



# **NONPARTISANSHIP WORKS**

**HOW LESSONS FROM CANADA CAN RE-ESTABLISH  
TRUST IN U.S. ELECTION ADMINISTRATION**

DECEMBER 2021





# EXECUTIVE SUMMARY

**Battles over the 2020 elections rage on, more than a year after the last presidential ballots were cast.** These clashes increasingly threaten the already vulnerable structures of U.S. election administration. A new cohort of unapologetically partisan party loyalists are vying to control election positions at the state and local levels. New laws and proposals aim to take authority away from the officials who provide, if imperfectly, some measure of neutrality in U.S. election administration.

In parallel, both parties have become increasingly critical of the fledgling attempts to counter partisan gerrymandering through new independent commissions. “There is no such thing as a nonpartisan” is an increasingly common refrain.

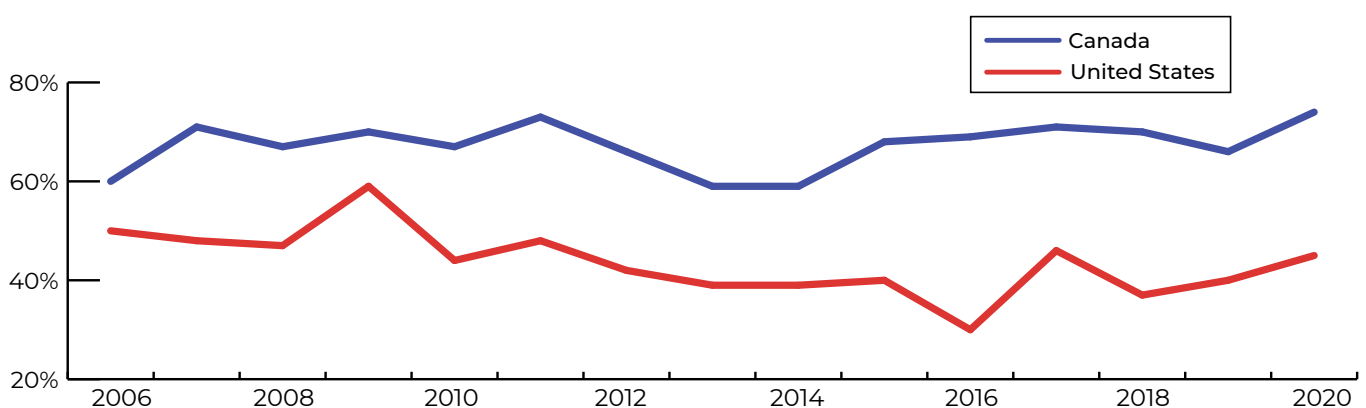
This is a study of the rules in a country where nonpartisanship works, one of many. This report assesses the most senior election administration position in Canada’s provinces and territories in comparison with the analogous position in U.S. states. Drawing on state, provincial, and territorial election laws, the study compares how the two sets of officials are selected, what constraints on partisan action they face, and to what extent authority has been delegated to them by legislative bodies. The comparison also leverages a unique dataset of the political activity and professional backgrounds of all holders of these offices since 2000.

## KEY FINDINGS


From this research, we present several important findings:

- › Chief electoral officers in Canada’s provinces and territories, and at the federal level, are required by law to be nonpartisan, while U.S. states place no such requirements on their most senior state election officials.
- › The backgrounds, performance in office, and subsequent careers of Canadian chief electoral officers seem to confirm that these officials have in fact been independent from Canada’s political parties.
- › Canada’s political parties support nonpartisan election administration. Governments of the left and the right have maintained or increased the authority given to these offices, and many of the individuals appointed have been unanimously approved.
- › Both the federal parliament and the provincial and territorial parliaments have delegated greater authority and discretion to chief electoral officers over time. This pattern suggests a virtuous circle, where increasing recognition of *de facto* neutrality of these officials has led to increasing willingness of lawmakers to entrust them with greater authority.
- › In the United States, state legislatures have delegated significantly less discretion to election officials than in Canada, and many states are now pulling back decision-making responsibility over election details from secretaries of state and state election boards.
- › As a result of this greater trust and authority, Canadian election officials were able to modify elections during COVID with little of the rancor and litigation experienced in the U.S. These differences between the countries also likely contribute to significantly greater voter confidence in Canada (illustrated in Figure 1).

**Figure 1. Percent of Voters Expressing Confidence in the Honesty of Their Country’s Elections**



Source: Gallup World Poll Data, 2006–2020, <https://www.gallup.com/analytics/318875/global-research.aspx>



This report aims to help policy advisors and lawmakers at the state and federal levels seeking to protect U.S. elections against the dangers of increasing polarization. We do not presume that easy answers to the challenges facing the U.S. are available in foreign models. Instead, we propose a set of steps to incrementally adapt the principles presented here to the context of U.S. state election institutions.

Already, work has begun to advance these ideas in the great laboratories of democracy, the U.S. states. Critical to the success of these efforts is an increasing recognition of the central finding of this report, that nonpartisanship works.

# CHAPTER 1

## THE U.S. – CANADA COMPARISON

To illustrate for a U.S. audience the structures that create nonpartisan election administration, this study compares election officials familiar to U.S. citizens, **secretaries of state**, with their roughly analogous counterparts in Canada, the **chief electoral officers** (“CEOs”) of Canada’s 10 provinces and three territories. More precisely, the U.S. positions evaluated here are the 38 secretaries of state and two lieutenant governors who also have the title of chief election officer, a designation established in federal law. (For convenience, the term “secretary of state” is used for all 40.) Because this study is framed to compare individual election leaders,\* the 10 U.S. states where boards or commissions lead election policy are not considered.<sup>1</sup>

Several significant differences between these positions, and between elections in the two countries, need to be emphasized at the outset. First, in Canada’s parliamentary system, executive officers at the federal, provincial, and territorial levels are not directly elected. For this and other reasons, Canada conducts far fewer elections than the United States. Also, U.S. states administer federal as well as state elections, and state legislatures have a constitutional role in federal election law. In

Canada, by contrast, election policies set at the provincial and territorial level do not affect federal elections.

*Canada and the U.S. both use first-past-the-post election systems, which amplify polarization and the political impact of voting rules.*

There are also differences in the role these two sets of officials play. Canadian chief electoral officers are the lead officials in provincial and territorial elections; this is their primary responsibility. In U.S. states, secretaries of state have less clear-cut control—in some states they share authority with a state election board, for example—and all secretaries of state have other functions in state government. Each secretary of state is also supported by a state election director, who typically is more directly involved in the management of elections.

\* For a discussion of the extent to which state election boards are structured for nonpartisanship see Johnson, Garber, McMahon & Vanderklipp, *Guardrails for the Guardians: Reducing Secretary of State Conflict of Interest and Building More Impartial U.S. Election Administration*, Election Reformers Network, 2020, p. 22, <https://electionreformers.org/guardrails-report/>



There are also important similarities between secretaries of state and chief electoral officers. Both are the public face of election administration in their jurisdictions, responsible for critical communications to voters, including proclamation of results in most cases. Both are the primary advocates for election administration before their respective legislative bodies.

Also, Canada and the United States both use first-past-the-post election systems, which amplify polarization and the political impact of voting rules. With first-past-the-post, success for individual politicians and for parties is sensitive to how elections are administered, particularly in terms of policies that affect voter turnout.<sup>2</sup> This fact increases the motivation for parties and politicians to influence election rules, and the need for protection against such influence.

Reflecting their similar voting systems, Canada and the U.S. also have roughly similar political dynamics regarding election policy. Canadian conservative parties have fared better in lower turnout elections, and conservatives often express more concern over election integrity than voter access. In 2014, the Conservative Party enacted a national voter ID law, realizing an objective that U.S. conservatives have long pursued.<sup>3</sup>

Both countries have also wrestled with election fraud at times in their history.<sup>4</sup> A particularly fraud-ridden and divisive election in Canada in 1917 triggered the transition to nonpartisan election administration that drives the key differences discussed in this report. In that election, the voter register was subjected to “a kind of ethnic cleansing,” votes from soldiers were allocated to districts after the fact, and it was a foregone conclusion that the party in Parliament enacting the election laws would retain the majority.<sup>5</sup>

In response, the Federal Parliament in 1920 passed the Dominion Elections Act, which established the position of federal chief electoral officer to bring order to federal elections.<sup>6</sup> To emphasize the expectation of impartiality, the law stipulated that the chief electoral officer could not vote. The act passed with broad support, and the first and all subsequent federal chief election officers have been approved unanimously in Parliament.

*A particularly fraud-ridden election in Canada in 1917 triggered the transition to nonpartisan election administration that drives the key differences discussed in this report.*

All 13 Canadian provincial and territorial chief electoral officer positions follow the pattern set by that Act, that a nonpartisan individual should be in charge of elections.

In the U.S., a parallel innovation developed in the form of bipartisan bodies representing the Democratic and Republican parties in election administration, primarily at the local level. But most states kept state-level election leadership with the office of the secretary of state, which had historically been given responsibility for elections along with other, non-election-related functions. Many states have considered changing the secretary of state to a nonpartisan status, particularly in the last two decades. The preference of political parties to keep this office winnable for their side has prevented such proposals from advancing.

\*\*\*\*\*

It is not a novel observation that nonpartisan officials run Canadian elections and that the U.S. might learn from that fact. Cross-border lesson-sharing on this point seems to have been tried in the past, with limited success.<sup>7</sup> Nevertheless, new data justify addressing this subject anew. To our knowledge, no study of this topic has identified the sharp contrast in delegation of authority to election officials in the two contexts discussed here, assessed the specific backgrounds of all individual office holders, or illustrated the contrasting virtuous and vicious cycles we examine here.

This subject is also of particular concern given the current U.S. political dynamic leading election administration toward more control by partisans, and toward the political conflagrations that will likely ensue.

# CHAPTER 2

## NONPARTISANSHIP, SELECTION & ACCOUNTABILITY

### KEY FINDINGS

- › Canadian provinces and territories use a range of legal mechanisms to ensure that individuals in the chief electoral officer position are independent of political parties.
- › U.S. state election laws, by contrast, make no requirements that secretaries of state have backgrounds of political independence or act independently in office.
- › While most U.S. secretaries of state are elected, all Canadian provincial and territorial chief electoral officers are appointed as officers of their respective assemblies. Nomination and appointment processes often include requirements for broad support, and in practice, many are approved unanimously.
- › Canadian provinces and territories generally have longer terms and fewer term limits than U.S. states for top election officials, policies that help retain institutional experience. Canadian provinces and territories also have more measures to hold these officials accountable, including mandated reports to legislatures and mechanisms for removal.

### NONPARTISANSHIP

The background to the 1920 Dominions Elections Act discussed in Chapter 1 suggests a sincere intent among lawmakers to establish nonpartisan administration of elections in Canada. But such intentions can be difficult to realize. How do Canadian electoral codes go about structuring the position to make administration nonpartisan in practice?

One answer is that electoral laws separate the chief electoral officer from political activity, in part to make the position unappealing to career politicians. In all 13 provinces and territories, CEOs are prevented from running in an election while in office. The election law of Newfoundland and Labrador, for example, provides that:

“The Chief Electoral Officer is an officer of the House of Assembly and is not eligible to be nominated for election, to



be elected or to sit as a member of the House of Assembly.”<sup>8</sup>

No similar prohibitions exist for U.S. secretaries of state, and many continue party-affiliated political careers while serving as secretary, often by running for higher office.

Provisions in several provinces and territories explicitly bar chief electoral officers from campaign activity, such as making public statements of support or giving political donations. For example, the CEO of Nunavut may not “accept or hold any office or employment or participate in an activity that is inconsistent with [their] duties,” including making “a contribution to a candidate.”<sup>9</sup> Similarly, the Yukon Election Act states:

“The chief electoral officer shall refrain from any active or public support or criticism of any candidate or any political party endorsing a candidate.”<sup>10</sup>

Other provinces and territories include a more general requirement of impartiality. The province of Newfoundland and Labrador requires the CEO “to exercise general direction and supervision over the administrative conduct of elections and to enforce on the part of election officers fairness, impartiality and compliance with this Act.”<sup>11</sup>

Seven provinces and territories prohibit the chief electoral officer from voting, replicating the federal policy noted earlier. In others, impartiality is explicitly required by an oath of office taken upon confirmation.

*The lack of prohibitions on political affiliation and activity by secretaries of state raises the potential for conflict of interest: that secretaries of state could use their position of influence over elections to help themselves or their party win.*

U.S. states likewise require secretaries of state to swear an oath at the outset of their service, typically pledging to “uphold” the state and federal constitutions. For only 10 of 40 secretaries of state, however, does the oath include an explicit commitment to impartiality.<sup>12</sup>

These contrasting requirements are summarized in Figure 2.

**Figure 2. Partisanship and Political Activity of Top Election Official**

Regulations	U.S. Secretaries of State	Canadian Provincial and Territorial Chief Electoral Officers
Official is explicitly required to perform duties impartially by oath and/or by statute	10 / 40	13 / 13
Official is prohibited from running for office	0 / 40	13 / 13
Official is barred from voting in elections	0 / 40	7 / 13

The underlying data used in this table and subsequent figures can be found at: <https://electionreformers.org/canada-resources/>

The lack of prohibitions on political affiliation and activity by secretaries of state raises the potential for conflict of interest: that secretaries of state could use their position of influence over elections to help themselves or their party win. The lead role that local election officials play in core functions such as voter registration, polling place management, and vote tabulation mitigates this risk. Nevertheless, secretaries of state can shape election processes and control important specific elements, such as approval of third party candidates.<sup>13</sup>

A 2019 *pro bono* study conducted for Election Reformers Network by the law firm of Ropes & Gray assessed the extent to which state conflict of interest laws constrain secretaries of state. The study concluded that:

“[No] state possessed formal legal structures explicitly preventing [these officials] from taking part in conflicted conduct whether to advance their own electoral interests or to purposefully aid a party, ballot initiative, or other candidate in an election they oversee.”<sup>14</sup>

## SELECTION METHODS

All 40 U.S. secretaries of state are selected in partisan processes; 33 in state-wide partisan elections, and seven by appointment of the governor or in the legislature. All 13 Canadian CEOs are appointed by their respective assemblies. Figure 3 summarizes these differences.

Canadian provinces and territories differ in how chief electoral officer candidates are nominated and approved. In New Brunswick, CEO candidates are named by a commission representing academic, judicial and legislative backgrounds, not unlike commissions in the U.S. that nominate candidates for judicial positions.<sup>15</sup> Other provinces designate multipar-

ty parliamentary committees to interview and evaluate candidates.

In several provinces, CEOs can be approved by a simple majority vote of the assembly; others require a supermajority. In Ontario, the CEO can be confirmed by a unanimous vote of the entire assembly, or, failing that, by a panel containing members of each recognized party within the body with approval from at least one member of each party.<sup>16</sup>

Partisan political considerations can of course play a role in the CEO appointment process. In Saskatchewan from 2008 to 2012, for example, the governing party refused to allow a vote on a CEO candidate who had been approved by a bipartisan committee.<sup>17</sup> That delay seems to have been motivated by concern about the nominee’s advocacy for election modernizations, including a permanent voter registry, likely to increase turnout. Such instances have occurred infrequently, and many provincial and territorial CEOs have been confirmed unanimously.

**Figure 3. Selection Method of Top Election Official**

Selection Method	U.S. Secretaries of State	Canadian Chief Electoral Officers
Total elected or appointed with explicit partisan affiliation	40 / 40	0 / 13
Elected	33 / 40	0 / 13
Appointed	7 / 40	13 / 13

## ACCOUNTABILITY

Mechanisms to hold the two sets of officials accountable also differ significantly. U.S. states exercise accountability through re-election and through term limits. In Canadian provinces and territories, accountability is enforced through required reporting to the legislatures and the threat of removal from office.

All 13 Canadian provinces and territories require the CEO to submit reports to the legislative assembly after every election, and either annually or after every legislative session. These reports explain decisions made by the office, detail expenditures, and suggest amendments to the electoral code.

*Secretaries of state are backed primarily by the voters of one party, who increasingly see the other side as a mortal threat. In this context, voters seem unlikely to prevent or punish bad behavior that helps their side win.*

Many U.S. secretaries of state also issue reports to state legislatures, either by policy of individual secretaries or in response to a requirement in state law. There is greater formal accountability in the reporting on the Canadian side, however, because Canadian CEOs are officers of their assemblies, reporting to the bodies that hired them.

Mechanisms also exist within the 13 provincial and territorial assemblies to remove the chief electoral officers for good cause. In Newfound-

land and Labrador, for example, a chief electoral officer may be suspended or removed from office “because of an incapacity to act or for misconduct, cause or neglect of duty.”<sup>18</sup> Six of the provinces and territories require a two-thirds majority of members for such removal, one allows a simple majority, and the other seven do not specify a threshold. Additional language exists in each province and territory for removal when the assembly is not in session.

In the U.S., most secretaries of state serve at the pleasure of the voters, not the legislature, and it is therefore the voters who can hold these officials accountable when they come up for re-election.

Many U.S. secretaries of state emphasize accountability to the electorate as a key counter to the risk of partisan behavior.<sup>19</sup> This logic is undermined, however, by the preference of voters to see their side win elections. In practice, secretaries of state are backed primarily by the voters of one party, who increasingly see the other side as a mortal threat. In this context, voters seem unlikely to prevent or punish bad behavior that helps their side win.

# CHAPTER 3

## DISCRETION AND AUTHORITY

### KEY FINDINGS

- › All Canadian chief electoral officers have discretion over interpretation of rules and the conduct of elections; many also have the ability to hire local officials, conduct test runs of new election methods, and control election spending.
- › Delegation of authority to election officials in Canada has increased over time.
- › In contrast with the more permissive legal approach in Canada, election legislation in the United States is much more prescriptive, often dictating in rigid detail the procedures that must be followed.

### DELEGATION

Canada and the United States differ significantly in the extent to which legislative bodies have delegated authority to election leaders. In both countries, legislatures set broad election policy, but Canadian chief electoral officers have much more flexibility to interpret those policies and to respond to exigencies of election implementation.

Two passages illustrate the remarkable degree of this delegation of authority.

The Manitoba Elections Act provides:

The chief electoral officer may:

- (a) extend the time for doing anything under this Act;

- (b) increase the number of election officials;

- (c) increase the number of voting stations;

- (d) omit or vary a prescribed form to suit existing circumstances;

- (e) modify a provision of this Act to permit its use at a by-election; and

- (f) generally, adapt the provisions of this Act to existing circumstances.<sup>20</sup>

Likewise, the Elections Act of the Yukon Territory states:

If, in the opinion of the chief electoral officer, the provisions of this Act are ineffective as a result of any mistake, miscalculation, emergency or unusual or unforeseen circumstances, the chief

electoral officer may extend the time for doing any act; increase the number of election officers or polling stations; or otherwise adapt any of the provisions of this Act to the extent the chief electoral officer considers necessary to ensure the execution of the intent of this Act.<sup>21</sup>

The electoral codes of the 11 other Canadian provinces and territories provide similar flexibility to chief electoral officers to make administrative decisions they believe are necessary.

Several provinces and territories also specifically allow for CEOs to test alternative equipment, technology, or voting procedures during by-elections.

*These patterns suggest a virtuous circle: the creation of positions structured for independence has been followed by growing recognition of the de facto neutrality of these officials and in turn growing willingness to cede authority to them.*

In contrast, U.S. state election legislation is much more prescriptive, requiring specific functions from election officials rather than allowing latitude to respond to circumstances. A protracted battle in 2020 in Ohio over ballot drop boxes provides a good illustration of the constraints of the more prescriptive U.S. approach. Ohio law stated that absentee ballots could only be delivered by mail or “personally to the director of the county board” and in “no other manner.” This tightly controlling language prevented Secretary of State Frank

LaRose from responding to voter demands, and even court rulings, to set up drop boxes in multiple, voter-safe locations.<sup>22</sup>

In the aftermath of the 2020 elections, a few exceptional states responded to the experience of the COVID-19 elections by shifting laws toward greater flexibility for secretaries of state. Many more states, however, took the opposite approach, passing laws that more tightly defined election processes or provided penalties for even minor transgressions. A bill in Arizona, for example, makes it a felony for any election official to change any election deadline.<sup>23</sup> Georgia’s new election law includes a provision preventing the giving of water to voters waiting in line.

Many bills micromanaging election processes have passed on strictly partisan votes, lending credence to the concern that they are designed at least in part to help the electoral chances of the sponsoring party.

In Canada, the authority delegated to chief electoral officers has increased over time. The electoral code provisions from Manitoba and Yukon cited above became law many years after the establishment of these CEO positions. At the Federal level, the Canadian parliament granted the federal chief electoral officer emergency authority in case of fire or flood in 1951 and more general emergency authority in 1960.<sup>24</sup> These patterns suggest a virtuous circle: the creation of positions structured for independence has been followed by growing recognition of the *de facto* neutrality of these officials and in turn growing willingness to cede authority to them.

The cycle seems to be turning in the opposite direction in many U.S. states.

**Figure 4. Discretion and Authority**

Authority	U.S. Secretaries of State	Canadian Chief Electoral Officers
Official is explicitly empowered to interpret and adapt election code as they consider necessary	0 / 40	13 / 13
Official is explicitly empowered to modify some deadlines and timetables established in the election code outside of emergency situations	0 / 40	13 / 13
Official is primary authority in making election changes during an emergency	4 / 40	13 / 13

Figure 4 contrasts powers delegated by Canadian provincial and territorial Election Acts with electoral codes in US states.

## LOCAL OFFICIALS; ELECTION COSTS

For many years in Canada, governments at the federal and provincial and territorial levels appointed returning officers, the important officials responsible for local election processes. This practice gave rise to concern over partisanship in favor of the party in power. In recent decades, both the Federal Parliament and Assemblies in 11 of 13 provinces and territories have transitioned this authority to the chief electoral officer or their deputy.

These changes provide further illustration of the virtuous cycle noted earlier, where increasing faith in nonpartisanship of chief electoral officers has led lawmakers to shift additional election functions away from more politically motivated supervision. Adoption of this rule change has occurred under both conservative and left-leaning provincial and territorial governments.

The law establishing this transition in Alberta takes an additional step to address the underlying issue of conflict of interest. It calls on the CEO to “establish a hiring policy, including policies surrounding conflicts of interest, relating to the hiring of election officers, enumerators and employees on the basis of merit.”<sup>25</sup>

In the U.S., local election officials are appointed or elected locally almost everywhere in the country, a system that is often cited as a key source of high confidence among U.S. voters in local results. But decentralized control sometimes collides with state-level needs to service all voters equally and efficiently.

In Georgia, a huge controversy has taken shape over recent election legislation giving the state’s election board the authority to investigate and replace some local election officials for underperformance. Many observers have taken the Georgia bill as proof of Republican intent to take over control of large Democratic Georgia counties.<sup>26</sup> Close analysis of the text suggests the replacement mechanism may be too drawn out to ever be used, but that has not abated concern.<sup>27</sup> This controversy illustrates the difficulty for U.S. states in establishing



oversight of local officials when state election authorities are aligned with one party.

Related to the issue of control over local election officials is the question of how elections are funded. In Canada, the costs of federal elections are paid from federal funds, and the federal chief electoral officer controls the election budget. Remarkably, the federal CEO accounts after the fact for what has been spent, rather than applying in advance for a specific budget. The territories and provinces cover the costs of their elections, with the CEOs allocating those funds.

In the United States, by contrast, local rather than state budgets cover most election costs, and secretaries of state have little role in local election spending.<sup>28</sup> This structure reduces their ability to ensure uniformity in election processes within their state. Figure 5 summarizes these differences.

**Figure 5. Control over Local Election Officials and Election Budgets**

Authority	U.S. Secretaries of State	Canadian Chief Electoral Officers
Official has some responsibility to appoint local/regional election officers	5 / 40	11 / 13
Election costs are paid by the state or province/territory and are managed by the official	1 / 40	13 / 13
Election costs are paid by local government and managed locally	39 / 40	0 / 13

# CHAPTER 4

## TRACK RECORD

### KEY FINDINGS

- › Canadian chief electoral officers exhibit in practice the independence from political activity expected of them in electoral law.
- › U.S. secretaries of state do not match the level of impartiality of their northern neighbors, but the track record in the United States shows less frequent partisan activity than might be expected given the absence of guardrails against such behavior.
- › The significantly greater delegation of authority to election officials in Canada allowed the country to modify elections during the ongoing COVID-19 pandemic with much less rancor and litigation than in the U.S.

We turn now to questions designed to assess the track records of Canadian provincial and territorial chief electoral officers and U.S. secretaries of state. How well have Canadian laws functioned in practice in creating separation between CEOs and political parties that compete in elections? To what extent have CEOs and secretaries of state faced credible allegations of partisan manipulation?

To approximate answers to these questions, we draw on a dataset of biographical and political information about secretaries of state and provincial and territorial CEOs who held office since 2000. We also compare how the two systems responded to the challenge of elections conducted during the COVID-19 pandemic.

### NONPARTISANSHIP IN PRACTICE

In Canada, 47 provincial and territorial chief electoral officers have served since 2000, and an analysis of their backgrounds and tenures suggests that these officers have in fact been distanced from political parties. All but three came to the CEO position without a prior political background, and none has run for office during or after their tenure. While in office, none has endorsed a candidate, taken a campaign position, or publicly endorsed a political campaign.

The track record of Canadian chief electoral officers in office does include instances of conflict between political parties and CEOs

over election rules, including a long-running battle between Alberta CEO Lorne R. Gibson and the province's conservative parties. But our research found no record of successful legal actions taken against a CEO for alleged partisan behavior.

Figure 6 summarizes this information and provides contrasting data for secretaries of state.

On the U.S. side of this comparison, not surprisingly, most secretaries of state have prior political experience, almost a prerequisite for a statewide elected office. Twenty-nine percent endorsed a candidate in a race under their supervision, and 20 percent lost lawsuits over allegations of partisan favoritism.<sup>29</sup>

Arguably, these data show less partisanship from U.S. secretaries of state than might be expected, given the nature of these positions. Most secretaries of state are senior members

of their political party, whose careers depend in part on building the political profile and party allegiances necessary to win future elections. As noted earlier, there are few if any legal constraints on partisan behavior of secretaries of state in office.

Nevertheless, naked partisanship in office is more the exception than the norm. There have of course been high-profile examples of partisan behavior, such as former Florida Secretary of State Katherine Harris's biased handling of her state's 2000 presidential recount, but the majority of secretaries of state seem to rise above the flaws in the positions they hold. An important question for U.S. elections is whether that pattern will survive the emergence of hyperpartisan "stop the steal" candidates running for secretary of state in 2022.\*

**Figure 6. Political Track Record of Secretaries of State and Chief Electoral Officers 2000 - 2020**

Track Record	U.S. Secretaries of State	Canadian Chief Electoral Officers
Prior political experience (eg held elected office)	67%	6%
Ran for an another office during or after tenure	40%	0%
Prior election administration experience	26%	49%
Made at least one endorsement in a partisan race under their supervision	29%	0%
Lost a lawsuit arising from allegations that the official's actions favored their political party	20%	0%
Held at least one position on a political campaign while in office	15%	0%

\* For more information on issues arising in these races, please visit: <https://electionreformers.org/2022-secretary-of-state-candidate-watch/>

## RESPONSE TO COVID-19

The differences between the Canadian and U.S. systems have been on display in the countries' responses to administering elections during the COVID-19 pandemic. In the U.S., secretaries of state used what authority they had to increase access to safer alternative voting methods, either advocating for relaxed restrictions on who could apply to vote by mail, opening web-based portals for applications, or mailing applications to voters. Some secretaries enacted emergency guidelines for polling places.

Many of these actions met with legal challenges from contesting political parties. Over 400 election-related lawsuits were filed in 2020, the majority addressing the legality of procedural changes to increase access to alternative voting methods such as mail-in voting.<sup>30</sup>

*The majority of secretaries of state seem to rise above the flaws in the positions they hold. An important question for U.S. elections is whether that pattern will survive the emergence of hyperpartisan “stop the steal” candidates running for secretary of state in 2022.*

After the election, legislatures in several states rolled back policies increasing voter access during 2020 and tightened restrictions on secretary of state authority.

In Canada, substantial changes to mitigate risk of COVID-19 transmission were introduced for

the federal election held in October 2021 and the seven provincial and territorial elections held during 2020 and 2021. Several provincial and territorial assemblies gave CEOs more power and more flexibility. Nova Scotia passed five amendments to this effect ahead of its elections.<sup>31</sup> Saskatchewan's government made changes to the Election Act to “give the Chief Electoral Officer the power to adapt any provision of the Act as necessary to reduce a health risk to the public.”<sup>32</sup>

For the Canadian federal elections conducted in October 2021, some pandemic-related changes faced criticism. Press coverage of the elections pointed out long lines at polling stations and disorganization in the implementation of voting-by-mail.<sup>33</sup> Some critics also questioned whether it was appropriate for Prime Minister Trudeau to call an election during the COVID-19 pandemic, especially so early in his mandate. What was much less in doubt was that Canada's federal and provincial and territorial election officials had the authority to make the needed changes.

In stark contrast with the United States, it appears that only a handful of election-related lawsuits were filed in Canada during the period.

## REDISTRICTING

The track record of nonpartisan election administration in Canada also helped build a foundation for a second kind of transition, to nonpartisan redistricting. Before 1964, parties with majorities in the Federal Parliament or in the provincial and territorial assemblies could use that power to control constituency boundaries, as is the case in most U.S. state legislatures. A 1964 act of Parliament established an independent boundary commission at the federal level, and all provinces and territories ad-

opted similar reforms over the ensuing three decades.

Most democracies followed the same pattern, establishing nonpartisan administration first, and only later taking on the more difficult political challenge of ending legislative control of district boundary drawing. The U.S. has taken the opposite course, launching nonpartisan redistricting commissions first in some states. These efforts have been limited, however, by the absence of supportive federal laws and by the lack of broad support for nonpartisanship in election administration as a prevailing concept.

# CONCLUSION

## COMMENTS AND RECOMMENDATIONS

Nonpartisan election administration works. Election leadership positions can in fact be structured to create functional independence from political parties. Parties in turn can see the benefit of moving election rule-making away from the political fray. This delegation of authority to independent professionals allows for management of disruptions like COVID-19 with less political hostility.

Nonpartisan election administration works in Canada's territories and provinces and at the Canadian federal level. There are another 72 democracies cited by International IDEA as using an "independent electoral management body," at least some of which, it seems reasonable to assume, work as well as Canada's in practice.<sup>34</sup>

*A transition to nonpartisan election administration in the United States... can be made in manageable steps.*

Yet in the United States, nonpartisanship is often dismissed as impossible. A series of comments by secretaries of state recorded in 2010

by Jocelyn Benson, now Secretary of State of Michigan, captures this skeptical perspective:

- › "To find a quote unquote nonpartisan is to find someone in a bubble. Is that the kind of person you want running the show?" - Former Indiana Secretary of State Todd Rokita
- › "I don't think there is such a thing [as a nonpartisan]." - Former Vermont Secretary of State Deborah Markowitz
- › "Non-partisan? I don't think so." - Former Oregon Secretary of State Bill Bradbury<sup>35</sup>

Political competition in the U.S. may well be more fierce than in other countries, but the country is not somehow lacking a gene that others possess. The real reason for the absence of nonpartisan structures leading U.S. state election administration is simply that they have not really been tried.<sup>36</sup>

## PRACTICAL STEPS

A transition to nonpartisan election administration in the United States does not need to happen in one fell swoop. Change can be made in manageable steps that incrementally increase nonpartisanship and build support from the public and among election policy makers.



Approaches will differ across the states, befitting the heterogeneous U.S. system, but the six specific reforms described below can provide a template for change.<sup>37</sup> These steps are loosely inspired by election administration in Canada but are designed to fit the unique context of the United States.

## Step 1

**Prohibit partisanship in office for the existing secretary of state position.** Through federal or state law, secretaries of state should be barred from endorsing any candidates or positions on ballot initiatives or having any involvement in fundraising for campaigns in any state.

## Step 2

**Make the existing secretary of state position less attractive to career politicians.** State law should bar secretaries of state from running for other offices while serving and for a set number of years afterward. Such provisions would reduce conflicts of interest and help tilt the appeal of the position toward election professionals, rather than career politicians. States may also consider having candidates for secretary of state meet a qualification, such as direct experience administering elections or completion of an election certification program.

## Step 3

**Make the existing secretary of state position elected via nonpartisan elections.** Under this reform, the secretary of state election should be conducted based on a ballot with no party affiliation.<sup>38</sup> States would not organize party primary primaries to winnow the field of secretary of state candidates, so a system with a runoff or ranked choice voting would be needed. In office, the secretary of state should have no party affiliation and should swear a special oath of office asserting their impartiality.

## Step 4

**Give the nonpartisan secretary of state greater authority.** The secretary of state should have the latitude to determine the best means to achieve election policy. Legislatures should set broad election policy objectives, such as, for example, registering a high percentage of the eligible population while keeping out-of-date records below a minimum threshold. Additionally, the secretary of state should have authority to manage funds from state and federal sources, including for distribution to local election offices.

*In many states, the steps listed above may be all that is politically achievable. Other states may consider going further.*

## Step 5

**Transfer election responsibility to a new nonpartisan chief election officer position, selected in the same manner as many state judges.** Many states use a multi-stakeholder nominating commission to shortlist judicial candidates, from which the governor names the judge. A similar approach could be used for a new, separate chief election officer position.<sup>39</sup> A commission representing voters, local administrators, and political parties could screen candidates and agree on a shortlist of nominees for final appointment by the governor.

## Step 6

**Create more effective accountability.** New accountability mechanisms would be needed as part of a reform creating an unelected chief election officer. Laws could establish automatic removal upon conviction for election fraud or other specific election crimes, and also provide for removal by the legislature with a supermajority vote. States can also strengthen requirements for regular reporting to the legislature.

\*\*\*\*\*

The United States has managed for many years without nonpartisan election administration. The country has relied instead on partisans to operate in good faith, whether as secretaries of state or members of canvassing boards or election commissions. That this approach has often succeeded is something of an achievement, a credit to the country's capacity for public service. But hyperpolarization and aggressive moves to control state and local election administration are putting an end to this partisans-acting-in-good-faith model. Election administration has become another battlefield in the winner-take-all political war.

In this context, the U.S. can no longer stand apart and ignore an innovation that has made elections more effectively managed and more broadly supported. In Canada and in many other countries, nonpartisanship works.



## ABOUT ELECTION REFORMERS NETWORK (ERN)

The Election Reformers Network is a nonpartisan 501c3 organization founded in January 2017 by experts in democracy promotion and election observation with extensive experience in the United States and overseas. ERN leverages this expertise to develop and support election reforms that reduce polarization and increase public confidence in U.S. democratic institutions.

## THE AUTHORS

**KEVIN JOHNSON** is co-founder and executive director of Election Reformers Network (ERN). Kevin leads ERN's research and advocacy programs focused on impartial election administration, independent redistricting, ranked choice voting, money in politics, and electoral college reform. Kevin's prior experience in election reform includes several years overseas with the National Democratic Institute and ten years on the Board of Common Cause Massachusetts. Kevin also serves on the Election Expert Study Team of The Carter Center, assisting the Center's U.S. Elections Program. Kevin is lead author of *Guardrails for the Guardians: Reducing Secretary of State Conflict of Interest and Building More Impartial U.S. Election Administration*.

**ALEXANDER VANDERKLIPP** is the Election Reform Fellow at ERN, where he contributes to development of the ERN program portfolio, with a focus on state-level election administration. He has also conducted independent research for The Century Foundation, Keep Our Republic, and Unite America, and is involved with the Youth Franchise Coalition's efforts to document the history of the 26th Amendment. Previously, he held internships with the Democracy Fund and the National Democratic Redistricting Committee.

# END NOTES

1 Eighteen states have an election board or commission; in eight of those states the board shares authority with the secretary of state. For further discussion on state election boards and commissions, please visit: <https://electionreformers.org/guide-to-state-election-boards-and-commissions/>

2 Researchers have also found that the two systems differ as regards electoral malfeasance, with malfeasance significantly more common in first-past-the-post countries than proportional representation countries. See Sarah Birch, "Electoral Systems and Electoral Misconduct." *Comparative Political Studies*, 2007, 40(12): p. 1533-1556.

3 John Nicol, "Federal election 2015: Voter ID rules stand, judge rules," *CBC News*, July 17, 2015, <https://www.cbc.ca/news/politics/federal-election-2015-voter-id-rules-stand-judge-rules-1.3156519>

4 Louis Massicotte, "The Chief Electoral Officer of Canada," *Canadian Parliamentary Review*, Autumn 2003, p. 19, <https://canlii.ca/t/skcn>. See also Edward Foley, *Ballot Battles: The history of disputed elections in the United States*. Oxford University Press, 2015, p. 317

5 Ibid

6 Ibid

7 Jean-Pierre Kingsley, Former Chief Electoral Officer of Canada. (Interview, May 14, 2021).

8 SNL1992 cE-3.1 s5.1

9 S.Nu. c17 s209

10 RSY 2002 c63 s13

11 SNL1992 cE-3.1 s5

12 Alexander Vanderklipp, *All States Oaths of Office 2020*, Election Reformers Network, 2020, [https://docs.google.com/document/d/1BXU215vbf-NPW8K9sfHtgz8\\_lxejyUR8T2mcrUhUdPY/](https://docs.google.com/document/d/1BXU215vbf-NPW8K9sfHtgz8_lxejyUR8T2mcrUhUdPY/)

13 Johnson, Garber, McMahon & Vanderklipp, *Guardrails for the Guardians: Reducing Secretary of State Conflict of Interest and Building More Impartial U.S. Election Administration*, Election Reformers Network, 2020

14 Ropes & Gray, *Chief Election Officers and Conflicts of Interest*, January 14, 2020, <https://electionreformers.org/ropes-gray-analysis/>

15 RSNB 1973, c E-3 s5. (1.11)

16 RSO 1990, c E.6 s3.1

17 James Wood, “Insiders fear an election disaster,” *Regina Leader-Post*, July 13, 2010

18 SNL1992 cE-3.1 s5.3

19 See Jocelyn Benson, “Secretaries of State: Guardians of the Democratic Process,” *Ashgate Publishing*, 2010, for several statements on this theme by secretaries of state. See also Johnson, et al. (2020), p. 30.

20 CCSM cE30 s28

21 RSY 2002 c 63 s14. (2)

22 NBC News, “Dispute over Ohio mail ballot drop box limit ends as advocates drop suit,” October 23, 2020, <https://www.nbcnews.com/politics/2020-election/dispute-over-ohio-mail-ballot-drop-box-limit-ends-advocates-n1244584>

23 See Arizona HB 2794: <https://legiscan.com/AZ/text/HB2794/id/2275299>

24 Massicotte (2003), p. 21

25 RSA 2000, c E-1 s9.1

26 Igor Derysh, “Georgia GOP called “shameless” for trying to use new voting law to oust local election officials,” *Salon*, September 4, 2021, <https://www.salon.com/2021/09/04/georgia-gop-called-shameless-for-trying-to-use-new-voting-law-to-oust-local-election-officials/>

27 Stephen Fowler, “How Does Georgia’s Election Board Takeover Law Work? Not Quickly,” *Georgia Public Broadcasting*, July 29, 2021, <https://www.gpb.org/news/2021/07/29/how-does-georgias-election-board-takeover-law-work-not-quickly>

28 Katy Owens Hubler and Wendy Underhill, *Election Costs: Who Pays and With Which Funds?*, National Conference of State Legislatures, March 2018, <https://www.ncsl.org/research/elections-and-campaigns/election-costs-who-pays-and-with-which-funds.aspx>

29 Johnson et al. (2020), p. 32–43

30 Lila Hassan and Dan Glaun, “COVID-19 and the Most Litigated Presidential Election in Recent U.S. History: How the Lawsuits Break Down,” *PBS Frontline*, October 28, 2020, <https://www.pbs.org/wgbh/frontline/article/covid-19-most-litigated-presidential-election-in-recent-us-history/>;

See also, Stanford-MIT Healthy Elections Project, COVID-Related Election Litigation Tracker, 2020–2021, <https://healthyelections-case-tracker.stanford.edu/>

- 31 Elections Nova Scotia, *Elections Act Amendments*, May 6, 2021, <https://electionsnovascotia.ca/LegislativeAmendments>
- 32 Adam Hunter, “Sask. government gives top electoral official emergency power for fall election,” *CBC News*, May 13, 2020, <https://www.cbc.ca/news/canada/saskatchewan/sask-election-emergency-powers-1.5568460>
- 33 Jesse Kline, “Hours-long lineups, technical failures mar Canada’s pandemic election,” *National Post*, September 21, 2021, <https://nationalpost.com/opinion/jesse-kline-hours-long-lineups-technical-failures-mar-canadas-pandemic-election>
- 34 Electoral Management Design Database, “Model of Electoral Management,” International Institute for Democracy and Electoral Assistance, 2021, <https://www.idea.int/data-tools/question-view/130365>
- 35 Benson, 2010, p. 29
- 36 For a discussion of the one significant attempt at a state-level nonpartisan structure, the Government Accountability Board of Wisconsin, see Johnson et al. (2020), p. 23
- 37 For a more detailed discussion of these reforms see Johnson et al. (2020).
- 38 For a discussion of the potential benefits and drawbacks of nonpartisan elections, see Johnson et al. (2020), p. 55–56.
- 39 The same mechanism can be used to improve the selection method of state election boards in states with such bodies. For a discussion of steps to increase nonpartisanship in state election boards, see Johnson et al. (2020), p. 56-57. See also *Keeping partisan loyalists from running elections: what can be learned from redistricting and judicial nominating commissions?* (provisional title), a report to be published by The Carter Center in January 2021.



## ACKNOWLEDGMENTS

This report was made possible in part through support from the Democracy Fund. While the contents of the report are the sole responsibility of Election Reformers Network and may not reflect the views of our funders, we are grateful to the Democracy Fund and the staff of the Democracy Fund Elections Program for continued support of our work to advance impartial election administration.

The authors would like to thank the ERN Board and Advisory Council for their election expertise and their advice in directing that expertise to best support U.S. election reform. In particular, Board Chair Eric Bjornlund provided invaluable guidance in conceiving and editing this report. Board members Larry Garber and Edward McMahon co-authored *Guardrails for the Guardians* with us, providing the foundation for this report. We would also like to express our appreciation to ERN's Research Intern, Rachel Powell, for her tireless and diligent research and essential contributions to this report.

Secretaries of state, or senior staff members to secretaries of state, in Arizona, Colorado, Georgia, Kentucky, Louisiana, New Mexico, Ohio, Michigan, and Washington provided very helpful insight into questions related to this report.

Additionally, we would like to thank staff off the following Canadian provincial and territorial government bodies for their assistance:

- The Office of the Clerk of the Legislative Assembly of Alberta
- The Office of the Clerk of the Legislative Assembly of Manitoba
- Elections New Brunswick
- Elections Newfoundland and Labrador
- The Legislative Assembly of Nunavut
- The Saskatchewan Legislative Library

Finally, we would like to acknowledge the following for their contributions to this report:

- Jean-Pierre Kingsley, Chief Electoral Officer of Canada from 1990–2007
- Louis Massicotte, Professor of Political Science, Laval University

Designed by:  
**BEARBERRY CREATIVE**



