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Campaign and Election Security Policy: Brief Introduction

Introduction

Securing U.S. elections is a complex policy challenge that involves multiple concepts, statutes, and agencies. Federalism principles embodied in the U.S. Constitution; the distinction between government agencies and nongovernmental political entities; and the unique needs of election administrators, voters, and political campaigns and related groups all affect policy choices. This CRS In Focus introduces selected issues and policy matters that frame the debate.

Recent Congressional Activity

During the 116th Congress, at least 40 bills related to security for campaigns and elections have been introduced. Provisions in these bills range from altering current practices or policies, such as changing disclaimers and disclosures for online political advertising, or federal funding to support state election administration; to establishing new ones, such as notification requirements for election interference. In the 115th Congress, the FY2018 omnibus appropriations law (P.L. 115-141) provided states \$380 million in election-security funding. The 116th Congress is considering additional funding. Oversight hearings in both chambers have addressed various security matters.

On March 8, 2019, the House passed (234-193) H.R. 1, the For the People Act, sponsored by Representative Sarbanes. The bill contains multiple provisions affecting campaign finance, elections, voting, and ethics and lobbying. Security-related provisions would codify a Department of Homeland Security (DHS) designation of election infrastructure as “critical”; authorize federal funding to assist states in upgrading their election equipment or otherwise enhancing security, including by implementing risk-limiting audits; require paper ballots in federal elections; require various election-threat reports among federal and state governments; and require developing a national strategy to safeguard democratic institutions. Several similar provisions appear in H.R. 2722, the Securing America’s Federal Elections (SAFE) Act. The House passed (225-184) H.R. 2722 on June 27, 2019.

Issues: Campaigns, Elections, and Voting

Campaigns, elections, and voting are related but separate concepts. They are defined and regulated differently, and each raises unique and even potentially competing security concerns. Campaigns are about persuading voters in an effort to win elections. Voters express their campaign preferences by casting ballots in elections. Except for campaign finance policy, U.S. campaigns are subject to relatively little regulation. Elections in the United States are more highly regulated and primarily a state-level responsibility. Provisions in state law and, to a lesser

degree, federal law, regulate how voters cast ballots and who may do so.

Issues: Access, Integrity, and Security

“Election security” can mean different things to different people and in different contexts. Broadly speaking, the concept can involve at least three policy goals.

- Access—ensuring that eligible individuals can register to vote, receive ballots, and vote privately
- Integrity—ensuring that election administration and voting are perceived as legitimate across the political spectrum, with accurate, fair and transparent participation and results
- Security—ensuring that campaigns and elections are free from criminal or other malicious activity, foreign or domestic disinformation or cyber-interference

Different audiences sometimes prioritize these policy goals—which are not necessarily mutually exclusive—differently. For example, what one observer views as a reasonable provision to safeguard elections, such as a voter-identification requirement, another might perceive as deliberate disenfranchisement. In addition, election roles and goals can affect security choices. A local election administrator, for example, must decide how to balance access, integrity, and security with a limited budget and deadlines set in law. A campaign manager likely is concerned with all three goals, but is responsible primarily for securing the campaign operation and turning-out supporters—also with a limited budget and, likely, limited in-house security expertise.

Policy: Federal Statutes and Agencies

The U.S. Constitution and federal statute regulate the division of governmental responsibility for election security, although no statute is devoted specifically to the topic. Most broadly, the Constitution’s Elections Clause assigns states with setting the “Times, Places and Manner” for House and Senate elections, and also permits Congress to “at any time...make or alter such Regulations” (Art. I, §4).

Historically, the federal government has played little role in election security, deferring to states, which are responsible for most U.S. election administration. Congress first enacted legislation affecting and funding election security in the 2002 Help America Vote Act (HAVA; 52 U.S.C. §§20901-21145). Federal law is relatively silent on campaign security, although some Title 18 criminal provisions apply, as do some Federal Election Campaign Act (FECA; 52 U.S.C. §§30101-30146) campaign finance provisions. The Voting Rights Act (VRA; 52 U.S.C.

§§10101-10701) is the primary federal statute covering access.

Selected Agency Roles

No single federal agency has responsibility specifically for providing election or campaign security. Only two federal agencies are devoted entirely to campaigns and elections. The Election Assistance Commission (EAC) disburses congressionally appropriated federal funding and coordinates information-sharing about elections practices (such as voting-system guidelines, which affect security) among the states. The Federal Election Commission (FEC) is responsible for administration and civil enforcement of FECA.

Other departments and agencies—such as component organizations comprising the Intelligence Community (IC, e.g., the Central Intelligence Agency [CIA] and National Security Agency [NSA])—primarily with responsibilities for other areas of public policy also support campaign or election security in specific cases. **Table 1** provides a brief overview of selected agency roles in campaign and election security.

Table 1. Selected Agency Roles in Election Security

Agency	Brief Security Role
Department of Commerce	National Institute of Standards and Technology (NIST) advises Election Assistance Commission (EAC) on technical and scientific matters
Department of Defense	Provides cybersecurity and intelligence in some cases; Federal Voting Assistance Program director included in EAC Board of Advisors
Department of Homeland Security	Assists states on cybersecurity; Sector-Specific Agency for Elections Infrastructure Subsector; Secret Service protects major presidential candidates
Department of Justice	Enforces criminal law and civil aspects of some elections statutes; DOJ included in EAC Board of Advisors; Federal Bureau of Investigation investigates election crimes and participates in Intelligence Community
Election Assistance Commission	Distributes HAVA funds and coordinates certain election information with states
Federal Election Commission	Administers and enforces civil campaign finance law
Intelligence Community	Assesses foreign efforts to influence U.S. campaigns and elections

Source: Adapted from CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

Two major categories of federal election-security assistance are available to states, territories, and localities that administer elections. First, federal agencies such as DHS and the Federal Bureau of Investigation (FBI) offer states assistance, such as consultations and investigations, on election security issues. A 2017 DHS “critical infrastructure” designation for U.S. election infrastructure permits the agency to prioritize support for election jurisdictions. This includes information-sharing on threats; monitoring election systems; conducting vulnerability assessments; and assistance identifying or responding to threats. Second, Congress periodically has authorized appropriations under HAVA, and appropriated funds (typically in omnibus or Financial Services and General Government [FSGG] appropriations legislation) to assist states to upgrade voting equipment and strengthen election security.

Unique Challenges for Campaigns

Most campaigns are short-lived with transient staffs. This is especially true for candidate committees, most of which have limited budgets, small professional staffs and depend heavily on volunteers. All these factors can weaken security. Recent FEC advisory opinions have granted corporations, including Microsoft, permission to provide reduced-rate cybersecurity services to political committees in specific circumstances. Debate remains about how to balance protecting campaigns from unlawful interference with upholding the FECA ban on corporate contributions.

For additional discussion, see, for example, CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett; CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; CRS Report R45320, *Campaign Finance Law: An Analysis of Key Issues, Recent Developments, and Constitutional Considerations for Legislation*, by L. Paige Whitaker; CRS Report R45770, *The U.S. Election Assistance Commission: Overview and Selected Issues for Congress*, by Karen L. Shanton; CRS In Focus IF10677, *The Designation of Election Systems as Critical Infrastructure*, by Eric A. Fischer; CRS In Focus IF10925, *State Election Reform Payments: FY2018 Appropriations*, by Karen L. Shanton; CRS In Focus IF10697, *Foreign Money and U.S. Campaign Finance Policy*, by R. Sam Garrett; CRS In Focus IF10683, *DHS’s Cybersecurity Mission—An Overview*, by Chris Jaikaran; and CRS Report R45142, *Information Warfare: Issues for Congress*, by Catherine A. Theohary.

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