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MAKING EVERY VOTE COUNT: PROTECTING ELECTION INTEGRITY

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UNCORRECTED TRANSCRIPT

PANEL:

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EISEN: Good morning, everyone, who's here with us in person. And good morning to the audience watching this streaming and on C-SPAN. I want to welcome everyone to the Brookings Institution for our panel, which could not be more timely about making every vote count. Protecting in election integrity. We have experienced unprecedented threats to democracy and to the rule of law in the United States in recent years. I'm going to be here today with my distinguished panelists to discuss them. I'm Norman Eisen, a senior fellow in Governance Studies here at the Brookings Institution. And I'd like to introduce my panelists and then we'll go across the panel with our first questions about the current threat profile, including breaking news in recent days that, in my view, have heightened the risk to American elections, the foundation that gives legitimacy to American democracy. And then because we pride ourselves at Brookings, not just discussing the threats, but coming up with practical solutions, I'm going to ask my panelists to address those as well. To my immediate left is Washington Post columnist, my friend Jennifer Rubin. And we'll ask Jen to reflect on some of the timely issues that have been in the news at The Post to kick off the conversation. Next to Jen is Ezra Rosenberg, the director of the Voting Rights Project at the Lawyers Committee for Civil Rights under Law. And Ezra is one of our nation's most distinguished advocates for voting and civil rights. Following that, my Brookings colleague Elaine Kamarck, the founding director of our Center for Effective Public Management and a senior fellow with me in Governance Studies. And finally, last, but by no means least, Ben Ginsberg, the Volker Distinguished visiting fellow at the Hoover Institution of Stanford University and the co-chair of the Pillars of the Community program, which you'll hear about today. Very interesting effort to deal with some of the crises that are afflicting confidence in our elections. Interesting and I daresay effective. With that, I'll just add one more word about the extraordinary moment in which we find ourselves and then turn it over to our panel. And if you thought that the events of the post election of 2020 were compelling, then like me, you have watched in alarm as instead of that fire of disinformation, baseless litigation, attacks on the integrity of the election and election workers, instead of that fire burning out, it has continued to rage. We find ourselves once again, four years later, on the cusp of a presidential election in which the threats have metastasize is not the identical threats, but the threats are significant. The good news is, as you'll hear today, that the preparation and the response to those threats have also evolved, are stronger than ever. And indeed, as we'll discuss, for example, when we talk about the most likely inflection point in the election of certification, where here at Brookings, I have an important new report out today on the 50 counties across the country, edited by my friend Elaine, where the certification threat is greatest. But their responses have involved have evolved as well. It's a very important and timely discussion as we move. Move into the election season. And I'm going to begin by going across the panel and asking each of the panelists to define the threat profile. We are taking questions from you online and on Twitter. So if you wish to ask a question, I will be checking. I am

not checking my email if you see me checking online. One of the things that we pride ourselves on with these live events is being watched across the country and around the world. One of the things that we prize about these events are the ability of our remote audience to communicate with us. You can do that by engaging with the conversation on social media at @BrookingsGov #electionintegrity. And please do send your questions, folks we will pose them to the panel. Jen Rubin, one of the bastions of American democracy and of our elections has been the free press. It is no coincidence that a free and vocal press holding power to account is the very first of the rights in the Bill of Rights. You have been in the middle of a controversy about the Washington Post and its failure, breaking a tradition of recent years to endorse a presidential candidate. Will you share with us your reactions from inside this critical American institution, a pillar of our democracy, you might say? I'm not taking sides in the debate, Jen Will you share your reflections and how that bears upon our election integrity, our election season and our democracy?

RUBIN: Well, thank you for having me, and thank you for putting me on the spot. I would never shy away from such a provocative question. Let me start by saying Norm is right. The press does several things in the context of an election. First of all, it must sort out fact from fiction. And you have seen a number of stories in The Washington Post and The New York Times looking at some of the bogus claims that are being advanced in preparation to challenge the election results. And I point to one specific one, which is the notion that undocumented immigrants are registered and are voting in large numbers. This is false. It has never been the case. And the media, to their credit, have been debunking this with specifics, with data to hopefully inoculate the public about what is going on. The second thing, obviously, is to cover the race in all of its exactitude and to lay out the stakes. And here I think the greatest incomplete. What we have here is not an ordinary election but a test of democracy. We do not have two ordinary candidates. We have one candidate who has rejected democracy, rejected pluralism, rejected the rule of law. And to continue to cover him as if there were no difference between the candidate aside from policies, does I think, a great disservice to the American electorate. So that, I think, has been an ongoing concern. But to Norm's point about the endorsement. Papers endorse candidates for several reasons. One is, since they do have editorial pages, they think it's important to let their readers know their ultimate verdict on candidates that they've been opining on throughout the campaign. So if there is any doubt as to where the paper editorially thinks voters would be most advised to cast their vote, this puts an exclamation at the other. They do is simply to put a stake in the ground for the independent press to say to both candidates, We're not concerned from a journalistic perspective who wins because we are going to maintain our integrity and our position no matter which one of you people win. It's a way of declaring independence from power. Now, some papers don't do

this, but when you do it and then you stop doing it in the most consequential election of our lifetime and you do it after you have endorsed Senate candidates, county candidates, local candidates, and give the excuse that we're simply going to get out of the business, that does huge damage. And it's in two respects. First of all, the explanation given detracts from the integrity and the credibility of the entire organization. You have to believe that what The Washington Post puts out there is it's good faith, investigative and opinion driven conclusions. If you think they are lying to you on one subject, you may be concerned that they are lying to you or pulling their punches on another. The second is a broader concern that runs beyond America, that runs internationally. For those of you who are international scholars, and that is the real danger of self-censorship. It is a. Absolute consistent pattern, whether you're talking about China, Eastern Europe, Africa, the Middle East, that authoritarians anticipate and encourage people in advance of any kind of repression to self-censor, to be concerned about the ramifications of speaking out to fear that their financial and social and political and every other concern will be harmed. So they choose not to speak. They choose to pull back. It happens in every society in which democracy is facing a challenge from an authoritarian regime or an authoritarian threat. And if you have billionaires who own major news organizations who are afraid to speak out, what does that say about the rest of us? That should be a flashing red light, not only for the institution but for the electorate and for the candidates that we're facing.

EISEN: Is it uncomfortable for you to criticize your own institution, The Washington Post?

RUBIN: If I didn't, I should pack up my laptop and go home. I owe it to my readers to give them my candid, I think, well-founded views. At the Washington Post's editorial page in the tradition of the late, magnificent Fred Hiatt. We also do reporting. It's not just what I think. It's what I think based upon reporting. Review of evidence, study of think tanks, a review of international conditions. So if I didn't tell them what I actually thought, what would be the point?

EISEN: Ezra. Jen has reflected on the dangers to our elections and to our democracy of failing to speak out. But yesterday in New York City, we saw some individuals speaking out about various topics that are near and dear to you. As someone who has been a leader in litigating for civil rights and equality, particularly in the election cycle. Ezra and I talk to each other every election cycle occasionally will be in cases together. And Ezra, what did you make of the rally in New York yesterday and how does that relate to your life's work of fighting for civil rights and against racism?

ROSENBERG: Thanks, Norm. And thanks for inviting the Lawyers Committee to participate in this panel. It's that's a really difficult question. I certainly read the articles. It's not the sort of thing that kind of makes my morning feel really good to listen to that kind of rhetoric. Calling Puerto Rico a go, I forget the exact words that were listed were used when a, you know, a full island of waste.

EISEN: A mass of garbage.

ROSENBERG: A mass of garbage. You know, it is I think one of the great threats to our democracy is the sort of rhetoric that unfortunately seems to be becoming much more of the norm than one would ever have thought, at least over the last ten, 20 years. And it's sad, quite frankly, Norm. But, you know, our organization's mission and we're a non we're a nonpartisan organization. Our mission is racial justice. And picking up on one of the points that Jennifer made in terms of the the real threat to election integrity in this country is not that a few people who may not have been citizens or may not be eligible have voted. And as an aside, the governor of Georgia held a press conference last week where he said that he had found that there were 20 people who were not citizens who voted in Georgia, 20 people born. That in itself, even if it were in one year, would be a real kind of nothing. It was 20 out of 8.2 million votes cast. I did the math quickly, which was of like 0.00000244 and that was 20 who are non-citizens? One on the on the register, only ten of whom had voted. I'm not going to even try to do the math there. And that was over a period of years. And that's really what this the scope of the problem is. So, quite frankly, the threat to election integrity in this country is not that there may be 1 or 2 people who vote every year who should not be allowed to vote. It is the threat that there are thousands of people who are eligible to vote who are being denied the right to vote, either intentionally or inadvertently. But that's what should be stopped. And the people who are most affected are typically people of color and other people who are parts of vulnerable populations, people who do not have homes, sometimes people who are in nursing homes. And that's what I'm concerned about. And that's what we've already seen in this election. This has been an extraordinarily atypical pre-election norm. Norm mentioned the 2020 post election, and we were involved in some, I think, 17 suits where on behalf of organizations like the state, the various state conferences of the NAACP, we intervened in the suits brought by the Trump campaign to to overturn the election results in order to make sure that the voices of voters of color were being heard. Because what happened there and it's going to it's happening already now is that it is the votes that were cast in places like Atlanta and Milwaukee and Detroit and Philadelphia that were the targets of the suits that were brought in 2020. And we already have begun to see it in the pre election cycle, which has been an extraordinarily unusual cycle where there have been a number of suits brought in

Michigan and Pennsylvania and Georgia and Nevada and a lot of the battleground states where the focus is on purges of voters, mass voter challenges at a time when they should not be allowed to. Be brought. And some of the first suits were brought against Fulton County and DeKalb County in Georgia. And these are counties that are predominantly have a disproportionate numbers of of voters of color. And that's what we perceive as as a major threat right now.

EISEN: Elaine, the climate of intimidation that can even lead billionaires to feel that they must be silent and of racism, including this this new big lie of 2024 that ineligible immigrants are voting when it's virtually zero. There's a study that says it's so low that as a statistical matter, it should be classified as it happens 0% of the time. That has real life consequences that you've studied and and written about for election workers, administrators, officials, the people who are charged with making sure in a bipartisan fashion. Ben and I will talk about this, but although we've approached election cases from across the aisle over the decades, this is an area that has been the most bipartisan consensus on the nonpartisan administration of elections and can count the votes. But it's creating this climate is creating a threat environment for the people who administer that critically important system, the foundation of our democracy. How does that look based on your scholarship and experience as one who has studied this?

KAMARCK: Well, thank you, Norm, for pulling this together. Let me say something about Ezra's point here. If you look on the Brookings website, you'll see two pieces, one from a couple of years ago, one that will be out this week that discuss the Heritage Foundation data. Now, I rarely am in a position of promoting heritage, but I would urge you to look at the Heritage Foundation data on illegal votes. And I don't know if you've seen this, Ezra, but essentially they do this for the whole United States. It's a marvelous data set. The headline is, my God, look at all these illegal votes. And then you take a given state. So I'll take one that we recently worked on. There were 56 cases, 56 cases of people voting illegally. That those cases occurred over 25 years, 25 years, millions and millions and millions of votes. And as you said, when you figure out the percentages, which my good interns have done for the table, we did, it's 0.0002.1. You know, it's just minuscule. Think about this for a minute. If you're here in the country illegally, you got to vote. You don't want to do anything that draws attention to yourself. You're going to stop at every stoplight, right? You're going to never jaywalk. I mean, you do not want to commit a crime because guess what? You might get sent out of the country. The whole argument that they make is just counter to common sense. Now let's go to the threats that I worry about. I don't think we will see another January 6th. And the reason was that among all the things, January 6th was it was an it was an intelligence failure. The people responsible for keeping the

Congress safe didn't see this coming. They thought it was going to be a protest. They didn't realize it was going to be a riot. They didn't realize people would be killed, that property would be damaged, etc.. That won't happen again. For those of us who live in Washington, when we get to that point in January, we won't be able to drive our car anywhere. Okay. The place will be just locked down like you wouldn't believe. But I do. I think the threat has now gone to where there are fewer resources for finding those threats and fighting those threats. And that will be at the level of precincts and counties where we already know that there are an unbelievable number of threats against county officials, precinct election workers, etc.. You can imagine disruptions at the polls because of this. In Arizona two years ago, people were. At drop boxes. There were guys with semiautomatic weapons sort of standing there. For what reason? Right. But to terrorize people, that's where we're going to see it. And it's going to be you won't see it in Washington anymore, but you will see it state by state, county by county, precinct by precinct. And that has the potential for real disruption on Election Day, perhaps even perhaps even delaying vote counting.

EISEN: In our certification piece. We the likely locust point of this is going to come as land when counties have to certify the disruption rolls up to that. And we write about we analyze the top 50 counties, look for the threat, but we also describe the solutions. I want to come now to my friend Ben Ginsberg, Ben, and start the solution part of the conversation. Ben, you're welcome to reflect on the threat profile, but the pillars of the community program that you have innovated around the country with. The longtime Democratic election guru, my friend Bob Bauer has been a real locus of hope for dealing with the crisis of confidence in our communities. Can you talk about the threat situation and how pillars of the community is responding to it?

GINSBERG: I can. Thank you, Norm, And thank you for for having me here. You've heard much about the descriptions of the threats. I the the real threat to us is the fact that over a third, maybe a half of our countrymen don't have faith in the reliability of our elections. That's a huge long term problem of a basic institution. It's actually a bipartisan problem because no matter who wins the election, if people don't have faith in the results, then it will be nearly impossible for that person to govern effectively, whether that's Kamala Harris or Donald Trump. And that and that's what worries, I think, us the most. The pillars of the community is a program designed to go into the most contentious election jurisdictions in the country. And we gather people, community leaders from across the political spectrum, the people who have the most credibility in the communities, faith leaders, veterans, first responders, business leaders, union leaders. And we ask them to gather and meet with the local election officials in these contentious jurisdictions and to really kick the tires of the election system. Any doubts, any questions they have about the reliability of the system?

The election officials in those jurisdictions have been outstanding in being willing to answer all those questions. That one of the reasons that I do have some degree of confidence in this election is the election officials who have embraced transparency will do ask me anything town halls. And that helps, I think, to diffuse some of the problems. Now, who were our target audience for this is really not hard core people who will never, ever believe that elections weren't stolen. But it is to concentrate on people who believe in peace and prosperity in their own communities on a local basis, and know that discord and disruption over elections and especially the lack of true information about elections is not good for them. It's not good for their families. It's not good for their businesses. It's not good for their communities. And so the project Norm has been to get community leaders to, again, kick the tires of the election system, come out with statements before the election that they don't know who's going to win. This isn't about the results, but it is about the soundness of the process and the integrity of the election officials in preparing for the election on a bipartisan basis to be able to count the ballots and then to be ready should there be disruptions in their own local communities after the election to step up and try and have peace in the in the community. So I do take a great deal of solace in what we see on a local level about people wanting to come together for their communities. And I got to say is like about completely absent on the really poisonous national level.

EISEN: I wanted to and the first wave across the panel on that note of hope and solutions, I'm just going to open it up for any reflections on our initial round of analysis. And I'm going to say another word on top of address on the litigation profile, because I think that we've seen it as a point. We've seen an extraordinary explosion been I don't we've. Between us, we've been doing this for a very long time. I have never seen a pretty election season with almost 250 cases. And I think that tells us what's coming in the post-election. Jan, I think you had something you wanted to say.

RUBIN: To Ben's point, the irony or the tragedy of all of this is 2020 was the best run, largest, most accurate election in the history of the United States. And I would daresay the world what gets lost in this is that the actual voting security, making sure that votes are accurately recorded, accurately counted, accurately aggregated, accurately certified, is phenomenally well-run, and we shouldn't lose track of that. That's because, first of all, we have developed software programs to detect fraud. It's because, contrary to a lawsuit brought against. Fox, in which Fox had asserted that the machines were changing the numbers. The machines don't change the numbers. In most states, many states, there is a paper ballot trail. It is safe, it's secure. And we managed to count over 100 million votes in a relatively fast timeframe. That shouldn't be forgotten. And unfortunately, the news business is such that we don't usually carry stories that say

everything's working great. That doesn't get the clicks. But we should because we need to give Americans the same assurance that Ben is finding from local officials that they know their vote did count and it's vote and it's voted accurately. And my concern is in this whole melasma of complaints and allegations and lies that people say, well, yeah, maybe it is a little bit dicey. It's not. It's not.

KAMARCK: Yeah, just a quick one. Also in this discussion, miasma much said of of lies and counter lies, etc. A lot of people don't know that at critical points in every state in the counting of ballots and in the protecting of ballots. There are representatives from the Democratic Party and the Republican Party. Lawyers are mobilized before, particularly before every presidential election, lawyers are mobilized to be all over the place now for this mammoth amount of fraud to have taken place, the Democrats and the Republicans must have either not had lawyers there, which was not true, or maybe they were stoned. Right? Or maybe they were just maybe they're just asleep at the switch. Okay. You have to believe that you had massive incompetence on the part of the political parties. Right. That was sort of looking the other way when funny business was going on. And you know, it just as in our economy, competition between car companies keeps us from keeps. Car companies where the door falls off the car from doing very well. Competition between the parties actually helps to keep elections safe and secure and honest because they're competing and nobody wants to see the other one getting stolen. So, I mean, it's it's it's a little unreal, the world between thinking that immigrants are going in droves to vote illegal people who are here illegally are going to vote between thinking that the parties won't look at their votes. You know, it's a it doesn't reflect the reality of the world we live in.

EISEN: Ezra.

ROSENBERG: If picking up on on on that and on the bigger issue of this this amazing flow of litigation, the good news so far is that the rule of law has prevailed. So far and suit after suit, where there has been an attempt to either purge the rolls or change the certification system. We can talk a little bit about that. The courts and these are not liberal courts, they're not Democratic appointed courts or Republican porn courts. They're courts of all stripes have to. A court rejected attempts to unlawfully purge groups. To to really effect to affect naturalized citizens in an unlawful way or to change the certification rules. And that's I don't want to be optimistic, too optimistic. That is tentatively a good sign. Now, there's a long game that may be played here because, you know, you have to wonder why, if it is so important to purge the rolls in order to achieve election integrity, as the plaintiffs in some of these suits have claimed, why did they wait almost to a to a suit

to precisely 30, 31 days before the election to file based on information that they had for six months, seven months, a year? And you have to wonder, because they have to know that those suits are going to be kicked out. So what is their long game? And that's what's worrisome.

GINSBERG: A couple of things to say about the election system as a whole. Remember, we made a policy decision 240 years ago to have very local control of our elections. We wanted it to be done by our neighbors and people in our communities. We have 10,000 jurisdictions in this country individually responsible for the casting, counting, and certification of voters in 10,000 of anything. You will have some inconsistencies. So we built in as a policy choice long ago that there are going to be some mistakes because we are all humans, because our polls are the volunteers in our polls or are older even than us on the panel. And stuff happens in polling places, but there are safeguards built into the system to look for that and to correct those things. Pillars co-sponsored a conference in Ann Arbor about three weeks ago in which we brought together the top election officials in the key county election officials to talk to reporters about all the safeguards in the 11 stages of the election system. And there are safeguards in there are checks and balances in every one in every part of the election system, which is why when you got to all the court cases that have been filed this cycle, and especially the 64 filed after 2020, they're failing because there's no evidence. The wonderful thing about our court system is that the rhetoric has to be backed up by evidence. There's a report called Last Night Stolen that was written about the 2020 election by conservatives who showed that there was no evidence to back up the charges. Those charges from 2020 are very similar to what we hear today. Now, speaking to that evidence, Alan is right. Both parties have operations with lots of poll workers, lots of poll watchers, lots of overcaffeinated lawyers, all looking to save democracy and.

KAMARCK: And save their party.

GINSBERG: And save their party. In in polling places, the the Republican National Committee and the Trump campaign have been pretty out there in saying they have 200,000 poll watchers. I think that's a good thing. I think that election officials and law enforcement are working together in an unprecedented way to be sure that there will be no disruptions in the polling places. But having 200,000 poll watchers means that there is someone to gather evidence if something goes wrong on the spot. So either those 200,000 people are going to be gathering evidence on Election Day that we're going to hear about or there won't be any evidence. And that in itself will be used in all those court cases that have been filed.

ROSENBERG: You know, one more thing on that. The Department of Justice, the Civil Rights Division, has been vigorously preparing for the election. They've announced that they're going to have a district election officers in each of the districts throughout the country, and they're rolling out the identities of them from week to week. They're going to be observers. I think that observer list is put out closer to the election. But that's an important asset in the fight for election integrity is DOJ and particularly this division of civil rights.

EISEN: I guess I would ask Ezra, Ben, as experienced voting litigators, I will tell you, I have not seen DOJ be as active during the quiet period as they have been, in my view, properly objecting to voter purges in Alabama, litigating in Virginia, where there was a voter purge. And and I think that that is successfully in both places. And because of this, because those purges are based on this myth that immigrants who are not eligible are voting. It's false. It's false. We do hear that being driven in the disinformation landscape. And I just each of you has in different ways. I was going to ask Ben about Lost, not stolen. Each of you has in different ways attempted to get at the root of the threats, the assault upon safe. Free and fair voting, and voters should be reassured. Every voter who's watching should be reassured that you will be able to to vote safely. Your vote will be able to be cast and freely and fairly counted. But there's the origin of the problem has a heavy aspect of disinformation. And each of you has dealt with that in different ways. Moving to the end, the questions are pouring in. So we are going to do questions from those who are watching. But going down the panel, what are you doing to counter disinformation? What is the ecosystem doing and is it working? Jen?

RUBIN: Well, I think the press is covering these lawsuits. The Washington Post has certainly run a number of stories on it. On the news side. On the opinion side, I and some of my colleagues have written about it. So exposing not only that, it has been a filing a suit, but that the outcome has been positive for the election system is critical because, as Norm says, the facts are not there. And what's more, the grandiose allegations of some election figures, which has a clear racial component, should be rebutted and they should face whatever accountability they will for having raised an alarm called Wolf, put out what I think are intentional efforts to, frankly, suppress the vote from certain communities.

EISEN: Ezra, this formula of disinformation in the court of public opinion, combined with losing meritless litigation and many of the lawyers involved in 2020 have faced severe consequences, disbarment, prosecution. We've had guilty pleas. This one two punch. Are we seeing a recurrence in 2024? And what are you and Lawyers Committee doing about it?

ROSENBERG: We are seeing a recurrence. I do. I do want to just amend something you said, the Virginia suit. Actually, we filed first together with Campaign Legal Center and Protect Democracy and Advancement Project. And we were thrilled that DOJ came in and filed in right now. So people know it's the Fourth Circuit affirmed the injunction that we got. It looks as if I know I just saw this morning the other the state of Virginia is petitioning to the Supreme Court for a stay of the injunction. So we'll see what happens there in terms of disinformation. I do want to talk about it in just a moment about election protection, which is a program that the Lawyers Committee and Common Cause and other groups coordinate. And it is it sponsors the, I guess, the most accessed 800 number or 866 our vote. And we do get hundreds of calls dealing with misinformation disinformation. We follow that up with the appropriate authorities. And words should be out there that there are phone numbers such as the 866 our vote. And that can lead to a quick response or at least being sent to the right place. After the last election, we filed suit against a group of people who had used robocalls to target black voters and tell them that if they voted absentee that they would be subject to credit checks, to criminal investigations. And the problem with misinformation, disinformation these days is that you really can't stop it because you don't really know all the time who's putting it out. What we did in that case, we were able to get a large money damage award against the perpetrators, but that happens after the fact, sadly. And you also have another problem right now, which is interference by foreign entities. You have Russia that apparently issued some artificial intelligence to the effect that ballots were being destroyed in Pennsylvania by Democrats. And it's that sort of thing that is extraordinarily hard to come back.

EISEN: Elaine, you wrote a book with our colleague Darrell West. "Lies that Kill: A Citizens Guide to Disinformation." What's your reflection on this one two punch of disinformation, non meritorious lawsuits? And how is the pushback going so far in 2024?

KAMARCK: Well, as Jennifer said, the newspapers have been pretty good at covering this. And I think as this goes on, citizens are getting smarter about this. I mean, simple things like everybody in the world follows Kate Middleton, the princess. Right. And when they put out that photo of her and it it was obviously Photoshopped and she had six fingers. Okay. The big story. Big story. But it alerted people to the fact that in this day and age, what you're seeing isn't actually always accurate. And so one of the reasons we wrote this book is to say, look, there's a bunch of things you can do to see if something is real. First of all, you can look at the media outlet or the publication and see if it's fake. All right. The Russians have been very good. They'll make up newspaper names. It'll be the Willamette Sun Times and they'll do a low. They'll do a logo, they'll do

a weather report. They'll do sports inside page seven, and they'll put an article out there. And, you know, who knows what the newspaper is and will omit. But that that's a very good way of. And so you have to check, is this a real newspaper? Look at how many people have picked up the material? Is there other places looking at it? If a story's really good, everybody wants in on it. So look at that. Look at the Haitian stories, the Haitian immigrants eating, capturing cats and dogs that needed them. Right. ABC News was out there in a flash. What did what a great story. Right? Looking for evidence. And of course, they found none. So is anybody else finding this? If it's really juicy, everybody's going to be after it. There are fact checkers such as PolitiFact or FactCheck.org. And they're very interesting because they will show you sometimes the germ of something. Right. There's just a germ of something that, in fact, is then blown up or taken out of context is, as you and I have described, with how people look at voting fraud, you've got to use a lot of common sense. Okay. Does this make sense? Does it make sense that Kamala Harris was in a bikini hugging Jeffrey Epstein? Does this really make sense? No. First of all, she's way too old for him. Okay. So but, you know, why would that picture showed up? And sure enough, it was it was a Russian fake. See if the opinion is coming from the United States or from a source abroad, because there's a lot of that coming from the source abroad. And, you know, four years ago, and particularly eight years ago, it was really easy to tell because they their English language was all screwed up. Okay. They all did. They wrote things in just weird ways that not a native speaker would do. These days, they've gotten a little bit better than that, but there's still ways to check and look at whether scientific or professional organizations have taken an opinion in. Do they have an opinion on this? As we know, disinformation affects not just elections, but particularly dangerous public health. So Covid, we were treated to a variety of nonsense about how to cure it, what it really was da da da da da. And one of the reasons we called the book "Lies That Kill," is that some of these there's some of this disinformation, in fact, kills people.

EISEN: When you alluded to your paper Lost, not stolen, are we going to see in which a panel of distinguished conservative election lawyers, former judges and other experts looked at the allegations, the evidence, and from a conservative perspective, rejected the disinformation surrounding 2020? Are we going to see a recurrence of that in the 2024 post election? Does it depend on how close the race is? Does that make it worse? And how well situated are we to once again withstand this one two punch disinformation in the court of public opinion and a surge of litigation of dubious merit? In the court of courts of law.

GINSBERG: I think we will undoubtedly see a lot of litigation that will matter only if the margins are close. The number of suits that have been filed pre-election are telling that there is at least a plan to litigate a lot

afterwards. Interestingly, the cases filed pre-election don't really ask for the most part for any sort of judicial relief before the election. So they are designed to set the tone, perhaps do some judge shopping and to sort of see the grounds for these post-election once again. The success of those cases and whether there has to be another lost, not stolen report depends on the evidence that can be gathered. I mean, the rubber hits the road and the evidence that you can that you can provide for fraud cases. And so far, there has not been the evidence produced to back up any of those cases. One thing about the media, though, and it is important to rebut and really pre-buy many of the allegations that, you know, are coming. I would agree that that many media outlets are doing a fine job of reporting on this issue. The problem is we are in such bubbles today that the people who you really want to read are aren't reading The Washington Post in The New York Times or watching MSNBC or CNN. So there's still a real information problem, at least on a national basis. It is another reason to go local, because in point of fact, this the the polling shows that local TV is actually what more people across the political spectrum are using to get their information. And on top of that is the really difficult situation that you do see. The presidential candidates are not hearing so much about 60 Minutes and network news programs, but going to podcasts with with their massive audiences, which tells you that the fighting disinformation battle is perhaps being fought on the wrong turf when we think about news organizations is the main point.

RUBIN: Just to that point, one of the real problems has been the failure of local media. The failure of local newspapers. They have folded. We have many states in the capital does not have a local newspaper. So you don't get that day to day coverage if you have local reporters and you have local stories. Those tend to have a high level of credibility with people because they're talking about things in their backyard. They can check, they can have a personal experience. They really have the people. And so when you don't have that, when you don't have your friends, your neighbors reporting on what is happening in your backyard, then there is a vacuum and there's the ability for disinformation, misinformation. So I think the real deserts that we face in local news is a tragedy on many fronts. But in election reporting and disinformation, it's particularly acute.

EISEN: There have been bright spots we've seen on social media, for example, the the rise of both social media accounts, but also publication like vote beat. We've seen the 501 (c)(3), the community organizations like Ezra's. Recognizing that we have to be very vocal. We've seen in litigation now the defeats send a powerful message every time there's a case that says there's migrants who are ineligible to vote and the court says, no, I'm not granting you the relief, I'm throwing your case out. That sends a message. We are

seeing I've monitored it the election coverage in the national outlets. It's true they don't have complete penetration, but we're now in that phase of the cycle where these issues are being covered extensively and all of that is informed by the experiences of 2020. So one of the points that we started with was there's a substantial threat from the mentality. The size, the form of the election denial movement. But the immunities, the responses, the vaccination, that is also much, much stronger. I'm going to go to some of our questions from the audience and from our online audience as well. I've assembled a good array of questions and we'll just alternate between the room. I'm not quite ready yet. I'm going to ask one more question to the panel. But our microphone just letting. Raise your hands. And what I wanted to say was I'll alternate between folks in the room and and folks online, and you should feel free to jump in, including to reply to each other's answers as we take these questions. This is the free for all part of the panel, which is my favorite. Okay, now we're ready to take our first in-person audience question. So on all the way in the back of the room, that's where I like to stand close to the pastry's.

AUDIENCE QUESTIONS: Good morning. My name's Todd. Wiggins. So my question has to do with a subject that I don't believe. Has been raised so far, has to do with ranked choice voting. Voting. There's an initiative 83 is on the ballot that would advocate that we use that system in the future. I think in another couple of years. Perhaps, which would lead to an open primary, which means that. People who are not affiliated with Democrat or Republican can be considered in the primaries. And so I wonder. If since that's a national point, but it's coming home to roost, so to speak, a local could be a local issue. What's your position on ranked choice voting in general?

EISEN: Is it just voted early in the district and the ranked choice voting was on the ballot? I won't tell you how I voted, but I will ask our panel. I'll put a slightly sharper point on the gentleman's question. Can we can we, through election reforms like ranked choice voting, do anything to increase the confidence of voters in the system and that the system fairly reflects their preferences? Elaine, you've studied RCV.

KAMARCK: Yeah. Listen, I think ranked choice voting is a great idea. I like it for primaries. I don't think it fundamentally will change any of the problems in the system we've been talking about here. Let me give you one thing that I is pretty simple that I think could change things, which is why don't we stop having election night? Why don't we just cancel election night? States ought to report on the morning after the election. They ought to report when they are at a level of certainty about the outcome, because right now there's a lot of Americans who do not understand probability, who do not understand what an election model is, etc., etc..

They go to bed thinking their candidate won. They wake up the next morning and their candidate lost. And that is just sowing massive distrust. We saw it especially in 2020, where the Republicans mounted a campaign against early voting, which I think they've switched. Although Trump keeps Trump keeps changing his mind on it. So I don't know what Republicans are going to do. But we saw it massively in 2020 where the vote that came in on Election Day was a Republican vote. And then by the time they counted the absentee ballots and the early voting, it switched in some places. There's no reason the republic really can exist if we don't learn the election returns at midnight as opposed to 9:00 the next morning. There's no reason to go through this frenzy. It is too much. There's too much error in it. There's too much mysterious stuff in it. And God bless him. John King on CNN. He does a terrific job trying to explain. Now, this isn't the whole thing. We haven't gotten Wayne County in. We haven't done this. It's too much. It's too much. And political scientists spend their life figuring out these things. The public doesn't. Cancel election night. Okay. Just states stop reporting anything on election night and wait till the next morning. And that, I think, is going to solve a lot of this problem.

EISEN: It's going to be pretty tough on Frito-Lay and the other snack food manufacturers.

KAMARCK: And the pizza delivery.

EISEN: The Pizza Hut and Domino's. If we and our election night parties. How about it, panel? Should we should we have election week or should it be election month? Big. Because early voting is now so predominant, then.

GINSBERG: We are going to have election week. We should be.

EISEN: Confident that this is going to be election week in 2018.

GINSBERG: The margins are close. It all depends on the margins. A state, any state will be able to compile 70% of its vote by midnight. If you know, the algorithms say that's enough of a spread between the candidates, they'll call the race. The margins are tied. It's going to take a good long time. Three of the states will probably be able to count pretty quickly. North Carolina, Georgia, Michigan, because of what they've done with their laws. It's going to take Pennsylvania a good long time because they have provisional ballots and 67 different counties and Philadelphia got some new high speed equipment. So that may be a little bit

quicker. But it's going to take a while. Arizona has a system where people can walk in their mail ballots up until 7 p.m.. So they get this huge flood of mail ballots. That's going to take a while. Nevada gives people four days whose ballots are postmarked on Election Day to get them in. Wisconsin and Pennsylvania don't pre process absentee ballots. It's going to take a while. This will all be on The New York Times guest essay page at five tomorrow morning.

RUBIN: One more thing. The balance in the House of Representatives will also be up in the air for a very long time. There are a number of seats that are in play in California. We think of it as a blue state, but there are swing state swing districts there. And in California, so long as it is postmarked on Election Day, sometimes the ballots don't come in for two weeks. Katie Porter, who won in 2018, attended the new members meeting before she found out she was, in fact, the winner. So particularly in the House of Representatives, we certainly may not know the market, but I am a favor. I am a fan of election reform. And there have been bills. They've been frankly, filibustered by Republicans that do lots of things that could increase confidence, that require paper ballots, that set up an audit procedure, that set up a quick appeals process. In addition, Norm asked about making elections more representative. You can have a Sunday, Election Day. You can have independent entities create the districts rather than highly gerrymandered districts. So there are many things you can do if you want to promote democracy. But if you have one party that does not want to promote democracy, that wants to shrink the electorate so that a certain demographic segment has disproportionate weight, you are not going to have that.

ROSENBERG: And you could pass the time Off to Vote Act so that people are compensated or do not lose compensation when they go to vote. One other point, just very quickly on something I think Ben mentioned. The predominance of early voting in this election cycle is really, really important, not only because it might facilitate the ease of voting, but it could dilute problems on Election Day itself. You know, when you think of what happened in Georgia, I think in the first 3 or 4 days, 1.6 million Georgians voted, but 30% of those who were going to vote. And that was last week. So when you come down to Election Day, perhaps problems could be diluted, which I think is a good thing.

EISEN: And the challenge is not every state allows for pre canvass. So in Pennsylvania, they will have all those mail in ballots and they cannot start canvassing pre canvassing them until 7 a.m. on Election day. And there has been controversy about some of the issues with mail in ballots where the voter intent is clear but there's a missing signature. There's the wrong date. There's a failure to include an envelope. We did have a

very important pro voter, pro democracy decision from the Pennsylvania Supreme Court. I just wrote an op ed in the Philadelphia Inquirer with the former Pennsylvania secretary of state, Kathy Boockvar, calling for this outcome. And we got this outcome in Pennsylvania. If you have made that kind of an error in your mail in ballot, you can go to your polling place and you can cast a provisional ballot. Just any Pennsylvania voters, irrespective of party, should remember use when you if you're doing a mail in ballot, please make sure to use your outer security envelope. Make sure to write the date that you are voting the ballot and make sure to sign your ballot before you get it back to the voting authorities. Jan, in the in fairness to Nonpartizanship, I will say we might have had the Freedom to Vote Act and the John Lewis Voting Rights Act, but for two members, at least two members who are nominal, two senators who are nominal, Democrats who caucus with the Democrats, who resisted reforming the filibuster. As you know, I've written in the Post about this. Jen has been kind enough to ask for comments about this. We have reconciliation for budgetary issues. It is an exception to the filibuster. Isn't democracy as important as our budgets? We should have democracy reconciliation for a democracy bill, a voting bill. And we almost got there. We almost got there. But for certain, certainly there was plenty of Republican opposition, but it was unfortunately blocked. As you well know, I don't think you were too gentle on them by two who caucus with the Democrats. Okay. I'm going to take one of the online questions. I applaud the panel for everybody jumping in and having a real conversation. One of our online questioners asks whether if there are shenanigans in the states and slates of electors are sent or withheld in a way that does not reflect the actual will of the voters. Will that. And this comes from Paul Heldman in Maryland. Paul asks. Is that kind of a state level funny business. We saw a version of it last time with the dual slates of electors. Is that a threat and have we adequately adapted the law to deal with that threat, or is Congress susceptible to having the will of the people hijacked by elector slate manipulation again this time around? Why don't I start at the end since I've come last? Man, Do you want to talk about that scenario in light of the ECRA?

GINSBERG: I think it's a threat because everybody's talking about it. I think in practice it is a minimal threat. There are an attempt to not certify has never succeeded. There are people under criminal indictment for refusing to certify in counties.

EISEN: Cochise County, Arizona. Yeah.

GINSBERG: If and there's a reason for that you certify because that starts the recount contest in litigation phase in every state. The place to bring up evidence of malfeasance in an election is not in the certification

process. Each state has that set for after the certification is done. The Electoral Count Reform Act passed in 2022 on a bipartisan basis, largely because neither party could figure out how to game. The Act does have much firmer procedures for correcting that sort of situation. So I think overall, between court precedents and what the law clearly states, we're not subject to that same amendment.

RUBIN: Also raise the threshold in Congress for raising objections. If we recall in 2020, it only took one one person on the Senate side, on the House side to throw this thing into chaos. The number is now 20%. And of course, it creates a situation in which then still a majority have to agree that there has been some electoral problem. So that additional protection, I think, will keep down on the funny business as you put.

EISEN: Up, including the gubernatorial certificate, is conclusive if submitted on December 11th. Yes. And then there is an accelerated litigation window in order to resolve things. Ezra, Elaine do you want to say a word about the ECRA?

ROSENBERG: I think it has solved hopefully all of the problems, certainly most of them.

KAMARCK: It was a it was very important and let very important that get done.

EISEN: I was very pleased to be able to testify in support of the bill. It was badly needed. That's a piece of legislation to reform the original Electoral Count Act, which came out of the Bush v Gore of its era. It was even worse than before.

KAMARCK: It was much worse than.

EISEN: The dispute of 80 electoral dispute of 1876. It took them 13 years. They passed the Electoral Count Act in 1889, and we had lived with it ever since. It was badly in need of modernization. Well, friends, it's getting to be that time when we need to wrap. It flew by really again, I'm going to go across the panel one last time. I'm going to ask each of the panelists for our audience here in person and for those watching remotely for a one sentence answer to the following question, starting with Ben Ginsburg Can Americans be confident that this election will be safe, free and fair? Ben?

GINSBERG: Yes, they can. I have studied the safeguards involved in the system. I've seen election officials and the way they've prepared. And yes.

EISEN: Elaine Kamarck.

KAMARCK: Yes, absolutely.

EISEN: Ezra.

ROSENBERG: Absolutely. The rule of law will prevail.

RUBIN: Yes.

EISEN: There you have it. Who am I to disagree with our panelists? I want to thank everybody who joined us for spending your morning with us. I want to thank my distinguished panelists and our in-person audience for a very lively conversation. Thanks, everybody. See you again at Brookings Governance Studies.