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# THE ELECTORAL INTEGRITY PROJECT

WHY ELECTIONS FAIL AND WHAT WE CAN DO ABOUT IT

## Why American elections are flawed (and how to fix them)

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**Synopsis:** Concern about how American elections work has risen since 2000 and has been exacerbated by events during the 2016 campaign. To understand these issues, the first section examines several major challenges facing U.S. elections, including deepening party polarization over electoral procedures, the vulnerability of electronic records to hacking, and the impact of deregulating campaign spending, compounding the lack of professional standards of electoral management. For a broader perspective, section 2 clarifies the core concept and measure of ‘electoral integrity’, the key yardstick used in this report to evaluate the performance of American contests. Section 3 compares cross-national evidence from expert surveys, finding that recent US elections have the worst performance among two-dozen Western democracies. Section 4 considers pragmatic reforms designed to strengthen U.S. electoral laws and procedures, recommending expanding secure *and* convenient registration and balloting facilities, improving the independence and professional standards of electoral management, monitoring performance, and strengthening impartial dispute resolution mechanisms. The conclusion summarizes the core argument and the reforms.

**Keywords:** Electoral integrity, electoral fraud, US elections, electoral reforms

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Like Humpty-Dumpty and his legendary fall, trust in American elections can be easily damaged, but it is far more difficult to rebuild. The 2016 US presidential elections have deepened the cracks and hinted at a pervasive problem in how American elections work. Secretary Hillary Clinton and Donald Trump battled through exceptionally brutal primary and general election campaigns that have polarized opinions and generated serious claims of fraud, vote rigging, repression of voters' rights, and hacking. These procedural concerns did not arise this year, of course; the flaws in the American electoral process have become more apparent over the course of decades. The contemporary tipping point in public awareness occurred during the 2000 Bush-versus-Gore election count. But, like a sagging foundation, several major structural weaknesses have exacerbated doubts in the 2016 campaign, thereby worsening party divisions and further corroding public trust in the electoral process.

To analyze electoral problems, and gather systematic evidence about their quality in America and around the world, the Electoral Integrity Project (EIP) was founded in 2012 with a research team based at Harvard and Sydney Universities. According to expert estimates developed by EIP, the 2012 and 2014 elections in the United States displayed the worst performance among all Western democracies.<sup>1</sup> Without urgent reform, these problems risk damaging the legitimacy of American elections—further weakening public confidence in the major political parties, Congress, and the US government, depressing voter turnout, and exacerbating the risks of contentious outcomes fought through court appeals and public protests.

America is far from alone in its problems at the ballot box; numerous types of flaws and failures undermine elections in developing democracies around the globe. In some, opponents are disqualified. District boundaries are gerrymandered. Campaigns provide a skewed playing field for parties. Independent media are muzzled. Citizens are ill-informed about choices. Balloting is disrupted by bloodshed. Ballot boxes are stuffed. Vote counts are fiddled. Opposition parties withdraw. Contenders refuse to accept the people's choice. Protests disrupt polling. Officials abuse state resources. Electoral registers are out-of-date. Candidates distribute largesse. Votes are bought. Airwaves favor incumbents. Campaigns are awash with hidden cash. Political finance rules are lax. Incompetent local officials run out of ballot papers. Incumbents are immune from effective challengers. Rallies trigger riots. Women candidates face discrimination. Ethnic minorities are persecuted. Voting machines jam. Lines lengthen. Ballot box seals break. Citizens cast more than one ballot. Legal requirements serve to suppress voting rights. Polling stations are inaccessible. Software crashes. "Secure" ink washes off fingers. Courts fail to resolve complaints impartially. Each of these problems can generate contentious elections characterized by lengthy court challenges, opposition boycotts, and public demonstrations.<sup>2</sup> In fragile states with a recent history of conflict, electoral failures can trigger further outbreaks of deadly violence and undermine regime legitimacy.

To understand these issues, the first section describes several major challenges observed during the 2016 US elections, including deepening party polarization over basic electoral procedures, the serious risks of hacking altering official records, the

complex consequences of deregulating campaign spending, and the lack of federal standards and professional practices in electoral management. To place these issues in broader perspective, Section 2 talks about the core concept and measure of *electoral integrity*, the key yardstick used by the Electoral Integrity Project to evaluate free and fair elections. Section 3 compares cross-national and state-level evidence from expert and mass surveys to diagnose problems in American elections. Section 4 considers how these challenges could be addressed through a series of policy reforms to US electoral laws and procedures. The study advocates several practical steps designed to improve American electoral procedures and practices: reforming laws for registration and balloting to produce convenient *and* secure processes, improving the independence and professional standards of election management, monitoring performance, and, finally, implementing impartial dispute resolution mechanisms and effective oversight agencies. The conclusion summarizes the core argument and the reforms recommended to advance free and fair elections at home and abroad.

### **I: Challenges of Electoral Integrity during the 2016 US Elections**

The challenges to electoral integrity highlighted by the 2016 US elections are far from new.<sup>3</sup> Several events during the campaign have highlighted long-standing vulnerabilities. Without a comprehensive program of reforms addressing these problems, in a close, heated, and bitterly fought election, the 2016 contest may potentially signify a critical tipping point which undermines the legitimacy of the political process and damages American democracy. Five major problems in the 2016 American elections are highlighted: partisan polarization over electoral procedures; lack of public confidence following widespread claims of fraud, vote rigging, and the suppression of voter rights; the risks of hacking; the consequences of deregulating campaign funding; and the lack of professional standards of electoral management.

#### *Partisan Polarization over Electoral Procedures*

In established democracies, processes for registering and balloting are often regarded today as routine matters, involving largely technical and procedural issues. Electoral management bodies and legislative oversight bodies commonly focus reform efforts upon practical steps designed to improve administrative and procedural efficiency, such as through the provision of user-friendly online information about the location and opening hours of polling places, ways to strengthen gender equality in elected office, the role of technology in elections, the provision of civic education to strengthen young people's engagement, and the provision of voting facilities for people with disabilities.

In the United States, however, ever since the 2000 Bush v. Gore count in Florida, Republican and Democrat-dominated statehouses have become increasingly polarized over the most appropriate legal regulations for electoral registration and balloting.<sup>4</sup> Like many other issues in contemporary American politics, there is no

agreement about what types of reforms to state laws should be prioritized to address issues of electoral integrity, including the underlying values of security versus inclusiveness. Debate surrounds whether integrity is hurt more by *overly strict* registration and voting procedures (which are thought to cause low turnout, political inequality, greater administrative complexity, and lack of inclusive voting rights by all sectors of society), or by *overly lenient* requirements (which are believed to increase the risks of voter impersonation and thus multiple voting, thereby invalidating legitimate results and damaging public trust). Electoral laws and regulations can be designed to either reduce or raise the logistical barriers (time, effort, and possibly money) which citizens face when seeking to register and/or cast a ballot.<sup>5</sup> These logistical costs reflect one part of the turnout calculus made by rational voters, alongside informational costs and calculations of the anticipated benefits arising from participation.<sup>6</sup>

Thus in Republican-held state houses, a series of new state laws have sought to tighten voter identification requirements and provide additional verification checks on the accuracy of the electoral register. Proponents argue that these steps help to prevent the risks of voter impersonation (multiple voting) and thereby strengthen public confidence in the electoral process. Before 2000, fourteen states asked citizens to present an identification document at the polls. In 2013, in *Shelby County v. Holder*, the Supreme Court eviscerated key provisions of the 1965 Voting Rights Act. That had required fifteen states with a history of discrimination to get the approval of the Justice Department or a federal court before making changes to their voting laws. Since this requirement was abolished, the adoption of voter ID requirements and their stringency accelerated rapidly in GOP-dominated state legislatures, such as in North Carolina, Alabama and Wisconsin. By 2016, 32 states have implemented laws requesting or requiring citizens to show some forms of identification at the polls (see Figure 1).<sup>7</sup>

[Figure 1 about here]

Opponents argue that, in fact, claims of voter impersonation and duplicate voting are grossly exaggerated and politically driven.<sup>8</sup> The sporadic cases which do exist are minor, largely due to human error, and insufficient to sway the outcome of an election. Overly stringent requirements may also restricted voters rights, especially disenfranchising mobile populations and sectors of the community lacking the necessary official documents, and thereby serve to intimidate or discriminate against certain types of citizens, especially minority groups, the low-income, young people, and senior citizens.<sup>9</sup> Making it harder to register and cast a ballot is likely to depress turnout. New regulations also increase the complexities for local officials and poorly trained poll workers when seeking to apply the revised electoral rules correctly. Partisan disagreements have intensified over these issues following the passage of new laws in state houses and challenges in the courts.<sup>10</sup> Many (but not all) of the more restrictive attempts have been struck down by the courts as discriminatory, including voting regulations passed in Kansas, North Carolina, North Dakota, Texas, and Wisconsin. Nevertheless, the debate over voting rights and procedures has politicized the electoral process, generated increased uncertainty and confusion among electoral officials and ordinary citizens about the

appropriate requirements needed to register and vote, and probably fueled public mistrust of the process.

By contrast, in seeking to boost turnout, many Democrats have advocated the expansion of ‘convenience’ voting facilities, exemplified by extended hours for voting, the provision of on-demand postal voting, and advance or early day voting. Those arguing for the loosening of registration procedures contend that such facilities reduce the logistical costs facing citizens seeking to register and cast a ballot, and thereby promote full and equal participation.

Convenience voter *registration* procedures, reducing the time and effort citizens need to be listed on the electoral rolls, are exemplified by online registration, automatic registration, election day registration, pre-qualifying age registration, and rolling registers. In the United States, for example, registration via the internet has become widely available, with 31 states allowing online registration applications in the 2016 elections, although making up only 7% of registration submissions.<sup>11</sup>

In addition, convenience *voting* facilities reduce the costs citizens face when casting ballots, including advance voting, assisted voting, overseas voting, absentee balloting, postal voting, extended hours/days, and weekend polling, internet voting, proxy voting, special facilities for the disabled, the production of multi-language informational materials, and the deployment of mobile polling stations.<sup>12</sup> Many states have relaxed the rules to allow any qualified citizen to make use of early and remote balloting, without the need to provide a specific reason, such as immobility or travel. Participating through both these types of facilities is particularly important those with physical disabilities or illnesses, homeworkers responsible for dependents, rural populations living in remote areas, residents in hospitals or retiree communities, the military and expatriates posted abroad, those whose religious commitments prevent them attending polling places on election day, and so on. As a result of implementing these types of provisions, voting in person at a local polling station on election-day has become less and less common. According to the Electoral Administration and Voting Survey, for example, in 2014 almost one in four American voters cast their ballot before polling day.<sup>13</sup>

While these reforms may appear to be common-sense and practical steps which serve to strengthen participation in American democracy, nevertheless critics claim that even well-meaning procedural reforms relaxing legal requirements for the registration and voting process may have unintended consequences, such as through heightening security risks, undermining the secrecy of the ballot, increasing administrative costs and complexities, producing inconsistent and unequal voting rights across America, and thereby possibly ultimately damaging public confidence in electoral integrity.<sup>14</sup> In other words, it is argued that the desire for inclusive participation needs to be counterbalanced by the need to protect the security of the ballot.<sup>15</sup> In particular, critics charge that overly lax registration and balloting requirements in America have heightened risks of voter impersonation, allowing non-citizens to vote, and other malpractices.<sup>16</sup> In line with these arguments, several Republican-held state houses have recently sought to overturn convenience voting facilities, catalyzing a series of court challenges. For example,

in 2013 North Carolina enacted voter-ID requirements and simultaneously restricted early voting and ended same-day registration, Sunday voting, and pre-registration for teenagers before they turn 18. The day the law was signed, the ACLU and the Southern Coalition for Social Justice filed suit on the grounds that the statute discriminated against minority voters in violation of the 14th and 15th Amendments. The lower courts heard these challenges and ruled that against the law on the grounds that requirements “target African Americans with almost surgical precision.” In August 2016, the US Supreme Court took up the case, upholding the claim that North Carolina’s voter ID-provisions were unconstitutional, although all four Republican-nominated justices on the Supreme Court expressed disagreement.<sup>17</sup>

### *Lack of Public Confidence in the Electoral Process*

During the 2016 elections, like throwing gasoline on the embers, partisan polarization over these issues has been exacerbated by Donald Trump’s repeated claims that the outcome in several battleground states such as Pennsylvania was in danger of being ‘rigged’, a serious charge which goes beyond previous Republican claims by alleging intentional manipulation of the vote count.<sup>18</sup> Mr. Trump has called for volunteers to sign up as observers in polling places. Credible and experienced monitors can help to ensure that procedures are properly followed, making the process more transparent, without interference.<sup>19</sup> Nevertheless, untrained and inexperienced partisan poll watchers may cause local tensions and confusion on polling day, such as by disrupting procedures or intimidating citizens. Trump has also claimed that vulnerability to voter impersonation and multiple voting has grown after a series of court decisions threw out many of the more restrictive state voter ID laws. The 2016 Republican platform urged states to require proof of citizenship and photo ID, to prevent abuse of voting procedures.

The allegations of fraud through pervasive voter impersonation and multiple voting in American elections have been widely discredited; an examination by the Brennan Center for Justice concluded that these problems were exaggerated and largely mythical: “Voter fraud is very rare, voter impersonation is nearly non-existent, and much of the problems associated with alleged fraud in elections relates to unintentional mistakes by voters or election administrators.”<sup>20</sup> The Brennan Center study found 241 potentially fraudulent ballots out of 1 billion ballots cast over a 14 year period. Another investigation by News21 for *The Washington Post* found only 2,068 cases of alleged voter fraud had been reported from 2000 to 2012, including only ten cases of voter impersonation.<sup>21</sup>

Contrary to the evidence, however, the heated charges of voter fraud and vote rigging appear to be widely believed among Trump’s supporters. If he loses, especially if the final margin of victory is tight, this perception may serve to delegitimize the eventual outcome and fuel protest challenges. Given news media coverage of the Republican accusations, it is hardly surprising that in September 2016 a Gallup poll found that only six in ten Americans were very or fairly confident that their vote would be accurately cast and counted in the US election,

down from around three quarters of all Americans a decade earlier.<sup>22</sup> Among Republicans, the proportion who were confident dropped to around half, the lowest which the Gallup poll has ever recorded on this question when asked in a series of surveys. Similarly, a Washington Post–ABC News poll of registered voters conducted on September 5–8, 2016 found that nearly half of all Americans (46%) believe that voter fraud occurs very or somewhat often, a figure which jumps to two thirds (69%) of Trump supporters.<sup>23</sup> At a time of persistently low confidence in American institutions, this deepening erosion of faith in elections is cause for serious concern. Studies have found that citizens often get their information about the integrity of the balloting process from parties; Beaulieu found that party elites provide strong cues for voter perceptions of electoral fraud, producing divergent beliefs among Democrats and Republicans.<sup>24</sup>

### *The Risks of Hacking Breaches*

While myths of multiple voting are largely without foundation, concern about the potential risks of security breaches to the official records have recently become real. The chiefs of the FBI and the National Security Agency regard the potential threat of external attempts to hack the election as serious risks, including the potential threats which are alleged to arise from Russia. Cybersecurity officials believe that Russian-based hackers were behind the break into the server of the Democratic National Committee, with the emails released to the media the day before the Democratic Convention. Similar reports have circulated emails from prominent Republicans, such as Colin Powell. Subsequent reports during September 2016 have found evidence of attempts to break into two state registration databases. One incident included stealing information in Illinois from roughly 200,000 voting records. In another attempt, in Arizona, cyber criminals used malware to try to breach voting records, forcing state officials to disable online voting registration for nine days as they investigated the unsuccessful hacking.<sup>25</sup> The aging equipment and vintage software used on many US electronic voting machines, and the lack of sophisticated security to protect state voting records, make these particularly vulnerable to external cyberattack by foreign powers and terrorist groups; many electronic voting machines were purchased by states and counties through a \$4 billion federal fund following the Helping America Vote Act of 2002 and never subsequently overhauled or replaced. Official spokespersons suggest that the decentralized nature of US electoral administration provides a partial protection, where security is maintained by 8,000 jurisdictions within states, sometimes by each county, limiting the penetration of wholesale efforts by attackers seeking to penetrate the whole system. But this is a weak defense; it would just take minor security breaches to some digital voting registers, electronic voting machines, or software aggregating vote tabulations, in a few local polling places in a couple of swing states to reduce the credibility of American elections, throw the outcome into chaos, and trigger doubts about the legitimacy of the eventual winner of the presidential contest.<sup>26</sup>

### *Deregulating Campaign Finance*

Along with voter's rights, and the security of the process, the issue of campaign finance and checkbook elections has long been a matter of major concern in America—as well as in most countries in the world, as exemplified by major political finance scandals in Italy, Japan, Spain, the UK, and Brazil.<sup>27</sup> The role of money in politics raises questions about the integrity and transparency of the electoral process, the power of wealthy special interests, and the accountability of elected representatives. In the United States, a series of decisions by the US Supreme Court, including *Citizens United v. the Federal Election Commission* (2010) and *McCutcheon v. FEC* (2014), has dramatically expanded the ability of wealthy individuals, corporations and groups to spend as much as they like to influence elections.<sup>28</sup> The Center for Responsive Politics estimates that \$6 billion will be spent in the 2016 US elections by campaigns, political parties and corporations hoping to propel their candidates into the White House and what Mark Twain once called the "best Congress money can buy."<sup>29</sup> This would be more than double the amount spent in 2012.

These enduring problems have been highlighted as an issue of public concern during the 2016 campaign, with attacks on the fund-raising role of major donors and corporations from both the left (Bernie Sanders) and the right (Donald Trump).<sup>30</sup> Major decisions by the Supreme Court, notably *Citizens United*, have deregulated campaign spending.<sup>31</sup> The growing funding of individual candidates by narrow interest groups with specific concerns, such as gun rights advocates or environmentalists, has increased polarization by putting pressures on representatives to defend these interests or else risk losing resources.<sup>32</sup> In practice, it remains to be seen how campaign spending develops among the major candidates during the run up to polling day. In late summer (August 2016), according to FEC figures, Clinton had raised more than three times the total funds compared with Trump (\$315 million to around \$127 million).<sup>33</sup> At the same time, patterns of spending on campaign communications and local organizations have been upended in this race, with Hillary Clinton outspending Donald Trump in television advertisements by a 17:1 margin in late August.<sup>34</sup> Until Labor Day, Trump relied largely upon his substantial advantage in the amount of news coverage contained in free media, as well as the use of social media/Twitter, and traditional campaign rallies.<sup>35</sup> The role of political finance has caused public concern about the democratic process and it raises major questions about the weakness of the U.S. Federal Election Commission, as the key regulatory agency whose leadership has been gridlocked over reform, reflecting the broader political climate.

### *Lack of Professional Standards of Electoral Management*

Finally, the issues we have seen during the 2016 US campaign are likely to exacerbate and compound the long-standing lack of professionalization of electoral administration which has long characterized American contests.<sup>36</sup> Compared with equivalent Western democracies, rather than regulating uniform standards across all polling places, and establishing independent and non-partisan authorities,

American elections have allowed exceptionally partisan control and highly decentralized administrative arrangements. The 2014 report of the bipartisan US Presidential Commission on Election Administration has documented a long series of vulnerabilities in American elections. Procedures have been under close scrutiny by the news media ever since the notoriously flawed ballot design in Florida in 2000. Since then, the Commission reported common problems such as wait times in excess of six hours to cast a ballot in Ohio, inaccurate state and local voter registers, insufficiently trained local poll workers, and the breakdown of voting machines in New York have continued to put the quality of American elections in the headlines.<sup>37</sup> Standards remain uneven across the country; the Pew Center's 2014 Election Performance Index estimates that states such as North Dakota, Minnesota and Wisconsin performed relatively well against a range of quality indicators combining voting convenience and electoral integrity, but others, including California, Oklahoma, and Mississippi demonstrated noticeable short-falls.<sup>38</sup>

The news media reported a range of problems occurring on polling day during the 2014 midterm elections, some trivial, others more serious, though it remains unclear whether accidental maladministration or intentional dirty tricks were to blame. At least eighteen state election websites were reported to have experienced disruptions on election day, preventing voters from using the sites to locate polling places and ballot information.<sup>39</sup> In Hartford, Connecticut, voters were turned away from polling places which did not open on time due to late-arriving polling lists.<sup>40</sup> The Chicago Board of Election Commissioners reported that more than 2,000 election judges did not turn up at their polling stations after receiving erroneous information from "robocalls."<sup>41</sup> In Virginia, a State Department of Elections spokesman said that thirty-two electronic voting machines at twenty-five polling places experienced problems. In both Virginia and North Carolina, there were also claimed cases of electronic polling machines which recorded a vote for the Democratic candidate when the screen was touched to cast a vote for the Republican.<sup>42</sup> The state-wide voter registration system crashed in Texas forcing many to complete provisional ballots when poll workers were unable to confirm voter eligibility.<sup>43</sup> Meanwhile new state laws requiring electors to present photo identification were reported to cause confusion in several states, including Texas, Georgia, and North Carolina.<sup>44</sup>

Among all mature democracies, the nuts and bolts of American contests seem notoriously vulnerable to incompetence and simple human errors arising from the extreme decentralization and partisanship of electoral administration processes.<sup>45</sup> The American constitution makes state and local officials primarily responsible for administering elections, and the arrangements rely heavily on the partisan appointment of local officials who supervise volunteer part-time poll workers. In terms of running elections, Article I, Section 4, of the Constitution grants state legislatures the authority to regulate the timing, place and manner of holding elections for Congress. The state legislatures remain the predominant source of legal regulations for elections, generating a complex patchwork quilt of arrangements even for basic matters, such as the hours that polling places are open, the requirements for voter registration and voter identification, and facilities for advance or postal voting.<sup>46</sup> To add a further layer of complexity, the operational

procedures are then implemented in around 13,000 countries and municipalities across America, where local officials determine many practical arrangements, such as the location of polling places and ballot designs. Congress has the formal constitutional authority to “make or alter” state rules although most federal laws are restricted to the rights to vote and the regulation of political finance.

At national level, the US federal government’s role in elections has been strictly limited, although this role has expanded somewhat in recent years with attempts to improve standards amid growing concern arising about the uneven performance of local and state electoral bodies.<sup>47</sup> The Federal Election Commission was created in 1974 to regulate and monitor how money is raised and spent in national elections, and to administer public funds in presidential contests. The FEC has strengthened transparency, but over the years it has become an increasingly weak and ineffectual body, with the leadership mired in partisan gridlock and unable to propose reforms with any realistic chance of passing into law. The six-member Commission is divided by law so that no more than three Commissioners can be members of the same political party and at least four votes are required for any official Commission action. In practice this has meant that as Democrat and Republican parties have become increasingly polarized over issues of political finance reform, the Commission has been permanently gridlocked and marginalized, at a time when campaigns are awash with money and Supreme Court decisions have loosened major parts of the regulatory framework and donor limits. Indeed even the process of replacing FEC members has become increasingly ineffective due to Senate veto over Presidential nominees.<sup>48</sup> The major decisions altering the regulation of campaign finance have come from a series of decisions by the Supreme Court.

The Florida debacle led to the 2002 Help America Vote Act which created a new national oversight and advisory body, the Electoral Assistance Commission, designed to monitor minimum standards of administrative performance. Primary responsibility for running elections still rests with agencies at state and local levels.<sup>49</sup> The result of the fragmented nature of American electoral governance is a bewildering hodgepodge of state laws and local procedures determining some of the most basic electoral procedures and voting rights which vary from place to place, such as the requirements for voter registration, for identification in polling places, and for casting absentee or advance ballots.<sup>50</sup> Where problems arise, such as Florida in 2000, accountability is weakened among multiple levels of government and the multiplication of veto-points hinders the introduction of any sweeping procedural reforms. At the same time, states and localities have considerable authority to introduce a variety of new voting procedures, if these are interpreted by the courts as meeting broader constitutional and legal rights.

## **II: Measuring Electoral Integrity**

All these problems suggest that the integrity of American elections has come under growing pressure in recent years. But much of the debate remains controversial. The issue of what is to blame for lack of public trust, whether arising from the risks of insecurity at the ballot or the suppression of voters’ rights, remains deeply mired in partisan disputes. Is there more systematic and impartial evidence diagnosing the problems at the heart of American elections?

Here we can turn to the approach developed by the Electoral Integrity Project, an independent and non-partisan academic research project, established in 2012. The idea of electoral integrity is defined by the project to refer to agreed international conventions and global norms, applying universally to all countries worldwide through the election cycle, including during the pre-election period, the campaign, on polling day, and its aftermath.<sup>51</sup>

For evidence, the project developed an expert survey of Perceptions of Electoral Integrity (PEI). The method of pooling expert knowledge has been used by many recent studies to measure complex issues which cannot be directly observed, such as by Transparency International's Corruption Perception Index, to assess the risks of malfeasance, and by the Varieties of Democracy project, to estimate trends in democratization. The PEI survey of electoral integrity gathers information covering all independent nation-states around the world which have held direct (popular) elections for the national parliament or presidential elections, excluding micro-states (with populations below 100,000). The 213 elections in 153 nations analyzed in the latest release used in this study, PEI-4.5, cover the period from July 1, 2012 to June 30, 2016.<sup>52</sup>

For each country, the project identified around forty election experts, defined as a political scientist (or other social scientist in a related discipline) who had demonstrated knowledge of the electoral process in a particular country (such as through publications, membership of a relevant research group or network, or university employment). The selection sought a roughly fifty-fifty balance between international and domestic experts, the latter defined by location or citizenship. Experts were asked to complete an online survey one month after the election. In total, 2,417 completed responses were received in the survey, representing just under one third of the experts that the project contacted (29%).

To measure the core concept, the PEI survey questionnaire includes forty-nine items on electoral integrity ranging over the whole electoral cycle. These items fell into eleven sequential sub-dimensions. Most attention in detecting fraud focuses upon the final stages of the voting process, such as the role of observers in preventing ballot-stuffing, vote-rigging and manipulated results. Drawing upon the notion of a "menu of manipulation," however, the concept of an electoral cycle suggests that failure in even one step in the sequence, or one link in the chain, can undermine electoral integrity, and ultimately democracy.<sup>53</sup>

The overall PEI Index is constructed from imputing missing values and then aggregating these forty-nine items into a 100-point scale. In the US, further research has expanded the comparison during the 2014 mid-term elections, using a similar expert-based survey to estimate and compare the integrity of US states (PEI-US 2014).<sup>54</sup> To monitor public opinion, the 2012 American National Election Study also included a special battery of five items designed to gauge the attitudes of the American electorate towards electoral integrity.

The PEI Index has been tested for external validity (with independent sources of evidence), internal validity (consistency within the group of experts), and legitimacy (how far the results can be regarded as authoritative by stakeholders).

The analysis demonstrates substantial external validity when the PEI data is compared with many other expert datasets, as well as internal validity across the experts within the survey, and legitimacy as measured by levels of congruence between mass and expert opinions within each country.<sup>55</sup> For example, the PEI-4.5 Index is significantly correlated with other standard independent indicators.<sup>56</sup>

### III: Comparing Electoral Integrity within and across States

What does this evidence suggest about the relative performance of US elections when compared with recent elections held in countries worldwide, as well as with similar post-industrial states and Western democracies?

[Figure 2 and 3 about here]

When evaluating the integrity of elections, experts rated America exceptionally poorly. Compared with all 153 countries in the survey, based on the average evaluations of both the 2012 and 2014 US elections, America scored 62 out of the 100-point PEI Index. Compared with the rest of the world, the U.S. ranks 52nd worldwide. The comparison of countries rated according to the PEI index are illustrated by the global map in Figure 2 and regional comparisons in Figure 3. Several Nordic welfare states—Denmark, Finland, Norway and Iceland—consistently lead the world in the quality of their elections, as in many other indicators of democratic governance. These countries are followed in the global rankings by Costa Rica (5th), Sweden (6th), Germany (7th), Estonia (8th), the Netherlands (9th) and Switzerland (10th). The fact that many long-established democracies score highly according to the survey suggests that, not surprisingly, historical experience of a long series of multiparty elections is important for their quality. At the same time, however, this is far from an inviolable rule: as well as the US, some other long-established Western democracies were not well rated, notably the UK. By contrast many of the newer democracies in the Baltics and post-Communist Europe (such as Estonia, Lithuania and Slovenia) also performed relatively well, as did Costa Rica and Uruguay in Latin America, Cape Verde and Benin in Africa, and the Republic of Korea in South-East Asia.

By contrast, countries holding elections scoring *least* well worldwide, ranked in the bottom ten, include Ethiopia (ranked 153rd), Burundi (152nd), Syria (151st), Equatorial Guinea (150th), Republic of Congo (149th), Haiti (148th), Djibouti (147th), Chad (146th), Cambodia (145th), and Afghanistan (144th). Their poor performance reflects the repression of political rights and civil liberties in these countries, as well as common problems of contentious contests flawed by violence, maladministration, and corruption. A more systematic comparison of all 153 countries in the study confirms the impression of the strong association between the PEI index and democratization (measured by the Freedom House/Polity IV index).<sup>57</sup>

[Figure 4 about here]

If the comparison is restricted to the two-dozen affluent post-industrial societies and long-established Western democracies with elections in the study, shown in Figure 4, the United States displays the lowest performance in electoral integrity; for example, the US scored 62 points out of 100, compared with scores in other Anglo-American democracies of 65 in the UK, 70 in Australia, 75 in Canada, 76 in New Zealand, as well as over 80 in the Scandinavian societies.

[Figure 5 about here]

To see whether these estimates remain robust, comparisons can also be drawn between the 2012 US Presidential elections and the 2014 US Congressional elections. Given the limited number of experts assessing each case, relatively modest differences across elections should not be exaggerated. Nevertheless, as shown in Figure 5, according to the two expert surveys, there are broadly similar assessments across both contests but some dimensions are rated marginally worse in 2014, including electoral laws and voter registration (probably reflecting the increasingly controversial debate in state houses and court-rooms), district boundaries, the vote count, and results. The evidence does not suggest that the quality of American elections has improved over these successive contests; if anything, problems are perceived to have worsened.

[Figure 6 about here]

To analyze the weakest links during the electoral cycle, Figure 6 illustrates the PEI scores by each of the eleven stages in the US compared with other similar Anglo-American democracies. The results suggest that, compared with these countries, US elections raised the greatest concerns among experts about electoral laws, voter registration, the process of drawing district boundaries, as well as the regulation of campaign finance.<sup>58</sup>

Finally, are these problems perceived just by technical election experts, or do these flaws matter also for ordinary citizens and the general public? Evidence from the sixth wave of the World Values Survey demonstrates that electoral integrity often has important consequences for public trust and confidence in the electoral process and institutions, support for democracy, civic engagement, and political representation.<sup>59</sup> By contrast, where citizens believe that widespread malpractices have occurred—whether falsely or correctly—then this corrodes citizens' trust in the electoral process, political parties, parliaments and governments, and confidence in democracy, depresses voter turnout and civic engagement, and thereby undermines channels of political representation.<sup>60</sup> In established democracies, minor malpractices can often be remedied through legal and

administrative reforms to electoral institutions and voting procedures without undermining support for the regime or destabilizing the state. In more challenging contexts, however, such as in transitional regimes, divided societies emerging from conflict, and fragile states, simple minor flaws—or even major failures in elections—can have far more serious impact, by potentially fueling social instability, riots, and violence in contentious elections, undermining fragile gains in democratization, and triggering popular uprisings and intercommunal conflict seeking revolutionary change.<sup>61</sup>

To see whether perceptions of electoral integrity matter for American voters, we can turn to the 2012 American National Election Survey, the standard study of voting behavior in the U.S., where the post-election wave contained several items using 4-point scales to monitor how ordinary citizens assessed electoral integrity in the US, including whether they approved or disapproved of the fairness of electoral officials, the fairness of media coverage of the campaign, whether votes were counted fairly, whether voters have genuine choice, and whether rich people buy elections. These items were highly inter-correlated so they were used to form a summary 20-point index of electoral integrity.<sup>62</sup> The results of the multivariate analysis confirmed that American perceptions of electoral integrity predicted significantly lower levels of reported voting turnout, even after controlling for several standard factors which are also associated with participation, including educational qualifications, age, sex, race, support for the winning presidential candidate and political interest. As shown in Figure 7, those with greater confidence in the integrity of the American electoral process were far more likely to vote. By contrast, as in many other countries, those citizens doubting the fairness of how elections worked were far more likely to stay home. Given that US turnout has long been amongst the lowest in Western democracies, typically about 10-20 points below equivalent European societies, it is vital to improve the integrity of elections.

[Figure 7 about here]

#### **IV: What Is to Be Done?**

By all these indicators, therefore, the evidence points to a range of enduring problems in American elections. Most attempts to strengthen US elections involve piecemeal reforms, often worthwhile but technical in nature.<sup>63</sup> These are equivalent to rearranging the deckchairs on the Titanic.

Instead what is needed is a more comprehensive wholesale plan addressing systematic and structural weaknesses at the heart of American elections. Several steps are recommended, illustrated in Figure 8, including a sequential process involving improving legal regulations, building the capacity of administrative agencies allowing these laws to be implemented efficiently and effectively, monitoring performance, and strengthening accountability and oversight. These are the initiatives commonly used in many countries around the world where electoral

assistance seeks to improve electoral integrity.<sup>64</sup> In practice, perhaps the most urgent practical steps in the US involve: (i) reforming electoral regulations for registration and balloting; (ii) building more impartial, independent, and professional electoral management bodies; (iii) monitoring performance and expanding transparency through electoral observers, comparative and state-level indicators, and watchdog groups; and (iv) strengthening dispute resolution mechanisms and oversight agencies.

[Figure 8 about here]

*(i) Legal regulations for registration and balloting*

The first step is to overhaul the basic regulation of registration and balloting, the source of so much controversy in US elections. The state laws which govern these processes in America have come under increasing scrutiny, although there is no consensus about the importance of the trade-off values of security versus inclusiveness, as well as the consequences of implementing new regulations. There is a complex hodge-podge of practices. Many states have sought to expand convenience voting, including facilities such as election-day registration; Online registration; Pre-registration (prior to attaining the age of 18); Voter identification requirements to cast a ballot; Voting rights for felons; Absentee ballots; Mail ballots; Early ballots; Provisional ballots; Publication of voter leaflets; and Publication and distribution of sample ballots. The National Conference of State Legislatures (NCSL) Election Laws database contains information on the election laws and procedures used in all 50 states ranging from voter identification requirements to methods of disseminating voter information.<sup>65</sup>

Are these measures effective? As discussed earlier, by reducing the logistical costs, it is hoped to boost turnout. Yet the measures do nothing to alter the other informational costs involved in voting, nor do they address the issue of genuine choice at the ballot box. Nevertheless, considerable research about the effects of these initiatives has been conducted, often by focusing upon the impact of introducing reforms into particular states, such as the use of all-postal voting in Oregon, or across American states, with some work in several other established democracies, such as the UK and Switzerland.<sup>66</sup> Despite the extensive body of literature, it still remains difficult to establish conclusively the effects of any single type of electoral law on participation, however, not least because multiple factors affect turnout.<sup>67</sup>

In one of the seminal early studies on convenience voting, Rosenstone and Wolfinger concluded that U.S. states which used the most relaxed registration processes had higher turnout, and they suggested that similar effects would follow

by lowering the costs of registration elsewhere in the country.<sup>68</sup> Similarly, Piven and Cloward have argued that legal-institutional factors, including registration procedures, are the most important barriers to voting participation for disadvantaged groups in America.<sup>69</sup> Burden et al. find that while election-day registration has a positive effect on participation, another convenience measure, early voting, actually tended to depress turnout.<sup>70</sup> So while most empirical studies find that stricter registration and balloting rules do correlate with lower turnout, at the same time, reforms designed to ease the process do not necessarily boost participation substantially.<sup>71</sup> U.S. states like Minnesota, with strong participatory cultures, are also most likely to adopt lenient registration laws, such as election day registration. As a result, it may be misleading to extrapolate from these contexts to assume that similar effects would arise from exporting lenient registration facilities to other states, like Alabama, with more restrictive traditions of voter rights.<sup>72</sup> Convenience voting facilities are often most often used by engaged citizens, reinforcing their propensity to vote, but this may thereby exacerbate any social gaps in turnout arising from age, socioeconomic status, education, ethnicity, or sex.<sup>73</sup> Additionally, critics claim that well-meaning procedural reforms making legal requirements for the registration and voting process more lenient may also have unintended consequences, such as through heightening security risks, undermining the secrecy of the ballot, increasing administrative costs and complexities, producing inconsistent and unequal voting rights across America, and thereby possibly ultimately damaging public confidence in electoral integrity.<sup>74</sup> Elsewhere, for example in the UK, the introduction of online registration, while seen as part of the common-sense drive to modernize elections, has also had consequences by making the system more vulnerable to fraud.<sup>75</sup> The desire for inclusive participation needs to be counterbalanced by the need to protect security of the ballot.<sup>76</sup> The introduction of electoral reforms introducing convenience voting may seem like a straightforward ‘fix’ for low turnout, and the results may be positive, but in practice, any effects need to be carefully monitored, with systematic evaluation research examining the implementation of any new regulations.

As discussed earlier, many other states have sought to implement stricter photo IDs for registration and voting, a process which could be straightforward if photo IDs were free and provided by state and federal agencies. In India, for example, a vast and complex developing country and federal state containing over 800 million people, all Indian citizens who qualify to vote are provided by the Indian Electoral Commission with free photo IDs which are matched to identical photo records listed against all names on the electoral register. The card also serves as general identity proof, address proof, and age proof for casting votes as well as for other purposes such as buying a mobile phone SIM or applying for a passport. If India can do this, in the days of smart credit cards and digital payments through smart phones, then this should not be beyond the capacity of the United States federal government. This is only one dimension of improving secure voting records – electronic machines which do not leave a paper trail also need replacing, and digital voting records must have overhauled security against hacking. All these steps

would strengthen public confidence in the integrity of the electoral process and undermine criticisms of convenience voting.

*(ii) Building Independent, Impartial and Professional Electoral Management*

Passing new laws and regulations is only the first step and this requires the capacity for local officials and poll workers to implement these in an impartial and uniform manner. Electoral officials are the front-line agencies implementing electoral laws and regulations. Officials should ideally meet several general guiding principles and values which are common in public sector management and which are thought to ensure legitimate and credible processes and outcomes meeting international standards. These principles include de facto *independence* from undue interference in their activities from the executive branch or partisan forces, *integrity* so that the process is free of fraud and corruption, *transparency* to build trust in the accuracy and honesty of the process, *efficiency* so that services are delivered effectively, equitably, and within budget, *impartiality* so that officials are not biased towards any single contestant, and *professionalism* so that staff have the training, expertise and resources to manage tasks well.<sup>77</sup> Similar principles are echoed in many of the practical guidelines designed to strengthen electoral administration, such as by International IDEA, IFES and the OSCE.

The organizational structure, legal mandate, and administrative functions of electoral agencies vary substantially from one country to another, however, as does the de facto autonomy of these agencies, according to their constitutional and legal status, their scope and mandate, provisions for the nomination, appointment, and removal of senior members, the capacity for external actors and other branches of government to overrule the agency's decisions and oversee its operations, and the body's financial independence.

The primary models of electoral administration concern whether the main actors are governmental or independent agencies (on the horizontal axis) and whether decision-making and regulations are largely centralized or localized (on the vertical). Based on these distinctions, US electoral administration is primarily governmental-localized. This is, quite possibly, perhaps the worst combination. It maximizes the opportunities for partisan interests *and* lack of uniform standards, generating a multitude of problems.

*Decentralized and partisan agencies*

In the US, electoral administration has traditionally been handled at a highly decentralized level. The American constitution gives state and local officials primary responsibilities for administering elections. The system relies upon partisan local officials who, in turn, supervise volunteer and poorly-trained part-time poll workers. Traditionally, due to constitutional requirements, the US federal government's role in elections has been strictly limited, although this role has expanded somewhat in recent years with attempts to improve standards amid growing concern arising about the uneven performance of local and state electoral

bodies, leading to the 2002 Help America Vote Act and establishment of the bipartisan U.S. Election Assistance Commission.<sup>78</sup> The decentralized structure hinders the implementation of effective electoral reforms across the whole country, such as establishing uniform opening times for polling places, professional training programs for managers and poll workers, more uniform standards for equipment, and a one-stop shop providing citizens with information about where and how to register and vote. People's basic rights to register and opportunities to vote should not vary according to whether they happen to live in Texas, North Carolina, Oregon or Massachusetts. A more independent and less partisan-dominated agency could reduce partisan interests and improve professional standards of electoral administration.

This contrasts with many established democracies where central authorities are responsible for managing and over-seeing elections. In the government model, those units are typically located in the Ministry of Interior, Ministry of Justice, Home Office, or equivalent department of state. This arrangement persists today in several European states, such as the Swedish Electoral Authority, the German Ministry of Interior, the Swiss Federal Chancellery, and the Norwegian Ministry for Local Government and Regional Development. In these countries, the civil service has a general reputation for professional neutrality and impartiality. Among all countries worldwide, International IDEA estimates that around one quarter continue to use the governmental model for running elections.<sup>79</sup> In this model, unlike in the US, there is a fair degree of centralization to ensure professional standards and uniform practices operate across the whole country, such as on basic matters of voter registration and balloting procedures, with accountability to the national legislature. The unit located within a central government department is typically responsible for administering elections, staffed by permanent civil servants and headed by a cabinet minister who is directly accountable to the legislature, and thus indirectly to the electorate. Where EMBs under the Governmental Model exist at national level, they are usually led by a minister or civil servant and they are answerable to a Cabinet minister. With very few exceptions they have no 'members'. Their budget falls within a government ministry and/or under local authorities.<sup>80</sup> This model persists in several European countries.<sup>81</sup> The day-to-day administration of elections, such as maintaining voter registries, organizing balloting, running polling places, and counting ballots, is devolved to government authorities at provincial, state, municipal, and constituency levels operating under uniform regulations and voting rights. The national parliament retains the primary prerogative of law-making, establishing the statutory framework of electoral regulations, with regional and local officials responsible for the detailed application and implementation of these procedures in each locality, and the courts interpreting the laws and adjudicating disputes.

One additional potential advantage of the governmental-centralized model is that electoral authorities in many democracies such as the UK can call upon the existing resources of the public sector to run elections, including commonly deploying the permanent pool of skilled, experienced, and trained full-time employees at national and local authority levels to administer contests. Electoral authorities can also use the existing technological and communication infrastructure of national and local

governments, reducing overhead costs and the duplication of services. In democratic states, the model also provides a clear chain of accountability for any errors which arise. Local government staff are supervised by national electoral officials who are, in turn, accountable to a government minister and thus ultimately subject to parliamentary oversight and the general electorate. The U.S. Electoral Assistance Commission (EAC) was established in 2002, in reaction to the Florida debacle, and strengthening and expanding its role and mandate would be one important way to improve uniform standards across America.<sup>82</sup>

At the same time, however, the main danger is that where electoral administration is the responsibility of civil servants working in central ministries or local authorities, and thus subject to executive control and legislative oversight, the process is thought vulnerable to either the actual or the perceived abuse of power and the risk of manipulation to benefit the interests of the governing party or parties. This is particularly dangerous in states with predominant parties, fragmented opposition parties, and weak parliamentary and judicial oversight of the executive. Electoral officials need to be impartial and independent of government or other external influences from political parties, special interests, or the military if the process and results are to be trusted as credible, transparent, and fair. What works in Sweden, Belgium, and Denmark may therefore be far from appropriate in newer democracies which also have a governmental model of electoral administration.

### *Independent administrative agencies*

Today two-thirds of all countries have established an independent administrative agency which is legally separate from government to manage elections (found in 131 countries out of 187 independent nation-states worldwide or 70%).<sup>83</sup> On the vertical axis, these institutions can also be highly centralized, where most key decisions are taken by a commission or agency with nationwide authority to regulate and manage lower levels of governance, or institutions they may be highly decentralized, allowing local countries and states/provinces to determine their own arrangements.

Recent years have seen several post-industrial countries adopting new public sector management reforms where several government functions are transferred from central department of state to specific administrative and regulatory agencies in the public sector.<sup>84</sup> In several Anglo-American countries, including New Zealand, the United Kingdom and Australia, in recent decades the tendency has been to establish more specialized organizations central agencies for managing elections, thereby delegating responsibility for public services which used to be the province of large bureaucratic ministries. Similar trends have been observed in Canada, France and the Netherlands, although they are thought to be less marked in Belgium, Finland, Germany, and Sweden.<sup>85</sup> Independent regulatory and administrative agencies have been established in the public sector to provide delegated authority over many policy areas, such as environmental protection, food safety, pharmaceuticals, and telecoms. It is widely believed that this separation of specialized agencies from direct government control avoids political interference and potential conflicts of

interest, as well as being more efficient, and thus strengthens the delivery of goods and services in the public interest.<sup>86</sup>

Reflecting this development, many countries transferred responsibilities for election management from government departments to legally independent administrative agencies, with chief executives composed of experts or partisan members, which operate at arm's length from the executive. The name of these bodies varies in different countries and they are often called electoral commissions, electoral tribunals, electoral boards, electoral courts, departments of elections, election institutes or election councils, and so on, known generically as election management bodies (EMBs).<sup>87</sup> Agency models of electoral administration create 'arms-length' separation from the government through the mechanism of establishing de jure formal legal independence. The agency model has often been established to run the first elections following regime transitions, such as the National Election Commission in Poland, the Independent Election Commission in South Africa, and the Central Election Bureau in Romania. The model has also become increasingly popular among established democracies; for example, through agencies such as the Australian Electoral Commission (since 1984), and the UK Electoral Commission (since 2000). This type of arrangement is described by International IDEA as those where "elections are organized and managed by an EMB which is institutionally independent and autonomous from the executive branch of government, and which has and manages its own budget. Under the Independent Model, an EMB is not accountable to a government ministry or department. It may be accountable to the legislature, the judiciary, or the head of state. EMBs under the Independent Model may enjoy varying degrees of financial autonomy and accountability, as well as varying levels of performance accountability. They are composed of members from outside the permanent civil service."<sup>88</sup>

The main advantage of the agency model is that by insulating electoral officials from outside pressures, this helps to curb any potential conflict of interest, partisan meddling, and the abuse of power by external forces, especially where it is suspected that the electoral arbitrator is biased towards incumbent politicians, political parties, the governing party, or powerful elites. By delegating responsibility for electoral administration to independent agencies, politicians agree to abide by the rules, strengthening the credibility of the electoral process.<sup>89</sup> The importance of independence is a prevalent perspective within the international community, for example a recent report for Elections Canada emphasizes: "Most election officers and scholars regard independence as the single most crucial test of the soundness of electoral governance arrangements."<sup>90</sup> The major risks of concentrating responsibilities in the hands of elected officials is that decisions are more easily manipulated by the party or parties controlling the executive, for example if the outcome of a contest threatens the power of incumbent elites.

There are many important variations in these arrangements across countries, however, especially in degree of centralization and local decentralization, reflecting long-standing contrasts between unitary and federal states. The United States, in particular, remains exceptional compared with most other long-standing

democracies in its high degree of partisanship and decentralization. Yet regulatory policies and administrative procedures are less coherent if decision-making is dispersed across multiple independent national agencies, weakening coordinated or 'joined-up' governance, for example if separate specialist bodies are established for the regulation of campaign broadcasting, the allocation of political finance, party registration, and boundary delimitation. With the decentralization of decision-making to local authorities, basic procedures, such as the hours polling stations are open, or the qualifications and application processes to be included on the electoral register, vary from one locality to another and thus citizens' fundamental voting rights are not consistently applied across all jurisdictions. Some poorly resourced local agencies, which have suddenly to ramp up efforts to run contests at periodic intervals, may lack the professional experience, permanent personnel, and technical machinery to manage these tasks well. Decentralization giving more discretion to local electoral officials also expands the number of entry points and thus the potential risks of corruption and malfeasance. If problems arise, it remains more difficult to establish 'where the buck stops' among multiple agencies with overlapping functions, weakening accountability. For example, even if both Democrats and Republicans agree that there should not be excessively long lines at polling stations, it remains difficult to implement straightforward solutions in the United States, such as those suggested by the Presidential Commission, due to the dispersed authorities of the state and local bodies running elections.<sup>91</sup> Therefore structural reforms to the process of electoral management should be considered in the US, at minimum strengthening the roles of the FEC and EAC, and promoting more autonomous regulatory agencies with uniform professional standards.

### *(iii) Monitoring Performance*

In general, attempts at monitoring electoral integrity are part of a broader set of initiatives concerning governance transparency and accountability. These qualities are generally thought to help plug the leaky pipes of corruption and inefficiency, channel government spending more efficiently, and produce better public services. In the field of electoral governance, greater openness about the rules and procedures, outcomes, and decisions processes used by electoral authorities is widely assumed to build public trust, improve policy-making, and facilitate accountability.<sup>92</sup> By revealing problems, it is generally believed that the reports published by election observers, the news media, and citizen watchdog groups will pressure electoral officials and elected representatives to implement reforms and deter malpractices in future contests. By contrast, in the words of the Open Society Institute: "Silence and secrecy are two of the most powerful tools that governments can employ to mute critics and cloak their actions from public scrutiny."<sup>93</sup> Even if unable to generate positive benefits, there is still a presumption in favor of open electoral governance since, by contrast: "The absence of transparency in electoral processes invariably leads to the suspicion that fraudulent activities are taking place."<sup>94</sup> Whether disclosure alone has the capacity to deliver major benefits, however, seems unlikely unless it is also coupled with other reforms which improve

the professional standards of electoral administration and reduce the role of partisan interests.<sup>95</sup>

*(iv) Improving Federal Oversight and Dispute Resolution Mechanisms*

The judiciary has traditionally played an active role in determining whether new state laws governing voting rights and electoral procedures meet constitutional standards, including striking out many of the most recent attempts to introduce strict voter photo identification requirements.<sup>96</sup> The courts, rather than the legislative branch, have also arguably played the most important role in determining contemporary campaign finance regulations and in *Bush v. Gore*, 531 U.S. 98, in 2000 the rulings by the Supreme Court essentially determined the outcome of the race, allowing the certification of George W. Bush's winning Florida's electoral college votes to stand.<sup>97</sup> Without a replacement for Justice Antonin Scalia, the Supreme Court composition currently remains evenly divided. The danger therefore arises that any legal appeals arising from the November 2016 elections, such as allegations of local voting irregularities or malpractices, could be deadlocked. The divisive nature of the issues may leave the eight justices unable to decide who can cast the ballots that will determine control of the White House and Congress. In a closely fought and highly polarized race, in particular, disputes which are unable to be decided by the Courts could well serve to delegitimize the outcome.

In many other countries, however, special courts and mediation processes have often been well established in advance to deal with any electoral disputes and problems which arise throughout all stages of the electoral cycle. The aim is to deal with complaints in a timely, just, and impartial manner, avoiding partisan conflict, upholding rights, and facilitating acceptance of the eventual result by all sides in any dispute. Effectives systems of electoral justice safeguard the legality of the process and the rights of citizens, promote consensus, and strengthen the legitimacy of the process. Electoral Dispute Resolution Systems, which are independent of electoral management bodies, take different institutional forms in different countries, as described a comprehensive global handbook published by International IDEA, but the core idea is now widely accepted and the US could learn from these practices.<sup>98</sup>

## **V: Conclusions and Recommendations**

In conclusion, there is considerable evidence that the way that American elections work has become increasingly problematic and piecemeal reforms will not be adequate to compensate for growing party polarization and declining public confidence, both of which have risen since 2000. These tendencies have been heightened by events during the 2016 campaign. The idea of system support by David Easton suggests that many people may be critical of elected leaders and representatives, as well as the way that representative institutions work. But this, by itself, can be regarded as a healthy process which does not necessarily

undermine the public's faith in democracy.<sup>99</sup> If the basic rules of the game come under growing scrutiny, however, and there little agreement about how elections should function in any state, and sore losers are willing to throw around cavalier accusations of fraud and vote rigging, then this is far more likely to trigger a genuine legitimacy crisis in American democracy with consequences far deeper and more damaging than the events of Florida. Time will tell whether future U.S. elections work smoothly or encounter major problems. But in close and highly polarized contests, with diverse practices of electoral administration heavily reliant upon the local decisions of partisan officials, and the best efforts of poorly trained poll workers, American elections are risky enterprises where outcomes may be determined by the legal wisdom of the courts rather than a count of the votes cast in the ballot box.

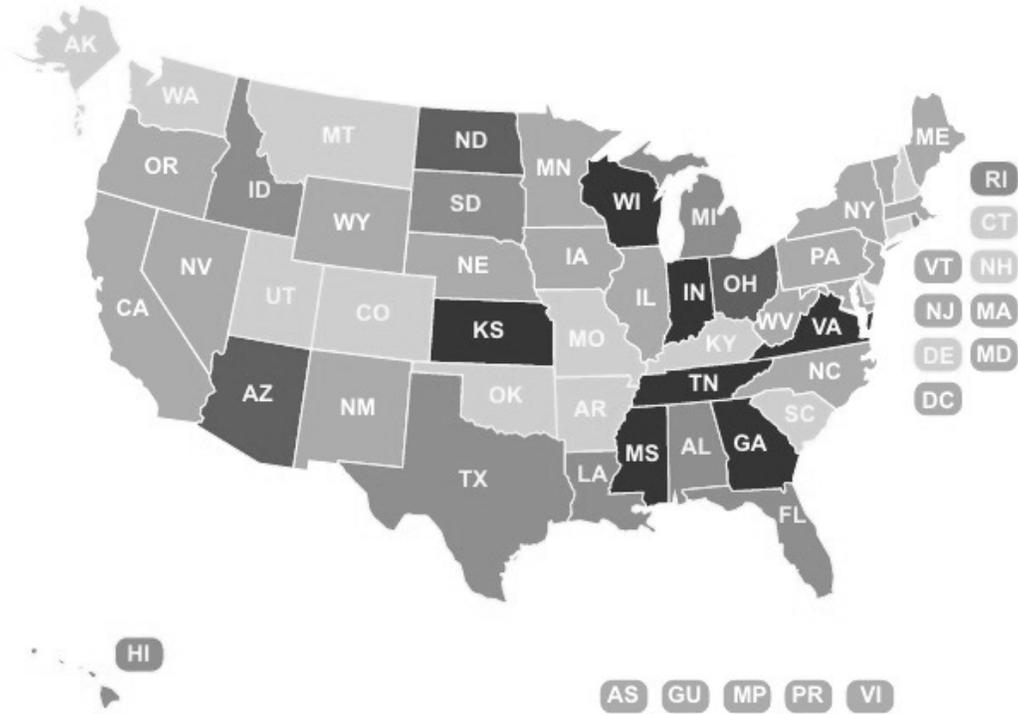
Several major challenges face U.S. elections, including deepening party polarization over electoral procedures, the risks that electronic records are open to hacking, and the impact of deregulating campaign spending, all compounded by the lack of professional standards of electoral management. Evidence from expert surveys suggests that, although some claims of fraud are politically driven and without foundation, there is a rational basis for concern. Cries of wolf are common but this does not mean that alarm is without foundation. The evidence shows that recent US elections display the worst performance among two-dozen Western democracies.

Policy reforms designed to strengthen US electoral laws and procedures include electoral reforms designed to build independent and impartial electoral management bodies, develop better dispute resolution mechanisms, and strengthen transparency, and accountability mechanisms. Matters of electoral governance should not be determined through laws enacted by self-interested partisan representatives in state houses, -- the equivalent to putting the fox in charge of the chicken coop. Instead, the reform process needs to engage us all. By themselves, the proposed reforms will not automatically restore confidence in elections overnight, but they are the first step in the long-term process stemming the loss of public trust in American elections.

**Figure 1**

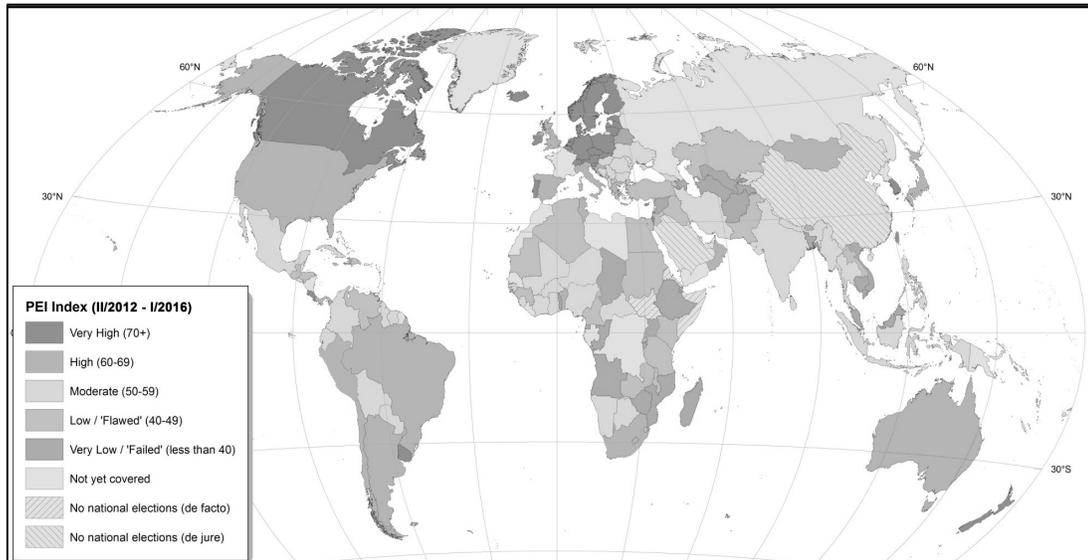
**Voter Identification Laws in Effect in 2016**

Strict Photo ID	Strict Non-Photo ID	Photo ID requested	ID requested; photo not required	No document required to vote
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**Source;** <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

**Figure 2: World map of electoral integrity**



**Note:** Mean levels of electoral integrity in national parliamentary and presidential elections from mid-2012 to mid-2016.

**Source:** The Perceptions of Electoral Integrity expert survey (PEI-4.5), Electoral Integrity Project [www.electoralintegrityproject.com](http://www.electoralintegrityproject.com)

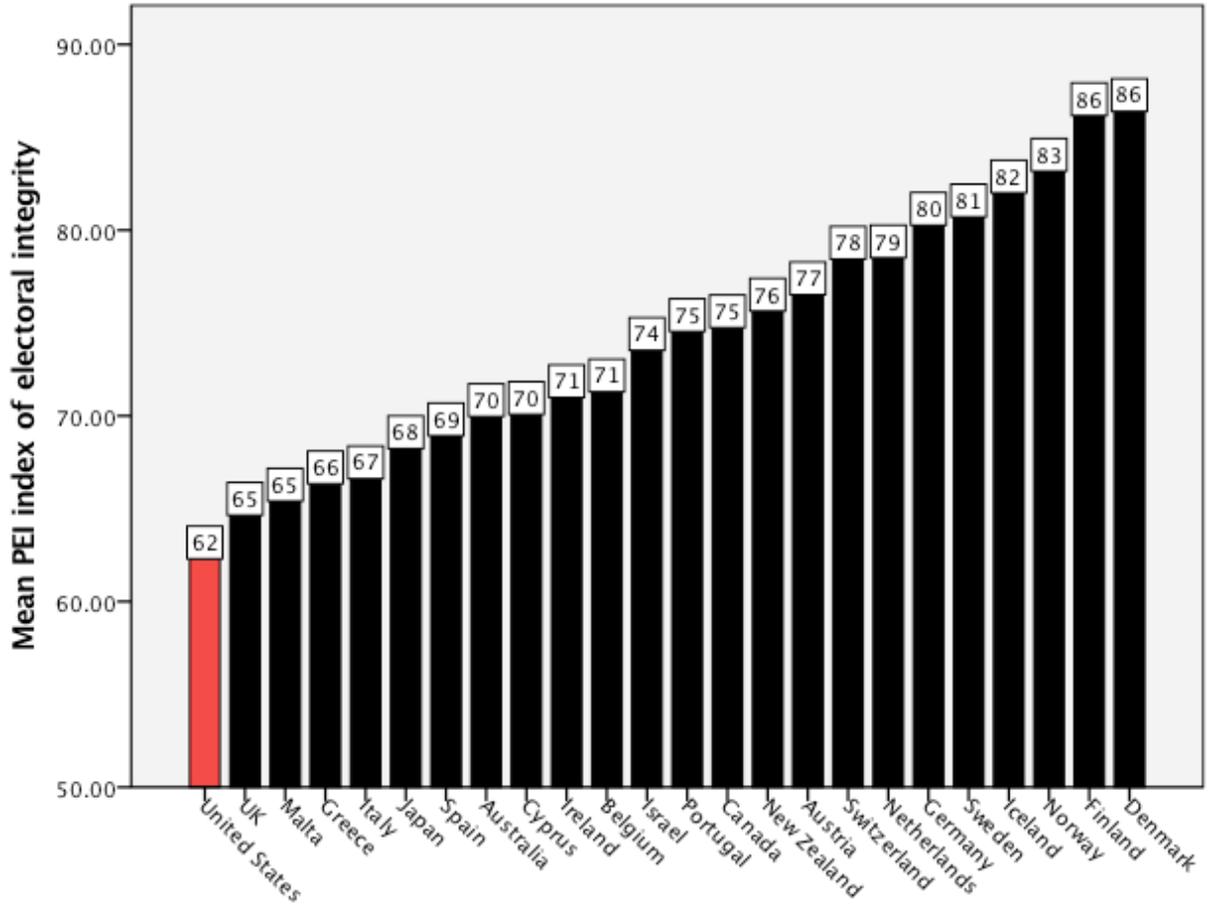
Figure 3: Electoral integrity by world region

Africa	PEI	Asia-Pacific	PEI	C&E Europe	PEI	Middle East	PEI	Americas	PEI	Scandinavia	PEI	W.Europe	PEI
Cape Verde *	71	New Zealand	76	Estonia	79	Israel	74	Costa Rica	81	Denmark	86	Netherlands	79
Benin *	69	Republic of Korea	74	Lithuania	77	Tunisia	67	Uruguay	75	Finland	86	Switzerland	78
Mauritius	64	Taiwan *	73	Slovenia	77	Oman	60	Canada	75	Norway	83	Austria *	77
Rwanda	64	Australia	70	Czech Republic	76	Kuwait	55	Brazil	67	Iceland *	82	Portugal *	75
South Africa	63	Japan	68	Slovak Republic *	75	Iran *	50	Chile	66	Sweden	81	Belgium	71
Lesotho	63	Mongolia *	64	Poland	74	Turkey	48	Grenada	66			Ireland *	71
Namibia	60	Vanuatu *	63	Latvia	72	Jordan	46	Jamaica *	66			Cyprus *	70
Ivory Coast	59	Micronesia	61	Croatia	67	Iraq	44	Argentina	64			Spain *	69
Sao Tome & Princip	58	Bhutan	61	Georgia	59	Egypt	42	Barbados	63			Italy	67
Botswana	58	India	59	Moldova	57	Bahrain	38	United States	62			Greece	66
Ghana	57	Samoa *	57	Bulgaria	56	Afghanistan	32	Peru *	62			Malta	65
Sierra Leone	57	Solomon Islands	57	Hungary	56	Syria *	25	Panama	60			United Kingdom	65
Guinea-Bissau	54	Maldives	57	Albania	54			Colombia	60				
Nigeria	53	Indonesia	57	Kyrgyzstan	54			Mexico	57				
Burkina Faso	53	Myanmar	54	Bosnia	52			Cuba	56				
Mali	52	Nepal	54	Serbia *	52			Bolivia	55				
Central African Rep	52	Fiji	53	Ukraine	51			Ecuador	55				
Niger *	52	Singapore	53	Romania	51			Paraguay	55				
Malawi	48	Philippines *	52	Macedonia	48			El Salvador	54				
Cameroon	46	Sri Lanka	52	Kazakhstan *	45			Belize	53				
Swaziland	45	Thailand	51	Armenia	44			Guyana	53				
Comoros *	45	Pakistan	50	Uzbekistan	39			Suriname	50				
Zambia	44	Laos *	48	Turkmenistan	38			Guatemala	48				
Mauritania	44	Bangladesh	39	Belarus	36			Venezuela	45				
Tanzania	44	Malaysia	35	Tajikistan	36			Honduras	45				
Sudan	43	Vietnam	34	Azerbaijan	35			Dominican Rep *	44				
Algeria	43	Cambodia	32					Haiti	28				
Guinea	42												
Kenya	41												
Madagascar	39												
Togo	38												
Uganda *	37												
Zimbabwe	35												
Angola	35												
Mozambique	35												
Chad *	31												
Djibouti *	29												
Congo, Rep. *	27												
Equatorial Guinea *	25												
Burundi	24												
Ethiopia	23												
<b>Total</b>	<b>47</b>	<b>Total</b>	<b>56</b>	<b>Total</b>	<b>56</b>	<b>Total</b>	<b>48</b>	<b>Total</b>	<b>57</b>	<b>Total</b>	<b>84</b>	<b>Total</b>	<b>71</b>

**Note:** Green = High to Very High Electoral Integrity (PEI Index of 60+); Yellow = Moderate Electoral Integrity (50-59); Red = Low to Very Low Electoral Integrity (less than 50).

**Source:** The Perceptions of Electoral Integrity expert survey (PEI 4.5) \* = updated ratings in 2016.

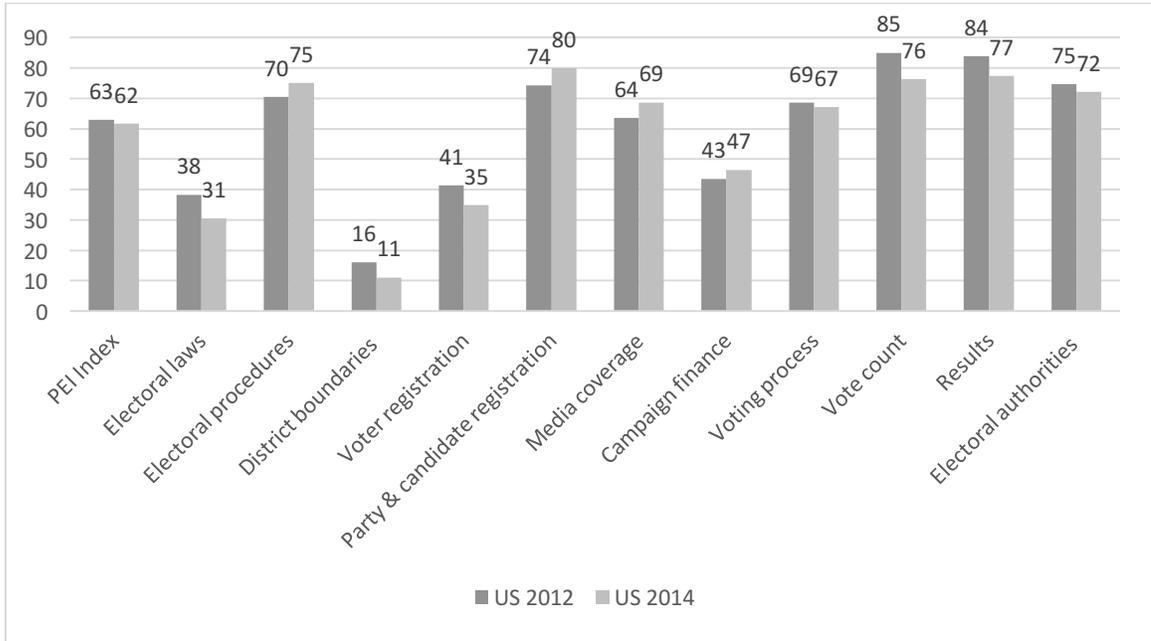
Figure 4: Electoral integrity in 24 Western democracies



**Note:** Mean levels of electoral integrity in national parliamentary and presidential elections from mid-2012 to mid-2016.

**Source:** The Perceptions of Electoral Integrity expert survey (PEI-4.5), Electoral Integrity Project [www.electoralintegrityproject.com](http://www.electoralintegrityproject.com)

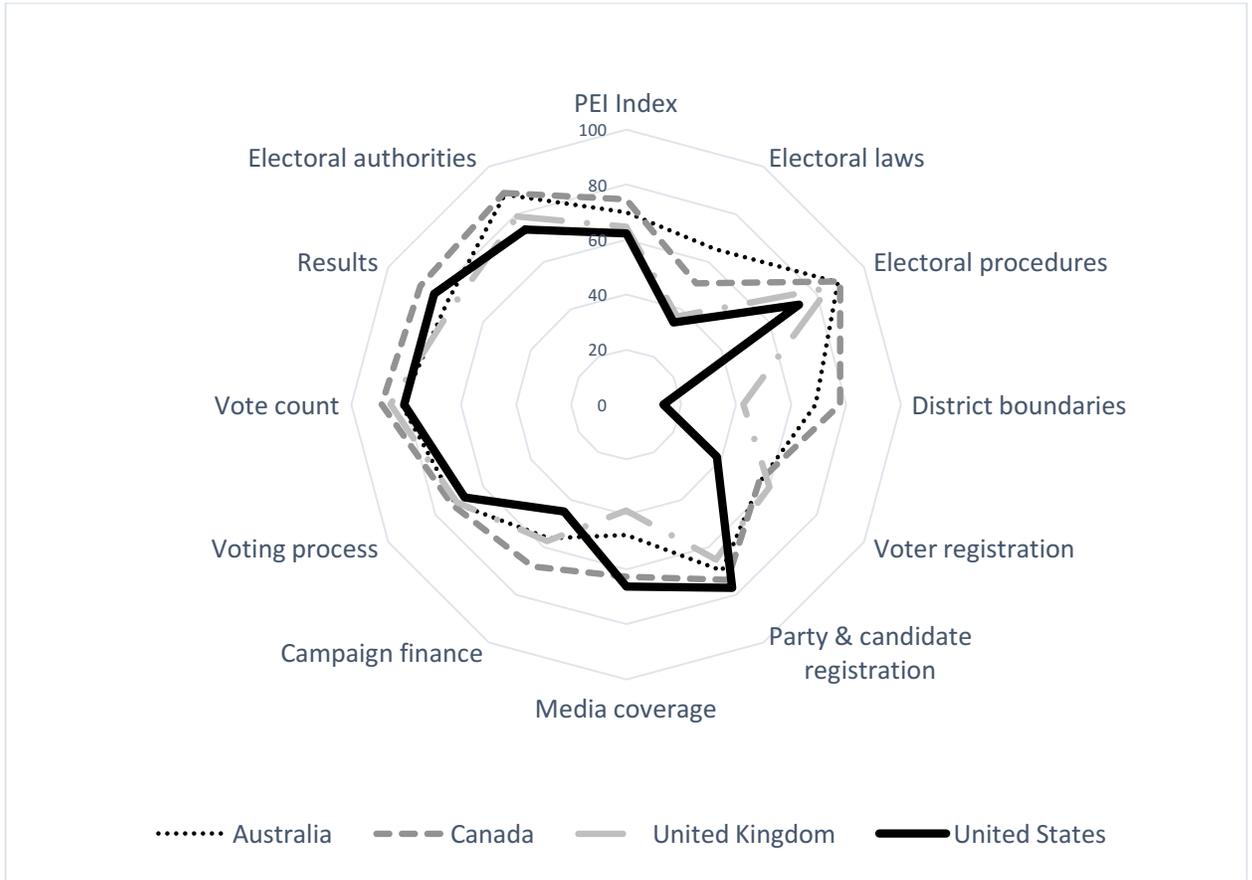
**Figure 5: Electoral integrity in the 2012 and 2014 US elections**



**Note:** Mean levels of electoral integrity in the 2012 presidential elections and the 2014 Congressional elections in the US.

**Source:** The Perceptions of Electoral Integrity expert survey (PEI-4.5), Electoral Integrity Project [www.electoralintegrityproject.com](http://www.electoralintegrityproject.com)

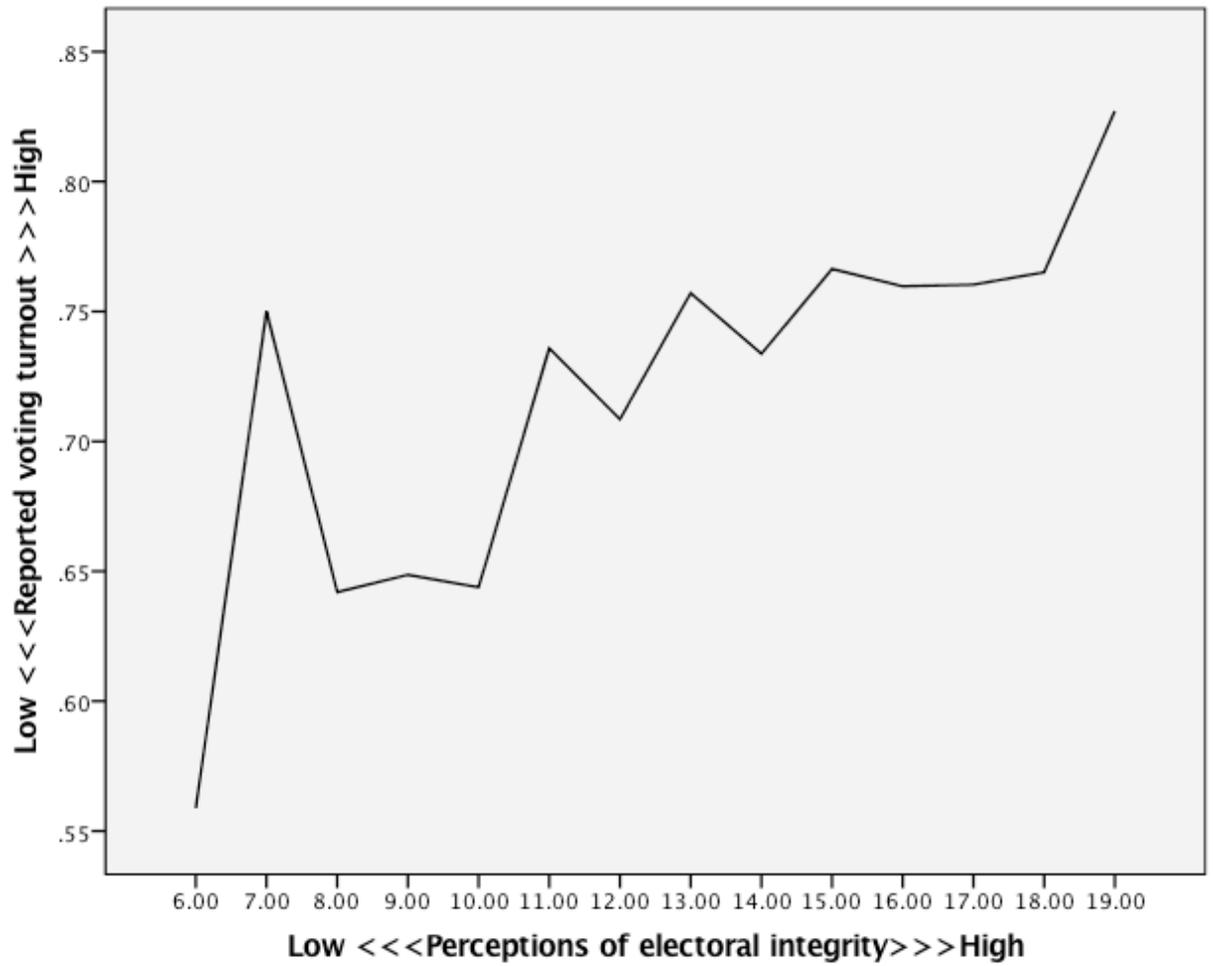
**Figure 6: Electoral integrity by stages in Anglo-American democracies**



**Note:** Mean levels of electoral integrity in national parliamentary and presidential elections from mid-2012 to mid-2016.

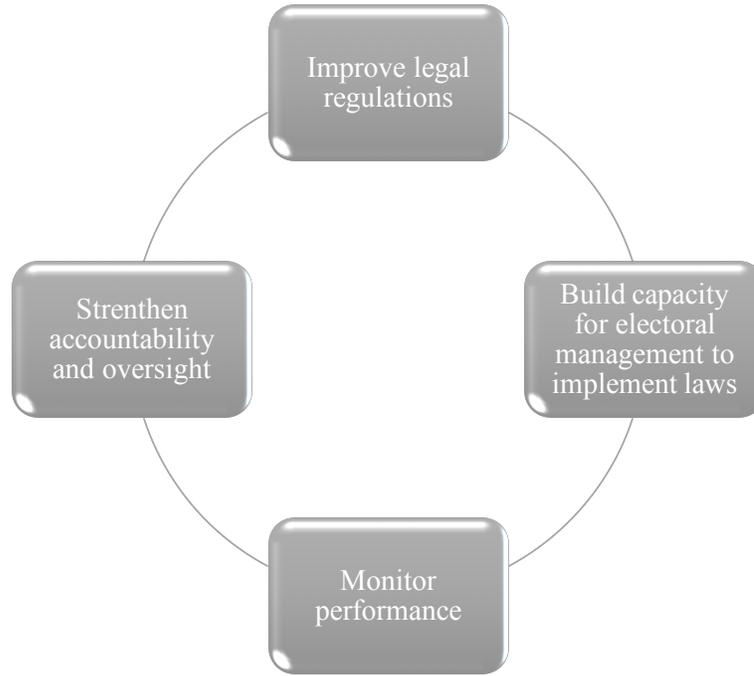
**Source:** The Perceptions of Electoral Integrity expert survey (PEI-4.5), Electoral Integrity Project [www.electoralintegrityproject.com](http://www.electoralintegrityproject.com)

**Figure 7: American perceptions of electoral integrity and voting turnout**



**Source:** American National Election study 2012.

**Figure 8: Recommended sequence of reforms**



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