaths and affirmations taken by election officials to support and defend the Constitution, follow the law, and behave ethically. At a minimum, anyone working to help conduct an election should sign an oath to support and defend federal and state law, including the respective constitutions. But this is a minimum. Although a signed document is usually considered the legally binding oath, the emotional power of the symbolic oath, stated orally with the right hand raised, cannot be overlooked. Finally, asking members of state and local associations of election officials to take an oath affirming adherence to an association's ethical principles can reinforce the shared moral basis on which all officials act.

We live in a time when the integrity of election administration is being challenged and, indeed, has come under attack. At a time like this, it is important to remind the public and those serving them of the profound moral foundation on which election administration rests in the United States. Yet, even if the times were not so challenging, it would be appropriate to encourage those who conduct elections to consider the principles that undergird their work, to inform the public of those principles, and to hold each other accountable to them. We hope this report has provided the basis on which others will join in bolstering the ethical basis on which American elections are conducted.

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principles. For states with non-existent election official associations, the topic of ethical principles seems like a valuable starting point of discussion that may generate interest in such an organization.