

# Best Practices and Standards for Election Audits

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## KEY TAKEAWAYS

Conducting comprehensive election audits should be a routine practice in every state just as such audits are a routine practice in the business world.

Generally Accepted Election Standards and Generally Accepted Election Auditing Principles must be developed for election administration investigation and analysis.

Such audits would determine whether the election was administered honestly, accurately, and fairly in compliance with all applicable laws and regulations.

In-depth financial and accounting audits are a standard practice (and legal requirement) for all publicly traded companies and most privately held businesses, for nonprofits from schools to churches to other charities, and for financial institutions themselves. Audits are a way of life in America for entities and enterprises, large and small.

Yet audits of election agencies and election procedures and systems are almost nonexistent in our public elections except for very limited audits in limited instances. The very concept of comprehensive election audits has been met with criticism and unjustified opposition by some election officials—and even the current U.S. Department of Justice.<sup>1</sup> For the same reasons that auditing is a ubiquitous requirement in the business world at large, so should audits be a customary requirement in the election world.

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This paper, in its entirety, can be found at <http://report.heritage.org/lm304>

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All federal, state, and local elections should be thoroughly audited after every election, and auditors should adopt standards and follow best practices that provide all stakeholders—candidates, election and other government officials, political parties, the media, and voters—with confirmation and confidence that:

- The election was administered honestly, accurately, and fairly in full compliance with all applicable laws and regulations;
- Only eligible U.S. citizens participated in the election and only individuals duly registered under state law were allowed to vote;
- No fraud, errors, or omissions occurred and, if they did occur, they have been identified and steps have been taken to rectify them;
- All election and voting equipment and computers functioned properly as designed to correctly tabulate and report the results without any unauthorized interference or tampering; and
- All results have been verified and reconciled, i.e., the number of ballots cast match the number of voters who participated in the election, all ballots are accounted for, and reports from election officials reflect the correct numbers.

## Auditing Standards for Elections

Business audits are conducted according to Generally Accepted Auditing Standards (GAAS) that are “systematic guidelines used by auditors when conducting audits on companies’ financial records.” They “ensure the accuracy, consistency, and verifiability of auditors’ actions and reports.”<sup>2</sup> GAAS were created by the Auditing Standards Board of the American Institute of Certified Public Accountants.<sup>3</sup>

**GAAS Standards.** There are 10 standards for business audits that, with only slight modification, could provide a guideline for establishing the standards for election audits. Under GAAS for business audits, the auditor must:

1. Have adequate technical training and proficiency;
2. Maintain his or her independence in all aspects of the audit;

3. Exercise due professional care and judgment;
4. Adequately plan the work and properly supervise all subordinates;
5. Obtain a sufficient understanding of the entity and its environment (including its internal controls) to assess the risk of material misstatement of financial statements due to error or fraud and design the nature, timing, and extent of further audit procedures;
6. Obtain sufficient audit evidence to afford a reasonable basis for an opinion about the financial statements being audited;
7. State in the audit report whether it was conducted in accordance with generally accepted accounting principles;
8. Report on those circumstances in which such principles were not followed;
9. State in the auditing report whether the information disclosures in the financial statement are not reasonably adequate; and
10. Express an opinion in the auditing report over the financial statements, taken as a whole, or explain why an opinion cannot be given.<sup>4</sup>

No such GAAS-type standards have been created for post-election audits.

**GAES Standards.** However, using GAAS as a baseline, the Generally Accepted Election Standards (GAES) for election auditors could be that such auditors must:

1. Have adequate technical training and proficiency to be familiar with all aspects of the voter registration and election process in the state;
2. Maintain their independence in all aspects of the audit;
3. Exercise due professional care and judgment;
4. Adequately plan the work and properly supervise all subordinates and individuals who are members of the auditing team;

5. Have a sufficient understanding of the election office being audited and its environment (including its internal controls and procedures) to assess the risk of material problems in its administration due to error or fraud and design the nature, timing, and extent of further audit procedures needed to investigate such problems;
6. Obtain sufficient audit evidence to afford a reasonable basis for an opinion about the accuracy of the election process;
7. State in the audit report whether the audit and the election were conducted in accordance with all state and federal legal requirements and auditing procedures established by the state;
8. Report on those circumstances in which such requirements were not followed;
9. State in the auditing report whether the information disclosures in the audit are not reasonably adequate to provide an opinion on the accuracy of the election or any aspects of the auditing review; and
10. Express an opinion in the auditing report over the voter registration, voting, tabulation, and reporting system as a whole, or explain why an opinion cannot be given.

## The Extent of an Audit

There is also general confusion and disagreement regarding what should be done in a post-election audit. The U.S. Election Assistance Commission (EAC), the federal agency created by the Help America Vote Act in 2002 to “serve as a national clearinghouse and resource” for information on the administration of elections,<sup>5</sup> says that post-election audits “are conducted to ensure that election voting tabulators are operating accurately and complying with regulations.”<sup>6</sup> The EAC has provided grants in the past to states to conduct audits.<sup>7</sup>

However, all that amounts to is a hand recount of ballots and a check of the accuracy of voting machines scanners and tabulators to ensure that the total number of ballots in the hand recount matches the machine count from Election Day. Of course, as the expression goes, “garbage in, garbage out.” If ballots cast by ineligible voters or fraudsters are fed into a scanner or tabulator, a properly functioning machine would still count that ballot,

even though a proper audit would reveal that the ballot should never have been fed into the machine in the first place.

A post-election tabulation audit or recount that merely determines whether a scanner or tabulator accurately counted the ballots that were fed into it is not the only type of audit that should be conducted, although such checks are “the most prevalent...and just about the only audits called for by statute” under state election laws.<sup>8</sup> As the CalTech/MIT Voting Technology Project points out, such vote tabulation audits “have been occurring in the United States ever since California mandated post-election audits in the 1960s.”<sup>9</sup>

According to the National Conference of State Legislatures, 32 states and the District of Columbia mandate such limited post-election audits, which “require that a fixed percent of ballots, voting districts, or voting machines be audited” by hand counting the ballots.<sup>10</sup> A risk-limiting audit has the same goal but uses “statistics to determine the number of ballots to be reviewed based on how close the race was.”<sup>11</sup> The assumption is that if the hand count matches the machine count in whatever percentage of precincts are audited, then all of the votes were correctly tabulated. Risk-limited audits based on statistics are no substitute for the type of actual audit that jurisdictions should employ for all elections.

There are some jurisdictions where “ballot images, rather than the ballots themselves, are used for auditing.” These images are created when the paper ballots are scanned at the polling place. Instead of hand counting the actual ballots, this allows “the use of independent software, not connected to the voting system, to retabulate” the votes cast in the election.<sup>12</sup>

The problem with such a limited audit is demonstrated by a simple example based on proven cases of fraud listed in the Heritage Election Fraud Database, such as individuals who illegally register and vote in two different states.<sup>13</sup> If 1,000 votes are cast in a local election and the winning candidate wins the election with 501 votes to his opponent’s 449 votes, a hand recount may confirm that the voting scanners and equipment correctly tabulated the 1,000 votes cast in that race—but it will not confirm whether the 1,000 votes were cast by *eligible* voters.

Only an audit that includes checking the procedures used by election officials prior to the election to verify the accuracy of the voter registration list itself to find voters who should not be registered because they actually reside in another state will prevent that from occurring. In such a close election—and we constantly have close elections in this country—only a small number of voters engaging in such illegal behavior could make a difference in the outcome of the election.

## Forensic and Other Audits

The term “forensic audit” has also been used frequently since the 2020 presidential election as a means of verifying or refuting the issues raised in connection with that election, but again, that is a relatively new term in the election area. It seems to have different meanings to different election officials, academics, citizens, and other interested parties. It has been defined as “the use of statistical methods to determine whether the results of an election accurately reflect the intentions of the electors,” but:

[it] may also—or instead—focus on suggesting why election returns are as they are, pointing out anomalies, revealing possible fraudulent manipulations or intimidations, explaining outcomes as due to routine strategic behavior or identifying areas that should be investigated further using more richly informed hands-on methods.<sup>14</sup>

Other types of election audits that are now being discussed are simply examinations of only certain parts of our voter registration and voting system. They include:

- **Equipment audits** that ensure voting and tabulation equipment and software conforms to the voluntary performance standards established by the U.S. Election Assistance Commission<sup>15</sup> and the mandatory standards established by some states;<sup>16</sup>
- **Process or procedure audits** that verify whether administrative procedures were followed such as the procedure for a registered voter to check in at a polling place before being given a ballot; and
- **Legal compliance audits** that examine whether applicable federal and state election laws were complied with by election officials and election staff in polling places and other voting and tabulation centers.

However, none of these audits conducted in isolation provides the type of complete information needed to confirm that the entire voter registration, voting, tabulation, and reporting system worked as it was designed and intended: providing a transparent, fully observable process that complies with applicable law in which only eligible citizens have the ability to register, vote in the election, and have their votes correctly tabulated and reported without their ballots being voided or negated by fraud, errors, or other problems.

The type of audit that is needed in the election arena is one that combines *all* of the different types of partial audits into a complete analysis of the entire registration and voting system. As pointed out by the CalTech Voting Technology Project, “it is important for states and localities to engage in *comprehensive* programs of auditing and quality assurance for *every* aspect of election management.”<sup>17</sup>

## What Should Be Reviewed and Audited

Election audits should accomplish two objectives:

The first is to ensure that the election was properly conducted, that election technologies performed as expected, and that the correct winners were declared. The second is to convince the public of the first thing. *Convincing the public* that the election was properly conducted and that the correct winners were declared is a core activity of establishing legitimacy in a democracy.<sup>18</sup>

Convincing the public that the election was properly conducted is especially important given that polling shows that faith in the election system is at a dangerous low point. Only 20 percent of Americans are “very confident” in the integrity of our elections, while another 39 percent are “somewhat confident.” This means that less than half of the public has confidence in the integrity of the election process.<sup>19</sup>

These two objectives cannot be achieved with partial, piecemeal, or limited audits. Instead, accomplishing those objectives requires a *comprehensive* election audit that investigates and reviews all of the procedures and actions applied and taken in the election.

**Mechanical Failure: New Hampshire.** It seems obvious that an audit report that finds errors and mistakes should not simply be ignored; state law should mandate that it be used by election officials to correct those problems to ensure they do not happen in future elections. A good example of that is the audit that was conducted in Wyndham, New Hampshire, in 2021 after a hand recount of the election for the Rockingham County District state representative seat showed a discrepancy of 499 votes from the machine tabulation on Election Day.<sup>20</sup>

The audit found that the discrepancy was caused by a folding machine leased by the town to fold absentee ballots for insertion into envelopes being sent to voters. Instead of folding the ballots along the lines between the names of candidates as it was supposed to, it folded many of the ballots through the candidates’ names. The computer scanners that were reading

the completed ballots when they were sent back by the voters mistakenly read the folds “as marked ovals” or votes for that candidate.<sup>21</sup>

Folds through the candidates’ names were also sometime interpreted as an “overvote” when the scanner detected the filled in oval next to the name of another candidate on the same ballot in the same race, voiding the vote in that race entirely. The actual ballot count did not change the outcome of the election, but without the audit, election officials in Wyndham would have had no idea that their voting equipment was malfunctioning. Unless it was corrected, that malfunction could have made the difference in a future election. It was only because of the audit that the problem was discovered.

**Intentional Misconduct.** State law should mandate that an audit report that finds intentional misconduct must be referred to the appropriate local, state, or federal law enforcement agency to investigate and prosecute any such misconduct that violates election laws, such as findings that voters were registered in more than one state and voted illegally in both states. State law should further require that local election officials provide law enforcement with all voter and election files relevant to such intentional misconduct.

**Comprehensive Audits.** As noted, the seventh GAAS for business auditors is that they state whether the audit was conducted in accordance with “generally accepted accounting principles” for the review of financial statements. The equivalent of such “accounting principles” for the review of election procedures in a comprehensive election audit, Generally Accepted Election Auditing Principles, could include investigating, reviewing, and determining whether:

1. Election officials complied with all state and federal laws and regulations governing the registration and election process.
2. Voter registration list maintenance actions were taken *prior* to the election to ensure only eligible individuals were registered to vote, including verifying that registrants were:
  - a. Citizens;
  - b. Legal residents of the precinct where they voted, living in an actual residence, and not registered and voting in another location in the state or any other state;
  - c. Not deceased;

- d. The minimum age required to vote;
  - e. Not disqualified due to criminal convictions or other disqualifications;
  - f. Qualified under all other state law requirements for legal registration; and
  - g. Were removed from the registration list prior to the election if they were not eligible.
3. The data sources used for voter registration list maintenance actions were sufficient to provide confirmation that those on the voter registration list were eligible to vote, that any problems uncovered were resolved, and that ineligible individuals were removed from the list and did not cast votes in the elections.
4. Hand recounts of ballots agreed with the machine counts made on Election Day.
5. The number of total ballots cast equals the number of individuals that registration records show cast ballots in the election.
6. The number of ballots cast in each precinct equals the number of individuals who registration records show as having cast ballots in that precinct.
7. The ballot totals from the precincts match the results published by the election office and any anomalies have been investigated.
8. The processing of absentee ballots was done in strict accordance with all applicable state laws and regulations, including any requirements for identification documentation, witness signatures or notarization, voter signature comparison, and receipt of completed absentee ballots prior to the state law deadline.
9. The chain of custody rules and regulations for all ballots, voting equipment, and drop boxes were followed by election officials and documented to confirm compliance.

10. The voting equipment and tabulation/vote counting machines and systems were subjected to logic and accuracy testing prior to Election Day and the start of any early voting period, as well as immediately after the election, and were not connected to the Internet at any time during the voting or tabulation period.
11. No unauthorized or unapproved software was added to any voting equipment prior to, or after, the election and there is full and complete documentation of all authorized changes made, including identification and contact information for the individuals making those changes.
12. Computer system logs show no malware, unexplained changes, or other problems in the voting and tabulation equipment and all such equipment and software was certified for use in the state under applicable certification processes. There are independent laboratories<sup>22</sup> accredited by the U.S. Election Assistance Commission that provide inspection and assessment services of voting equipment that has been certified under the voluntary federal voting system standards established by the EAC that could be used by audit teams, as well as a Quality Monitoring Program established by the EAC to cover certified voting equipment.<sup>23</sup>
13. Observers authorized by state law were given full and meaningful access to observe in-person voting in polling locations on Election Day and during early voting, the processing of absentee ballots, the operation of all tabulation systems and other voting equipment, and the fulfillment of all legal requirements such as signature-matching on absentee ballots, as well as the processing of voter registration and absentee ballot applications prior to Election Day.
14. All complaints by voters, observers, and election officials were investigated, documented, and properly resolved and disciplinary action was taken against any election officials engaging in misbehavior or unlawful actions.
15. All disputed, challenged, rejected, and cured ballots were investigated, documented, and properly resolved in compliance with applicable state law.
16. All provisional ballots cast by voters were investigated, documented, and properly resolved in compliance with both federal law<sup>24</sup> and

applicable state law and legal requirements were not waived by election officials to circumvent the state's voter registration deadline.

17. All contracts with third-party vendors are made available to the public and were reviewed to verify their compliance with state law and equal treatment of all voters.

18. A financial audit<sup>25</sup> confirms that all election office appropriations, grants, and disbursements were properly spent on activities related to registration, voting, and administration in the year prior to the date of the general election.<sup>26</sup>

## Who Should Be Audited

Clearly, the best course of action would be for every county election jurisdiction (or townships in states like New Hampshire, where elections are conducted by towns) to be audited after every election. However, such a procedure may be impossible in some larger states due to the cost, lack of resources, and lack of experienced personnel.

One potential solution to this problem would be to audit every election jurisdiction in a state on a random, rotating basis that is not announced until *after* the election. That rotation system should ensure that every election jurisdiction is audited at least once every five years and that no election jurisdiction believes that just because it was audited, it will not be audited again for five years. A rotating audit system based on a three-year cycle would, of course, be better, but again that will depend on the size of the state, the number of election jurisdictions, and the resources and personnel available to conduct such audits.

When it comes to voter registrations and ballots cast in an election, auditors could choose to audit a statistically significant random sample of registration and ballots cast in each precinct within an election jurisdiction or they might opt to audit all registrations and ballots cast within a randomly selected number of precincts within an election jurisdiction.

## Who Should Conduct Audits

Corporate audits are conducted by independent, outside experts to avoid having corporate personnel cover up mistakes, errors, intentional misconduct, and other problems. Individuals within the corporations being audited obviously have a non-waivable conflict of interest that prevents them from serving as independent auditors.

The same rule should apply to election audits because the same conflict of interest exists. Local election officials who may be embarrassed or lose their jobs if mistakes and problems are detected that were caused by their mismanagement of the voter registration and voting system, as well as the equipment they chose to use, should *not* be the individuals conducting an audit of how they or the equipment they selected performed in the election.

The problem is that while there are numerous accounting firms that are qualified to conduct business audits, there are currently almost no experienced entities with the requisite knowledge of election law and experience in election administration to competently conduct a comprehensive election audit. Creating a mandatory system for conducting election audits nationwide will likely give rise to a new market for skilled, experienced, and independent election auditors.

Until that happens, audits should be conducted by teams consisting of local election officials from *different* jurisdictions than the one being audited. State election officials, state auditors or inspectors general, and experienced outside experts should be utilized, and those efforts should be coordinated by the secretary of state or a state election board with final authority over elections in the state.<sup>27</sup>

Designated state legislators on a bipartisan basis could also be part of such teams—but only as observers—to be able to report back to their legislatures about the conduct and findings of the audit. A representative of the U.S. Election Assistance Commission could also be allowed in as an observer. Permitting bipartisan groups of legislators or EAC officials to serve as observers need not be a mandatory requirement, but it might be helpful.

Local election officials in the jurisdiction being audited should, of course, participate in the audit, but only to the extent needed to explain their procedures to the members of the audit team, provide any information, materials, or background needed, and answer any questions. They should have no participation in the analysis or preparation of the audit team's report.

Any state law that is passed to implement the auditing process should include a provision requiring that local election officials cooperate with, and provide all records sought by, the auditing team. The chief election official or agency of the state, whether it is a secretary of state or a state election board, should have the authority to impose administrative fines on an election official who refuses to comply with this requirement—as well as the power to terminate such election official for cause. States should also consider criminal penalties for election officials who willfully refuse to cooperate with an audit.

**Third-Party Cooperation.** This cooperation mandate should also apply to all third-party contractors that provide equipment or services to election officials, and all contracts entered into with such contractors should include a

provision requiring such cooperation—with the imposition of liquidated damages for each day that a contractor refuses to provide information or documentation sought by the audit team. Such a provision might have prevented the problem that arose when Maricopa County election officials and the county’s voting equipment supplier, Dominion Voting Systems, refused to cooperate with the audit implemented by the state senate in Arizona after the 2020 election.

As state Arizona Senate President Karen Fann said at the time, “the non-compliance by the County and Dominion continues to delay the results and breeds distrust.”<sup>28</sup> States need to implement audit enforcement provisions to prevent such misbehavior, including a requirement that any voting equipment and software company seeking to have its products certified for use in a state agree, as part of that certification process, to cooperate fully with any audits or lose their accreditation in the state.

**Observers.** Every aspect of an audit—just like every aspect of the election process—should allow observers from the political parties and candidates to monitor the auditors and the entire auditing process. Transparency is fundamental to achieving the second objective of an audit—convincing the public that the election was fairly, effectively, and honestly conducted.

## Legal Issues

One issue that should not deter the implementation of comprehensive auditing standards and procedures by state governments is a threat by the U.S. Department of Justice—which has no jurisdiction over such issues despite its erroneous claims to the contrary.

**Department of Justice (DOJ) Threats.** On May 5, 2021, Pamela S. Karlan, the Principal Deputy Assistant Attorney General of the Civil Rights Division of the Justice Department (a political appointee), sent a letter to Arizona Senator Fann warning her that the audit being conducted of the 2020 election in Maricopa County potentially violated the federal law requiring preservation of election records or could be considered “intimidation” of voters under Section 11(b) of the Voting Rights Act, the latter being a criminal offense.<sup>29</sup> This was followed by a “guidance” document published on July 28, 2021, that made the same false assertions.<sup>30</sup>

As the Public Interest Legal Foundation (PILF),<sup>31</sup> which is staffed with former Justice Department lawyers, correctly concluded in a published response, the DOJ’s letter and guidance overstated the Justice Department’s power and understated the state’s authority over its election. They were written, in PILF’s views, by “an ideological extremist with a long history of partisan enforcement of civil rights laws as well as rank scholarly dishonesty.”<sup>32</sup>

According to PILF, the Justice Department's position rested "on tenuous legal grounds" and was designed to deter Arizona from auditing the election rather than "provide a sober description of federal power"<sup>33</sup> simply because the political appointees within the Biden Justice Department did not want any questions raised about the legitimacy of the 2020 election.

Conducting an audit that examines existing election records does not violate the federal law requiring preservation of such records, contrary to the assertions of the Justice Department, which "exaggerated the reach of" the statute.<sup>34</sup> Audits do not destroy records, they simply examine and review the existing records.

**Audits and the Voting Rights Act.** Furthermore, contrary to the DOJ's claims, Section 11(b) of the Voting Rights Act is also not implicated by an audit.<sup>35</sup> Section 11(b) prohibits directly intimidating or threatening an individual for "voting or attempting to vote." It requires "real, objective intimidation, not imaginary or attenuated intimidation."<sup>36</sup> When an audit is conducted *after* the election, it is an "absurd and implausible interpretation of Section 11(b)" to claim that conducting an audit or a recount could possibly "intimidate" or "threaten" voters who have already voted.

Prior to the issuance of this dishonest guidance, the Justice Department had *never* asserted that it had any authority of any kind over, or had ever investigated, the recount, recanvass, or audit of a prior election. State officials should disregard this guidance and recognize it for what it is: the partisan abuse of the Justice Department's law enforcement authority under federal voting rights laws for political purposes.

## Conclusion

Conducting audits of U.S. elections should be a routine practice, the same way they are a routine practice in the business community and other fields of our society. Such audits are necessary to ensure the proper conduct of the entire election system, from the registration of eligible voters to the casting of ballots to the tabulation and reporting of the election results. Such a requirement should be imposed and enforced by state law and state officials to guarantee not only the honesty and effectiveness of the election process, but to assure the public, candidates, political parties, and the media that they can be confident in the security and integrity of our elections.

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## Endnotes

1. *Federal Law Constraints on Post-Election "Audits,"* U.S. DEP'T. OF JUST., (July 28, 2021), <https://www.justice.gov/opa/press-release/file/1417796/download>.
2. Alicia Tuovila, *Generally Accepted Auditing Standards (GAAS)*, INVESTOPEDIA (Nov. 11, 2020), [https://www.investopedia.com/terms/g/gaas.asp#:~:text=Generally%20accepted%20auditing%20standards%20\(GAAS\)%20are%20a%20set%20of%20systematic,of%20auditors%20actions%20and%20reports](https://www.investopedia.com/terms/g/gaas.asp#:~:text=Generally%20accepted%20auditing%20standards%20(GAAS)%20are%20a%20set%20of%20systematic,of%20auditors%20actions%20and%20reports).
3. *ASB Auditing Standards Board*, AICPA, <https://us.aicpa.org/research/standards/auditattest/asb>.
4. Tuovila, *Generally Accepted Auditing Standards*, *supra* note 2.
5. 52 U.S.C. § 20922.
6. *Post-Election Audits*, U.S. ELECTION ASSISTANCE COMM'N (Oct. 23, 2020), at 1.
7. *See EAC Logic and Accuracy and Post-Election Audit Grants*, U.S. ELECTION ASSISTANCE COMM'N, <https://www.eac.gov/election-officials/post-election-audits-recounts>.
8. Amanda Zoch, *The What, Why and How of Election Audits*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 5, 2021), <https://www.ncsl.org/research/elections-and-campaigns/the-what-why-and-how-of-election-audits-magazine2021.aspx>.
9. *Election Auditing: Key Issue and Perspectives*, Summary Report, CALTECH/MIT VOTING TECH. PROJECT (Dec. 7–8, 2018), p. vi.
10. Zoch, *The What, Why and How of Election Audits*, *supra* note 8.
11. *Id.*
12. *Post-Election Audits*, U.S. Election Assistance Comm'n, *supra* note 6, at 6.
13. *Election Fraud Database*, THE HERITAGE FOUNDATION (2022), <https://www.heritage.org/voterfraud>.
14. Walter R. Mebane, Jr., *Election Forensics Beyond Audits*, Summary Report, CALTECH/MIT VOTING TECH. PROJECT (Dec. 7–8, 2018), at 21.
15. *Voluntary Voting System Guidelines*, U.S. ELECTION ASSISTANCE COMM'N, <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>.
16. *See, e.g., General Information on Texas Voting System Certification Process*, TEX. SEC'Y OF STATE, <https://www.sos.state.tx.us/elections/laws/generalinfo.shtml>.
17. Summary Report, *supra* note 9, at v (emphasis added).
18. *Id.* at iv (emphasis in original).
19. Xander Landen, *Only 20 Percent of Americans Say They're "Very Confident" in U.S. Election Integrity: Poll*, NEWSWEEK (Jan. 6, 2022), <https://www.newsweek.com/only-20-percent-americans-say-theyre-very-confident-us-election-integrity-poll-1666411>.
20. Harri Hursti, Mark Lindeman, and Philip B. Stark, *New Hampshire SB 43 Forensic Audit*, DEP'T OF JUST. (July 2021), <https://www.doj.nh.gov/sb43/documents/20210713-sb43-forensic-audit-report.pdf>.
21. *Id.* at 3.
22. *See, e.g., Pro V&V*, <http://www.provandv.com/services/>; and SLI COMPLIANCE, <https://slicompliance.com/services/voting-system-certification-testing/electronic-voting-system-forensic-analysis-and-audit/>.
23. *Voluntary Voting Systems Guidelines*, *supra* note 15. The U.S. Election Assistance Commission has implemented the "Quality Monitoring Program" that is "designed to ensure that voting systems certified by EAC are the same systems sold by manufacturers" and includes "fielded voting system review, anomaly reporting, and manufacturing site visits." *See Quality Monitoring Program*, U.S. ELECTION ASSISTANCE COMM'N, <https://www.eac.gov/voting-equipment/quality-monitoring-program>. For an example of its work, *see EAC Approves Measure to Address Missouri Voting Machine Anomaly*, Press Release, U.S. ELECTION ASSISTANCE COMM'N (May 20, 2022), <https://www.eac.gov/news/2022/05/20/eac-approves-measure-address-missouri-voting-machine-anomaly>.
24. Section 302 of the Help America Vote Act of 2002, 52 U.S.C. § 21082.
25. The Inspector General of the U.S. Election Assistance Commission conducts audits of how states have used federal grants provided to them by the EAC through federal appropriations. Thus, some aspects of the financial spending of election officials and election agencies is already being audited. *See EAC Office of the Inspector General Announces Audits of HAVA Grant Funds in Eight States*, Press Release, U.S. ELECTION ASSISTANCE COMM'N (July 16, 2021), <https://www.eac.gov/news/2021/07/16/eac-office-inspector-general-announces-audits-hava-grant-funds-eight-states>.
26. For other suggestions on different types of post-election audits, *see Post-Election Audits: Verifying Election Integrity*, (June 22, 2012), [https://election-integrity.info/Post\\_Election\\_Audits.pdf](https://election-integrity.info/Post_Election_Audits.pdf).
27. While there are many academics who write about election issues, there are very few who have actual experience in election administration and the knowledge needed to participate in a comprehensive audit. The author served on a county election board in Georgia for five years and a similar board in Virginia for three years. Both boards administered the voter registration and election process in the largest counties in each state.

28. Jen Fifield and Mary Jo Pitzl, *Maricopa County and Dominion Won't Comply with New Subpoenas Issued by Arizona Senate*, ARIZONA CENTRAL (Aug. 2, 2021), <https://www.azcentral.com/story/news/politics/elections/2021/08/02/maricopa-co-and-dominion-face-monday-deadline-ariz-senate-election-subpoenas/5434136001/>.
29. Pamela S. Carlin, Principal Deputy Assistant Attorney General, Letter to Karen Fann, May 5, 2021, <https://www.justice.gov/crt/case-document/file/1424586/download>. 52 U.S.C. § 2070 requires preservation of “all records and papers” relating to a federal election for 22 months after Election Day.
30. *Federal Law Constraints on Post-Election “Audits,” supra* note 1.
31. The author is a member of the board of the Public Interest Legal Foundation. He served as Counsel to the Assistant Attorney General for Civil Rights at the U.S. Justice Department from 2002 to 2005.
32. *Response to United States Department of Justice July 28, 2021 Guidance*, PUB. INTEREST LEGAL FOUND. (Aug. 26, 2021), <https://publicinterestlegal.org/wp-content/uploads/2021/08/Letter-Dated-August-26-2021.pdf>.
33. *Id.*
34. *Id.*
35. 52 U.S.C. § 10307(b).
36. *Response to United States Department of Justice, supra* note 32.