

THE  
CARTER CENTER



**United States of America**

**NGO Submission to the U. N. Human Rights Committee**

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## **Reporting Organization**

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts, advancing democracy, human rights, and economic opportunity, preventing diseases, and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center’s Democracy Program works globally to promote democratic elections and governance consistent with universal human rights principles. The Center has monitored more than 110 elections in 40 countries since 1989, forging many of the techniques now common in the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for elections, based on state obligations under public international law. Since 2020, The Carter Center has supported elections in the U.S. by providing objective information about the process and advancing transparent election practices.

This report focuses on key issues relevant to the right to participate in public affairs outlined in Article 25 of the International Covenant on Civil and Political Rights (ICCPR), a human rights treaty adopted in 1966, and bolstered by rights and freedoms outlined in other articles of the covenant. The report covers issues raised in the list of issues, along with responses of the state, and highlights additional issues of concern to The Carter Center, specifically felon disenfranchisement, election accessibility for persons with disabilities; the impact of mis-, dis- and mal-information on the election process; political finance; and the need for nonpartisan election administration.

## **The Carter Center Alternative Report on Article 25 (The Right to Participate in Public Affairs)**

Article 25 (b) of the ICCPR states, “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: . . . (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.” Paragraph 11 of General Comment 25 on the Right to Participate in Public Affairs elaborates on Article 25, urging State Parties “to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to registration should not be imposed.”<sup>1</sup>

In the 2019 List of Issues, the U.N. Human Rights Committee requested more information from the U.S. on its progress in implementing Article 25 obligations:

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<sup>1</sup>CCPR/C/21/Rev.1/Add.7 (1996)

*“27. With reference to the Committee’s previous concluding observations (para. 24), please provide updated information on measures adopted by the State party to encourage the review of state laws on felony disenfranchisement and the removal of lengthy and cumbersome voting restoration procedures. Please comment on the prevalence of voter suppression measures in the State party, such as cuts to early voting and voter identification laws, which may impose an excessive burden on voters, especially those belonging to minority groups. In addition, comment on the compatibility of the practice of drawing electoral boundaries with a view to influencing election outcomes with article 25 of the Covenant.*

*28. Please provide information on the measures taken to prevent undue influence on the conduct of elections at the federal and state levels, and to ensure that rules governing campaign funding guarantee an equal right to take part in the conduct of public affairs.”<sup>2</sup>*

The state responded to this request for information by providing an index on the legality of voter ID felon disenfranchisement laws in paragraphs 110-114.<sup>3</sup> However, the state report does not provide detail on how policies and practice may disenfranchise those who meet the legal requirements to vote, or the disparate impacts that policies may have on historically marginalized communities.

When considering Article 25(b)-related issues in the U.S. it is important to note that the administration of elections is highly decentralized. Article 1, Section 4 of the U.S. Constitution regulates elections and vests authority in the states to determine the “times, places and manner of holding elections” subject to Congress’s authority to make or alter state regulations. Elections take place in a complex environment subject to state and federal law and administered by state and local (often county or municipal) authorities.<sup>4</sup> Election policies and procedures can vary widely across the 10,000 electoral jurisdictions in the U.S., which impacts the enjoyment of Article 25 rights across the states. For this reason, this report often will include national-level statistics, while sharing state-level examples on specific electoral practices.

### ***Felon Disenfranchisement***

Paragraph 14 of General Comment 25 states, “The grounds for such deprivation [of the right to vote] should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.” Disenfranchisement of people convicted of felonies has been a recurring issue raised by the Human Rights Committee in Concluding Observations on the U.S. Report in previous reporting cycles. In the Concluding Observations on the 4th Report of the United States, the Committee recommended that the U.S. “should ensure that all states reinstate voting rights to felons who have fully served their sentences; provide inmates with

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<sup>2</sup> CCPR/C/USA/QPR/5 (2019)

<sup>3</sup> CCPR/C/USA/5

<sup>4</sup> Michael Morley and Franita Tolson, “The Elections Clause,” <https://constitutioncenter.org/the-constitution/articles/article-i/clauses/750>

information about their voting restoration options; remove or streamline lengthy and cumbersome voting restoration procedures; as well as review automatic denial of the vote to any imprisoned felon, regardless of the nature of the offence.”<sup>5</sup>

Approximately 4.6 million Americans face disenfranchisement due to felony convictions, a 24% reduction since 2016, driven by state policy shifts and declining prison populations.<sup>6</sup> As of 2016, state and federal prisoners were 2½ times more likely to report a disability than adults in the general population, and people with cognitive disabilities were disproportionately represented among that group.<sup>7</sup>

Congress has limited constitutional authority to compel states to allow felons and ex-felons to vote in federal elections. Furthermore, a recent federal executive order, with notable effects on specific agencies, has encountered substantial resistance from states.<sup>8</sup> To date, the successful restoration of voting rights to millions with felony convictions remains primarily a state responsibility, with limited success in the courts or at the federal level.

Navigating voter eligibility poses a significant challenge for individuals with felony convictions.<sup>9</sup> To address this issue, Federal Executive Order 14019 aims to enhance federal voting access and protect voting rights.<sup>10</sup> It seeks to raise awareness of voting eligibility and improve access for currently and formerly incarcerated individuals. The order directs the U.S. attorney general to provide voter registration education for those in federal custody and jails, coordinate with probation services, and assist formerly incarcerated individuals in obtaining the necessary IDs to meet state voter requirements.<sup>11</sup> While not altering state disenfranchisement laws, the order addresses a critical voting barrier: the lack of awareness regarding eligibility.

According to a 2023 report,<sup>12</sup> while the Bureau of Prisons has provided incarcerated individuals with voter information, the process has experienced delays, leaving “[m]any eligible voters with felony convictions unaware of their continued eligibility to vote, coupled with a lack of opportunities to register or vote.”<sup>13</sup> Furthermore, state cooperation remains uncertain.

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<sup>5</sup> CCPR/C/USA/CO/4

<sup>6</sup> Christopher Uggen, Ryan Larson, Sarah Shannon and Robert Stewart, *Locked Out 2022: Estimates of People Denied Voting Rights*. The Sentencing Project. Oct. 25, 2022. Available at:

<https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>

<sup>7</sup> Laura M. Maruscak, Jennifer Bronson, Mariel Alper, *Disabilities Reported by Prisoners: Survey of Prison Inmates, 2016*. March 2021. Available at: <https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016>

<sup>8</sup> Exec. Order No. 14019 86 C.F.R. 13623 (Mar. 7, 2021). Available at:

<https://www.federalregister.gov/documents/2021/03/10/2021-05087/promoting-access-to-voting>

<sup>9</sup> Amrit Cheng, *Crystal Mason Thought she had the Right to Vote. Texas Sentenced her to Five Years in Prison for Trying*. ACLU. Available at: <https://www.aclu.org/issues/voting-rights/crystal-mason-thought-she-had-right-vote-texas-sentenced-her-five-years-prison?redirect=issues/voting-rights/fighting-voter-suppression/crystal-mason-thought-she-had-right-vote-texas>

<sup>10</sup> Id

<sup>11</sup> Id at 13626.

<sup>12</sup> The Leadership Conference on Civil and Human Rights, *Strengthening Democracy: A Progress Report on Federal Agency Action to Promote Access to Voting*. Voting Rights Resources. Mar. 2, 2023. Available at: [https://civilrights.org/wp-content/uploads/2023/03/ProgressReport\\_VotingAccess.pdf](https://civilrights.org/wp-content/uploads/2023/03/ProgressReport_VotingAccess.pdf).

<sup>13</sup> Id at 13-14.

For example, election officials from 15 states challenged the executive order,<sup>14</sup> disputing its constitutionality and absence of congressional approval, arguing that election procedures fall within the purview of state legislatures or Congress, rather than the executive branch.

Despite limited justification, criminal disenfranchisement laws have withstood constitutional challenges. Courts typically subject state restrictions on voting rights to rigorous scrutiny under Section 1 of the U.S. Constitution’s 14th Amendment’s equal protection clause,<sup>15</sup> demanding a compelling state interest, narrow tailoring, and minimal restriction to curtail the application of racially discriminatory laws.<sup>16</sup> This is especially significant for felony disenfranchisement, as one in 19 eligible Black voters faces disenfranchisement, more than triple the rate for other groups.<sup>17</sup> However, the Supreme Court, in *Richardson v. Ramirez*,<sup>18</sup> exempted these laws from such scrutiny, citing Section 2 of the 14th Amendment as permitting criminal disenfranchisement, concluding that Section 2 allows states to withhold voting rights from individuals convicted of crimes, even after they complete their sentences.<sup>19</sup> However, a federal appeals court ruled in August 2023 “that Mississippi’s lifetime ban on voting for people convicted of certain felonies violates the Eighth Amendment’s prohibition against cruel and unusual punishment.”<sup>20</sup> In the decision, the court reasoned there is a “national consensus” against lifetime voting bans, as 35 states and Washington, D.C., do not have such a policy.”<sup>21</sup>

There has been some state-level progress in addressing felon disenfranchisement as outlined in the State Report. In 2021, Connecticut reinstated voting rights for individuals on parole, ending the sole U.S. law distinguishing between probation and parole status. This change affected up to 4,000 people with convictions and brought the state in line with 20 other states and Washington, D.C. This reflects a broader national trend against felony disenfranchisement. States like Virginia,

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<sup>14</sup> See Caroline Sullivan, *GOP Secretaries of State ask Biden to Rescind Pro-Voting Executive Order*. Democracy Docket. Aug. 10, 2022. at: <https://www.democracymarket.com/news-alerts/gop-secretaries-of-state-ask-biden-to-rescind-pro-voting-executive-order/> and Press Release, Texas Attorney General, *Paxton Slams Biden’s Executive Order Designed to Use Taxpayer Funds to Aid the Left in Future Elections*. Oct. 10, 2022. at: <https://www.texasattorneygeneral.gov/news/releases/paxton-slams-bidens-executive-order-designed-use-taxpayer-funds-aid-left-future-elections>.

<sup>15</sup> Section 1, 14th Amendment of the U.S. Constitution, in part: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

<sup>16</sup> See, e.g., *Dunn v. Blumstein*, 405 U.S. 330 (1972) (restrictive residency requirements are not a compelling state interest sufficient to prohibit participation); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966) (poll taxes infringe on the fundamental right to vote).

<sup>17</sup> Uggen et. al., *supra* note 1.

<sup>18</sup> 418 U.S. 24 (1974).

<sup>19</sup> Section 2, 14th Amendment of U.S. Constitution, in part: “When the right to vote...is denied to any...citizen[] of the United States, or in any way abridged, except for participation in rebellion, or **other crime**, the basis of representation therein shall be **reduced** in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.” (emphasis added).

<sup>20</sup> Brennan Center, *Court Strikes Down Mississippi’s Lifetime Felony Voting Ban*, Aug. 18, 2023. <https://www.brennancenter.org/our-work/analysis-opinion/court-strikes-down-mississippi-lifetime-felony-voting-ban>

<sup>21</sup> *Ibid.*

Washington, New York, California, Iowa, and Washington, D.C., have recently expanded voting rights for individuals with convictions.<sup>22</sup>

### ***Election Material Accessibility for Non-English Speakers***

General Comment 25, Paragraph 12 states, “Information and materials about voting should be available in minority languages.”<sup>23</sup> In line with this, Section 203 of the Voting Rights Act requires states with language-minority populations to produce and make available election-related materials in languages other than English. These materials should inform voters about how to access elections. In addition, Section 203 specifies that the ballot itself should be available in languages other than English.

There is limited data and research on whether states and localities comply with this requirement. Some states require local election officials to self-report on their activities. For example, the state of Florida mandates that local election officials complete a bi-annual county voter education survey. This survey tracks multiple voter education activities of local election officials and includes a question on language-minority voter outreach.<sup>24</sup> Even with the data, however, there are limitations on tracking exactly what election officials are doing, which makes it difficult to identify gaps in how language-minority voters are served.

A central challenge in meeting the requirement to provide minority-language materials is the general lack of sufficient and consistent funding for election administration. Local-level budgetary tradeoffs often result in consistent underfunding of election administration.<sup>25</sup> With regard to language accessibility specifically, the state of Oregon serves as a good example of some of the challenges faced: In 2022, the state legislature appropriated funds to hire a language accessibility officer, but the position was term-limited, with uncertainty about whether legislators would renew it. This creates challenges with building sustainable infrastructure to efficiently serve language-minority communities.<sup>26</sup>

### ***Voter ID and Participation***

As of 2022, 35 states have laws that require voters to show some form of ID at the polls.<sup>27</sup> The legality of such laws is routinely challenged in federal courts, as noted in Paragraph 112 of the U.S. fifth periodic report on the covenant, which includes a summary of three relevant cases that indicated that voter ID is permissible under law, should be free, that rules and procedures for getting an ID should not be discriminatory, and that states may take measures to ensure that ID requirements are not an excessive burden on voters. However, the state does not address the effects of the imposition of voter ID on voters, or any potential disparate impacts of voter ID laws on

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<sup>22</sup> Uggen et. al., *supra* note 1.

<sup>23</sup> CCPR/C/21/Rev.1/Add.7

<sup>24</sup> Thessalia Merivaki & Mara Suttman-Lea, *Can electoral management bodies expand the pool of registered voters? Examining the effects of face-to-face, remote, traditional, and social media outreach*, Policy Studies, 44(3), 377-407. (2023)

<sup>25</sup> Mary Jo McGowan, JoEllen V. Pope, Martha E. Kropf, and Zachary Mohr, *Guns or Butter... or Elections? Understanding intertemporal and distributive dimensions of policy choice through the examination of budgetary tradeoffs at the local level*. Public Budgeting & Finance, 41(4), 3-19 (2021).|

<sup>27</sup> National Conference of State Legislatures, *Voter ID Laws. March 9, 2023*. at <https://www.ncsl.org/elections-and-campaigns/voter-id>

marginalized communities, or efforts to ensure that “free IDs” are available.<sup>28</sup> There is research that indicates that voter ID laws affect voter participation. One study indicates that about 10% of nonvoters in Wisconsin lack a qualifying voter ID or report that voter ID was at least a *partial* reason why they did not vote in 2016, and 6% of nonvoters lacked a voter ID or cited voter ID as their *primary* reason for not voting.<sup>29</sup>

In federal elections, those who fail to produce the required ID or whose eligibility is not immediately verifiable, federal law mandates they be able to cast a “provisional” ballot that may later be cured.<sup>30</sup> The method for “curing”<sup>31</sup> and casting a provisional ballot varies by state.<sup>32</sup> The number of provisional ballots cast also varies greatly by jurisdiction, as noted by the MIT Election Data and Science Lab, observing that “jurisdictions with younger, more mobile and minority populations distribute them at a higher rate.”<sup>33</sup> Some research indicates that demographic factors such as race and sex may influence whether provisional ballots are ultimately counted.<sup>34</sup>

### ***Participation in Public Affairs for Persons with Disabilities***

In a survey of 2,000 voters, The U.S. Election Assistance Commission found a voter turnout gap of 3.6% between people with and without disabilities in the 2022 election. In their analysis of census data, they found a voter turnout gap of 1.5%.<sup>35</sup> One in five voters with disabilities needed assistance or had some difficulty in voting in 2022, which was three times the rate of voters without disabilities. In person, 20% of voters with disabilities experienced barriers, compared with 6% of voters without disabilities. For those voting by mail, 6% of voters with disabilities experienced difficulties, compared with 0.3% of voters without disabilities.<sup>36</sup>

Most states restrict voting rights for people with disabilities who are deemed as lacking the mental capacity to vote. In at least 12 states, all people subject to guardianship are banned from voting,

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<sup>28</sup> Brennan Center, *The Challenge of Obtaining a Voter ID*, 2012, <https://www.brennancenter.org/our-work/research-reports/challenge-obtaining-voter-identification>

<sup>29</sup> See Michael G. DeCrescenzo and Kenneth R. Mayer, *Voter Identification and Nonvoting in Wisconsin – Evidence from the 2016 Election*. *Election Law Journal* 18(4), 342-359. Dec. 13, 2019. Available at: [https://www.liebertpub.com/doi/pdf/10.1089/elj.2018.0536?casa\\_token=1sOG3ya5N3kAAAAA%3AofuTMIJruQ972iz\\_SO1qTiuTJHAsFMJizR695JxRX5ZbWcgts5V8bFbfSzok47AoAhFi4gKPFqNPaGMW;](https://www.liebertpub.com/doi/pdf/10.1089/elj.2018.0536?casa_token=1sOG3ya5N3kAAAAA%3AofuTMIJruQ972iz_SO1qTiuTJHAsFMJizR695JxRX5ZbWcgts5V8bFbfSzok47AoAhFi4gKPFqNPaGMW;)

<sup>30</sup> 52 USCS § 21082

<sup>31</sup> In this context, curing refers to the state-defined process for determining whether a provisional ballot will be tabulated.

<sup>32</sup> National Conference of State Legislatures, *Provisional Ballots*. Nov. 4, 2022, at <https://www.ncsl.org/elections-and-campaigns/provisional-ballots>

<sup>33</sup> MIT Election Data and Science Lab, *Provisional Ballots*. at <https://electionlab.mit.edu/research/provisional-ballots>

<sup>34</sup> Thessalia Merivaki and Daniel A. Smith, *Political Research Quarterly* 2019 73:1, 65-78 *A Failsafe for Voters? Cast and Rejected Provisional Ballots in North Carolina*, *Political Research Quarterly* 2019 73:1, 65-78. <https://journals-sagepub-com.proxy.library.emory.edu/doi/full/10.1177/1065912919875816>

<sup>35</sup> Lisa Schur, Douglas Kruse, Mason Ameri, and Meera Adya, *Disability and Voting Accessibility in the 2022*. July 2023. at [https://www.eac.gov/sites/default/files/2023-07/EAC\\_2023\\_Rutgers\\_Report\\_FINAL.pdf](https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_FINAL.pdf)

<sup>36</sup> Id at 9.

while in other states, a person under guardianship may retain their right to vote unless a court explicitly determines that they do not have the capacity.<sup>37</sup>

### *Voter Registration*

Although the registration gap between voters with and without disabilities is less than 1%, people with disabilities experience greater disenfranchisement from state and federal voting laws as well as access barriers to voter registration. Although online voter registration allows people to use assistive technology, some states have not implemented an online voter registration system. In those states, voters with print disabilities (perceptual, physical, or visual) may have difficulty printing and signing the form.<sup>38</sup> In some states, that signature may be used for wet signature verification for absentee ballots and may not be consistent for voters with print disabilities.<sup>39</sup> In states with online voter registration systems, those systems may be noncompliant with accessibility standards or difficult to use with assistive technology.<sup>40</sup> Voters with disabilities may have a harder time obtaining proper ID, especially those who are unable to leave their homes due to disabilities or who don't have access to accessible transportation.

### *Voter Education*

Voters with disabilities encounter barriers in accessing voter information and educational materials. State and local websites may not meet accessibility standards such as WCAG 2.0 (international standards for web accessibility) or work with assistive technology. Additionally, voting information often isn't written in plain language, making it difficult to understand for voters with cognitive disabilities.<sup>41</sup>

### *Voting*

Paragraph 89 of General Comment 7 of the Committee on the Rights of Persons with Disabilities elaborates on Article 25 of the ICCPR and paragraphs 10 and 20 of General Comment 25 states that “States parties should pass regulations, in close consultation with organizations of persons with disabilities, to allow persons with disabilities requiring assistance to be able to cast their vote on their own. This may require making aids available for persons with disabilities in voting booths (on election day and at advance voting) at national and local elections and national referendums.”<sup>42</sup>

Federal and state laws guarantee the right to a private and independent ballot for people with disabilities. Although laws like the Americans with Disabilities Act, Voting Rights Act, and Help America Vote Act mandate the accessibility of polling places, most polling places remain out of compliance. State and local election officials find it challenging to fully comply with these laws due to the lack of resources and funding available to remedy these barriers.<sup>43</sup>

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<sup>37</sup> National Disability Rights Network, *Voting Rights of Individuals Subject to Guardianship: A Primer for Practitioners*. July 12, 2023. <https://www.ndrn.org/resource/voting-guardianship/>

<sup>38</sup> Kerianne E. Buchanan, Kevin C. Mangold, Sharon J. Laskowski. *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting for People with Disabilities*. 35. March 2022. <https://doi.org/10.6028/NIST.SP.1273>

<sup>39</sup> Id at 45.

<sup>40</sup> Id at 36.

<sup>41</sup> Buchanan, Mangold, and Laskowski, *supra* note 35, at 12.

<sup>42</sup> CRPD/C/GC/7

<sup>43</sup> Id at 10.



As an example, during the November 2022 election, The Carter Center partnered with Detroit Disability Power to observe 261 polling locations across Metro Detroit. Observers examined four accessibility measures: parking and pathways; entrances; electronic voting systems; and voting booths. Only 16% of polling places observed were fully accessible. The most common violations included entrances that had poor signage or impediments to entry such as stairs or obstacles, and inaccessible voting booths that did not afford privacy to voters with disabilities. Although inaccessibility was significant across all four metrics, 26% of the polling places scored “no” on only one of the four measures. If these issues were fixed, 42% of polling places would be fully accessible.<sup>44</sup> The widespread inaccessibility of polling places was evident in other observations. In a survey of early voting poll site accessibility of New York State during the 2022 elections, Disability Rights New York found that 94% of early voting sites across the surveyed area were not fully accessible to voters with disabilities.<sup>45</sup> The most common violations included parking spaces without access aisles, inaccessible doors, and lack of space around ballot-marking devices for users with mobility disabilities.

Voting by mail is a popular method for voters with disabilities and may have played a role in the increase in turnout for voters with disabilities in the 2020 election.<sup>46</sup> While voting by mail may afford more accessibility to voters who have difficulty with going to and entering a polling place, it is not the solution for everyone. States that require an excuse for absentee voting create an additional hurdle for accessing this option. Additionally, the process for requesting a mail ballot can have barriers that are similar to registering to vote, such as inaccessible forms and signature verification issues. While some states offer an electronic ballot that can be read and marked electronically (and either printed and mailed or returned electronically), other states offer only paper absentee ballots. Voters with print disabilities may not be able to independently read, mark, and verify a paper ballot, and are unable to privately and independently vote by mail.<sup>47</sup> In 2022, 38% of voters with vision disabilities had difficulty with voting by mail ballot.<sup>48</sup>

### *The Right to Be Elected*

Challenges also exist for persons with disabilities when it comes to the right to be elected. Many disabled people rely on Social Security and Medicaid to receive [home and community-based services](#) that allow them to live independently, while others qualify for these programs due to the nature of their disabilities, difficulty in obtaining or holding full-time paid employment, or low income. Beneficiaries are subject to stringent requirements, review periods, and asset limits. Running for elected office or holding elected office may result in the reduction or termination of these benefits, even if they are not taking a salary as a candidate or serving in an elected office

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<sup>44</sup> Detroit Disability Power & The Carter Center, *Improving Voting Accessibility for Detroit Voters with Disabilities*. 13. June 22, 2023. at [https://www.detroitdisabilitypower.org/files/ugd/03370b\\_9dc91e1f6bac410bbdbdedeffbf1cc7.pdf](https://www.detroitdisabilitypower.org/files/ugd/03370b_9dc91e1f6bac410bbdbdedeffbf1cc7.pdf)

<sup>45</sup> Hazel Millard and Derek Tisler, *How to Make Early Voting More Accessible in New York*. Brennan Center. Aug. 10, 2023. <https://www.brennancenter.org/our-work/research-reports/how-make-early-voting-more-accessible-new-york>

<sup>46</sup> Lisa Schur and Douglas Kruse, *Fact Sheet: Disability and Voter Turnout in the 2020 Elections*. Rutgers University. [https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program\\_Disability\\_Research/FactSheet\\_Disability\\_Voter\\_Turnout\\_2020.pdf](https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/FactSheet_Disability_Voter_Turnout_2020.pdf)

<sup>47</sup> Buchanan, Mangold, and Laskowski, *supra* note 35, at 46.

<sup>48</sup> Schur and Kruse, *supra* note 30, at 11.

position that is part time and comes with no salary. Their campaign activity may be taken as a sign of [medical improvement](#) or functional ability to work. Because of this, people who receive federal disability benefits [risk reducing or eliminating their benefits](#) by campaigning for elected office. Federal legislation was proposed in the [Senate in 2022](#) to change the Social Security Administration’s rules, but did not make it out of committee.

### ***Funding of Election Administration***

Sufficient and consistent funding for impartial election administration is critical to the enjoyment of Article 25 rights. Federal intervention in state and local election administration has been inconsistent over time, but in critical times it has proven to be a lifeline to state and election officials with substantial needs, particularly in securing the election process, and insulating voters against mis-, dis-, and mal-information.

Voter education and communication by local election officials further highlight some of the impacts of inconsistent funding of election processes. In 2020, the CARES Act provided funds for states to prepare for an election during a pandemic as well as misinformation about election integrity. States allocated part of these funds to voter communications designed to build confidence in ballot accuracy.<sup>49</sup> However, the U.S. Electoral Assistance Commission reports that state investment in communications in 2020 was not consistent.<sup>50</sup> The Help America Vote Act of 2002, which required that states build and maintain voter education programs, provided several rounds of funding to the states, but voter education programs are not available anymore, and the same applies to the CARES Act.<sup>51</sup>

An April 2023 survey of election officials found that 27% say the federal government is doing a good job supporting them in their roles, compared with 54% and 74%, respectively, who say the same thing about their state and local governments. Further, 74% of the election officials surveyed say their annual budget needs to grow to meet election security and administration needs over the next five years.<sup>52</sup>

### ***Money, Influence, Elections***

General Comment 25, Paragraph 19, provides the following guidelines regarding campaign expenditures: “Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the

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<sup>49</sup> Mara Suttman-Lea, & Thessalia Merivaki, *The Impact of Voter Education on Voter Confidence: Evidence from the 2020 US Presidential Election*. Election Law Journal: Rules, Politics, and Policy (2023).

<sup>50</sup> U.S. Election Assistance Commission, 2021 Grant Expenditure Report. Available at: [https://www.eac.gov/sites/default/files/paymentgrants/expenditures/EAC\\_2021\\_Grant\\_Expenditure\\_Report\\_FINAL.pdf](https://www.eac.gov/sites/default/files/paymentgrants/expenditures/EAC_2021_Grant_Expenditure_Report_FINAL.pdf)

<sup>51</sup> Thessalia Merivaki, Mara Suttman-Lea, *Designing Voter Education Across the States: State Responses to the Help America Vote Act*. Election Law Journal: Rules, Politics, and Policy, 21(1), 46-59 (2022).

<sup>52</sup> Brennan Center, Local Election Officials Survey, April 2023. <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>

free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”

An important challenge for the U.S. regarding adherence to Article 25 lies in the area of campaign expenditures. State and federal laws limit amounts that individuals can give to campaigns and require disclosure of campaign records to ensure that such limits are respected. But so-called “outside spending” – on election-related advertisements and other communication that is managed independently from a candidate’s campaign – provides a legal way to bypass such limits.

The U.S. Supreme Court’s 2010 decision in *Citizens United v. Federal Election Commission* rendered unconstitutional any state or federal law limiting such outside spending, citing it as a violation of freedom of speech. Following that decision, outside spending grew from \$205 million across all elections in 2010 to \$2.9 billion in the presidential election year of 2020.<sup>53</sup> In many races, more money is spent by outside spending groups than by candidate campaigns.

Outside spending can be pooled and operated by organizations referred to as super PACs (political action committees), which are not required to disclose their sources, creating an opportunity for foreign entities, corporations, interest groups, and individuals to influence elections anonymously.

In most U.S. elections since the *Citizens United* decision, a small handful of individuals or interest groups have spent more on election communications than all other contributors combined. In one well-documented instance, industrialists David and Charles Koch used massive election spending to change the policy of the Republican party on climate change.<sup>54</sup>

Concentrated outside spending has a particularly large impact on elections for specific functions such as judges and school boards. Special interest groups, often with direct interest in cases before or expected to come before courts, accounted for 35% of all spending on state supreme court justice elections in 2019-2020 (the latest data available), according to one analysis.<sup>55</sup>

### ***Impartial Election Administration***

The U.S. is highly unusual in the degree to which political parties have direct involvement, and sometimes full control, over the administration of elections. This fact creates significant problems for state compliance with some elements of Article 25. General Comment 25 recommends two specific institutional structures for adherence with Article 25, and because of partisan involvement in elections, the U.S. is largely at odds with those recommendations. First, Paragraph 20 of the Commentary states, “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws...” Second, Paragraph 23 recommends that states

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<sup>53</sup> Open Secrets, *Outside Spending*. at <https://www.opensecrets.org/outside-spending/>

<sup>54</sup> Coral Davenport and Eric Lipton, *How G.O.P Leaders Came to View Climate Change as Fake Science*. New York Times. June 3, 2017. at <https://www.nytimes.com/2017/06/03/us/politics/republican-leaders-climate-change.html>

<sup>55</sup> Douglas Keith and Douglas Velasco *The Politics of Judicial Elections 2019-20*. Brennan Center. Jan. 25, 2022. <https://www.brennancenter.org/our-work/research-reports/politics-judicial-elections-2019-20>.

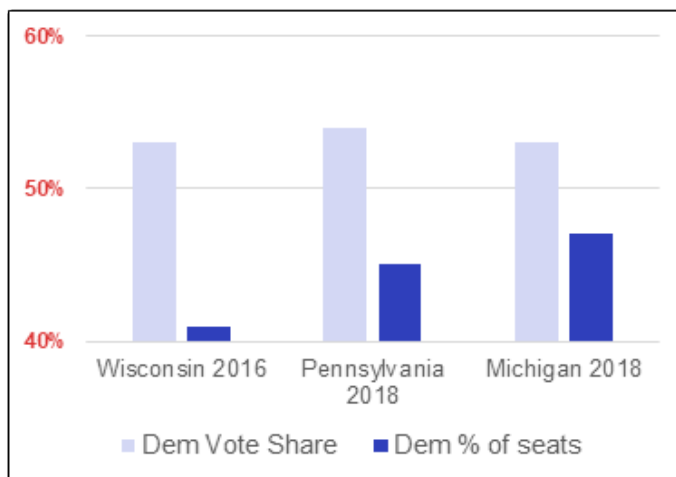
ensure that “persons holding public service positions are free from political interference or pressures.”

As noted above, authority over elections in the U.S. is divided among local authorities who oversee registration and polling place operations; state election offices, which coordinate local offices and manage state voter rolls; and the Federal Election Commission, which oversees federal campaign finance compliance. At each level, all or most positions are filled by individuals elected in partisan elections, with backing from a political party or appointed by a political party. These selection methods put individuals in authority who face a conflict between responsibility to administer elections neutrally and partisan and sometimes professional interests in the success of one side. Laws provide few prohibitions against election officials explicitly supporting one side, for example by publicly endorsing candidates or fundraising.

Litigation, often drawing on guarantees of equal protection, is often used to counter actions by election officials who help one side win. Whether because of the threat of such litigation, or strong and widespread ethics, partisan influence on election outcomes does not appear to be a systemic problem, according to researchers.<sup>56</sup> By contrast, recent polling suggests that the partisan orientation of election officials does weaken voter confidence.<sup>57</sup>

Second, The U.S. fails in respect to recommendations for district boundaries detailed in Paragraph 21, which states: “The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”

In most states, redistricting for congressional and state legislative elections is the responsibility of the state legislature, which largely reflects the interests of the majority political party. Consequently, district maps often are intentionally drawn to maximize the number of seats the party in power is likely to win. The chart at right shows examples of state elections in which, because of partisan gerrymandering, a majority of votes for one party yielded far fewer than a majority of seats in the legislature.



<sup>56</sup> Joshua Ferrer, Igor Geyn, and Daniel M. Thompson, *How Partisan is Local Election Administration*. American Political Science Review (2023). <https://doi.org/10.1017/S0003055423000631>

<sup>57</sup> Heather Balas, *National Poll on Election Administration*. Aug. 23, 2022. Election Reformers Network. <https://www.electionreformers.org/articles/national-poll-on-election-administration>

Likewise, for congressional elections, both parties use redistricting to maximize the number of seats they win in the states they control. Because of gerrymandering, the two parties have won roughly 10-20 “excess seats”<sup>58</sup> above their state vote share in most elections. Districts drawn for partisan benefit often elect more extreme, less collaborative representatives.<sup>59</sup>

The U.S. Supreme has in effect helped enable partisan gerrymandering by ruling the practice too inherently political and too difficult to measure to be assessed by federal courts. One state so far, North Carolina, has reached a similar conclusion.

Partisan gerrymandering often has a disproportionately negative effect on historically marginalized communities. Many such communities have recent voting patterns that are strongly in support of one party or another, and that fact creates incentives for district boundary drawers of the opposing party to distribute those communities across multiple districts. Countering that tendency is Section 2 of the Voting Rights Act, which prohibits dilution of minority voting power. A 2021 study found that non-white Americans were underrepresented in every single state legislature.<sup>60</sup>

### ***Mis- and Disinformation and Harassment of Election Officials***

Mis- and disinformation continues to pose a significant risk to the electoral process in the U.S.<sup>61</sup> As the Special Rapporteur on Freedom of Opinion and Expression has suggested, disinformation is a consequence of the erosion of trust in public institutions. When it comes to elections in the U.S., it is also accelerating that erosion.

Although the 2020 elections were the most secure elections in American history,<sup>62</sup> and despite the dismissal of 63 out of 64 challenges brought by former President Donald Trump, and multiple reviews of the 2020 elections in states across the country affirmed the results, false claims that the election was “rigged” ultimately led to the storming of the Capital building on Jan. 6, 2021, by Americans who believed the election had been “stolen.” Now, three years later, distrust in the electoral process continues, with views about whether the process is fair, and whether votes will be accurately counted differing depending on party affiliation.<sup>63</sup> A 2021 survey revealed that 64% of Americans perceive a crisis in U.S. democracy, with more than 70% saying they believe the risk has increased in the past year.<sup>64</sup>

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<sup>58</sup> David A. Lieb, *Analysis: What makes a fair? Recent Redistricting the most politically balanced in years*. June 10, 2023. AP. <https://apnews.com/article/redistricting-gerrymandering-2022-elections-e576c35ee37ef7ae14337953a42541c2>

<sup>59</sup> Dana Bash and Abbie Sharpe, *How Gerrymandering Makes the US House Intensely Partisan*. CNN Jan. 25, 2022. <https://www.cnn.com/2022/01/25/politics/gerrymandering-us-house-partisan/index.html>

<sup>60</sup> Renuka Rayasam, Nolan D. McCaskill, Beatrice Jin, and Allan James Vestal, *Why state legislatures are still very white - and very male*, Politico, Feb. 23, 2021. <https://www.politico.com/interactives/2021/state-legislature-demographics/>

<sup>61</sup> For the purposes of this report we define disinformation and misinformation as “disinformation is understood as false information that is disseminated intentionally to cause serious social harm and misinformation as the dissemination of false information unknowingly. The terms are not used interchangeably,” in alignment with the definition used by the Special Rapporteur on Freedom of Opinion and Expression in her 2021 report (A-HRC-47-25). <https://digitallibrary.un.org/record/3925306?ln=en>

This crisis of confidence is having real-world consequences for election officials who are on the front line of the election administration process. In one high-profile example, Shaye Moss and her mother, Ruby Freeman – both election workers in Fulton County, Georgia – became targets of false claims of election impropriety and faced such violent threats that Moss says she had to change her appearance, leave her home, and quit her job.<sup>65</sup> Since the 2020 elections, election officials across the country, regardless of political affiliation, have been the targets of harassment, death threats, and abuse.<sup>66</sup>

A 2023 survey of election officials found:

- Nearly three in four say they feel that threats against election officials have increased in recent years.
- More than half say they are concerned that threats, harassment, and intimidation will harm retention and recruitment; likewise, nearly half are concerned about the safety of their colleagues and/or staff.
- 30% say they have personally been abused, harassed, or threatened because of their job as a local election official.<sup>67</sup>

Election officials have welcomed the creation of a federal Election Threats Task Force, which includes members from the U.S. Justice Department’s Criminal Division, Civil Rights Division, National Security Division, and the FBI. As of Aug. 31, 2023, the task force has brought charges in 14 cases that involved threats to election workers and secured nine convictions.<sup>68</sup>

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<sup>62</sup> Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees, Nov. 12, 2020. <https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election>

<sup>63</sup> Pew Research Center, *Two Years After Election Turmoil, GOP Voters Remain Skeptical on Elections, Vote Counts*, Oct. 21, 2022. <https://www.pewresearch.org/politics/2022/10/31/two-years-after-election-turmoil-gop-voters-remain-skeptical-on-elections-vote-counts/>

<sup>64</sup> Gabriel R. Sanchez and Keesha Middlemass, *Misinformation is Eroding the Public’s Confidence in Democracy*. Brookings. Jul. 26, 2022. <https://www.brookings.edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/>

<sup>65</sup> Deepa Shivaram, *Shaye Moss staffed an election office in Georgia. Then she was targeted by Trump*. June 22, 2022. <https://www.npr.org/2022/06/22/1106459556/shaye-moss-staffed-an-election-office-in-georgia-then-she-was-targeted-by-trump>

<sup>66</sup> *Cat Zakrzewski*, *Election workers brace for a torrent of threats: ‘I KNOW WHERE YOU SLEEP’*, Washington Post, Nov. 8, 2022. <https://www.washingtonpost.com/technology/2022/11/08/election-workers-online-threats/>

<sup>67</sup> Brennan Center, *Local Election Officials Survey*, April 2023. <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>

Beyond the personal implications for election workers, threats, harassment, and intimidation also are impacting the retention of election officials.<sup>69</sup> When veteran election officials exit the profession, they leave institutional gaps that are difficult to cover; in some cases, a mass exodus of all election officials in a single jurisdiction signals insecurity to voters about whether elections will be secure.<sup>70</sup> This affects voter confidence and voter interest in participating in the electoral process. It also creates a bigger strain on the state election office in intervening to manage the administration of elections, when often there is a lack of statutory guidance and financial resources.

***Suggested Questions to the State Party on Issues Related to Article 25:***

- Sufficient and consistent funding for elections is critical to fulfilling Article 25 obligations, from providing materials in minority languages, to ensuring participation of persons with disabilities, to securing the election process more generally. What steps can be taken to ensure sufficient and consistent funding for election administration across electoral jurisdictions?
- What additional steps can be taken to ensure those leaving incarceration understand their voting rights and how to restore them? What steps can be taken to ensure that these materials are accessible to persons with disabilities?
- What steps can be taken to require greater transparency and disclosure in campaign spending by outside groups (e.g., a stronger Federal Election Commission, requirements that super PACs disclose top-tier donors, etc.)?
- What steps are being taken by the federal government to support state and local law enforcement with regard to threats, harassment, and intimidation of election officials?

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<sup>68</sup> U.S. Department of Justice, *Justice Department's Election Threats Task Force Secures Ninth Conviction*, Aug. 31, 2023. <https://www.justice.gov/opa/pr/justice-departments-election-threats-task-force-secures-ninth-conviction> <sup>69</sup> Elections & Voting Information Center at Reed College, *The New Environment of Threats, Harassment, and Abuse*. (2020) [https://evic.reed.edu/leo\\_survey\\_threatenvironment/](https://evic.reed.edu/leo_survey_threatenvironment/)

<sup>70</sup> Paul J. Weber, *Election workers abruptly quit, upending rural Texas county*. Aug. 22, 2022. <https://www.pbs.org/newshour/politics/election-staff-abruptly-quits-upending-rural-texas-county>.