

MEMORANDUM

To: Interested Parties
From: Center for American Progress
Re: Ensuring safe and orderly vote counting
Date: October 26, 2020

This year, states should be prepared to ensure that vote counting processes are not disrupted by individuals seeking to undermine public confidence in legitimate electoral processes and prevent votes from being counted. Although election disturbances are more likely to occur at in-person polling places during active voting periods, officials must also prepare for possible problems after polls close. This memo lays out how these disruptions could occur and what steps officials can take now to keep election workers and communities safe. The most important thing that officials can do is **make explicitly clear to election workers that they should not turn over ballots to anyone other than an election official, even federal officials claiming to act under color of law, unless it is approved by a high-ranking official designated by the state**

i. Public access to observe vote counting procedures varies by state

States have different rules for who may be present when ballots are being counted. Some states permit only certified election observers to be present, while other states allow anyone to observe the process.

State	Who may be present when ballots are counted?	Who may be present when absentee ballots are processed and counted?	Who may be present during election recounts?
Arizona	Any member of the public	Partisan observers	Any member of the public
Florida	Any member of the public	Any member of the public	Manual recounts are open to the public
Georgia	Any member of the public	Partisan observers	Any member of the public
Iowa	Any member of the public	Partisan observers	Any member of the public
Maine	Any member of the public	Any member of the public	Partisan observers
Michigan	Certified election observers	Certified election observers	Any member of the public
Minnesota	Any member of the public	Any member of the public	Any member of the public
Montana	Any member of the public	Any member of the public	Any member of the public
North Carolina	Any member of the public	Any member of the public	Any member of the public
Ohio	Partisan observers	Partisan observers	Partisan observers
Pennsylvania	Partisan observers	Partisan observers	Partisan observers
South Carolina	Any member of the public	Any member of the public	Any member of the public
Texas	Partisan observers	Partisan observers	Partisan observers
Wisconsin	Any member of the public	Any member of the public	Any member of the public

Source: National Conference of State Legislatures, “Policies for Election Observers,” available at <https://www.ncsl.org/research/elections-and-campaigns/policies-for-election-observers.aspx#> (last accessed October 2020); National Conference of State Legislatures and The Carter Center, “Who Can Observe U.S. Elections” (2020), available at <https://www.cartercenter.org/resources/pdfs/peace/democracy/u.s.-observer-%20policies-2020.pdf>.

Note: Depending on the state, absentee ballots may be processed and/or counted before or after in-person ballots are counted.

In setting these standards, officials balance interests of transparency and security. On the one hand, allowing outside observers to examine ballot counting processes is a form of accountability that bolsters the credibility of election outcomes. Trained election observers can help ensure ballots are counted fairly in accordance with local, state, and federal law. The mere presence of others keeps election workers honest and can exert positive pressure to exercise due diligence in carrying out their duties. Furthermore, ballot counting observation can help bolster public faith in election administration.

On the other hand, broad public access to ballot counting locations can leave jurisdictions vulnerable to potential disturbances by outside groups or individuals.

That being said, interference at vote counting centers is historically very rare, which is why many states err on the side of transparency and allow anyone to observe.

ii. The same people who intimidate voters at polling places are most likely to disrupt vote counting sites

Likely perpetrators of vote counting disruptions are the same individuals and groups expected to intimidate voters at polling places during active voting periods. This includes [political instigators](#), anti-government militia, and hate groups. But they are not the only ones: during the 2000 Florida recount, political campaign representatives organized the [“Brooks Brothers Riot,”](#) which took place at a manual recount center in Miami Dade in an effort to disrupt the recount.

Malicious actors can disturb ballot processing and counting procedures in a myriad of ways, such as:

- Staging violent or non-violent demonstrations
- Refusing to wear masks or PPE in close proximity to others
- Openly carrying firearms and other weapons to vote counting sites
- Harassing or accosting election workers while in the process of performing their duties
- Falsely reporting illegal conduct by election workers

iii. Officials can take steps to prevent disruptions at vote counting sites and help ensure election workers are sufficiently prepared to respond.

Depending on state law, state or local officials may have [authority over who can observe](#) election activities. In states that permit only certified observers to be present during ballot counting, observers may need to first get permission from state or local election officials. In these places, **officials can use this authority to deny access to those suspected of ill-intent.** In doing so, however, they must be careful not to sacrifice public transparency. One option is to set up live video feeds at ballot counting sites so that people can monitor the process offsite. North Carolina already allows certain meetings where absentee ballots are counted to be [broadcasted via live video feed](#) due to COVID-19.

Officials should consider stationing uniformed police officers at vote counting locations in jurisdictions permitting broad public observation. While the presence of uniformed officers at polling places can result in voter intimidation during active voting periods, the situation is different after ballots have been cast. Positioning officers outside or around the perimeter of vote counting sites can help deter disruptions from occurring at these locations. Officers stationed at vote counting sites must be sufficiently trained in de-escalation techniques and instructed on use of force as a last resort.

State and local officials should actively engage in bidirectional communication with social media platforms who may be able to collect intelligence about planned demonstrations at places where ballots are counted and/or stored. Officials should share the precise locations of post-election administration sites with platform representatives so that they can monitor for discussions of organizing activities near those areas.

In jurisdictions lacking specific rules or that permit any member of the public to be present when ballots are counted, **officials should issue guidance on appropriate observer conduct**, including complying with social distance requirements and wearing a mask. Depending on state law, attorneys general and other officials may issue binding orders, advisory opinions, and policy memos detailing impermissible behavior by third parties at vote counting sites and related penalties. States like [North Carolina](#) have

already issued [guidance](#) outlining acceptable third-party conduct during active voting periods. Any official documents must make clear that election disrupters and those who refuse to wear a mask will be ejected. [Face coverings are already required](#) in public spaces and/or at large outdoor gatherings in 33 states and the District of Columbia. **Mask mandates must be strictly enforced at vote counting locations.**

Officials should publish short explainers of state open carry laws written in plain language, which can serve as a helpful resource for election workers and law enforcement personnel. Depending on the jurisdiction, ballots may be counted at individual polling places, vote counting centers, or both. These sites may be located on government property where guns are already prohibited under state or local law. For example, an [October memo](#) by Michigan Secretary of State Jocelyn Benson clarified limits on the ability to openly carry firearms at or around polling places, election clerk's offices, and at absentee counting boards. Officials may have flexibility in determining locations for manual recounts. Where possible, manual counting activities should take place in secure public buildings, such as courthouses, that limit the carriage of weapons and have controlled entry to prevent interruptions by individuals posing a public health or security threat to others.

Election workers involved in vote counting procedures must receive step-by-step directions for responding to potential disruptions, as well as de-escalation training to help ensure they are sufficiently prepared if problems arise. In Wisconsin, [de-escalation techniques](#) for conflict situations are reportedly being integrated into training sessions with election officials ahead of Election Day. Such trainings must be extended to election workers responsible for counting votes and handling voted ballots. Important contact information must be distributed to election workers ahead of Election Day for reporting potential disturbances.

Finally, **election workers must be explicitly directed not to turn over ballots to anyone other than an election official, even federal officials claiming to act under color of law, unless it is approved by a high-ranking official designated by the state.** Election workers must comply with state laws related to ballot custody. If a third party claims they must take custody of ballots, it is critical that requisite state officials have an opportunity to determine why the extraordinary remedy of ballot confiscation is sought, as well as have the opportunity to challenge any such action in court.