IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HERITAGE FOUNDATION &)	
MIKE HOWELL)	
)	
Plaintiffs, v.)	Case No. 24-cv-2715 (APM)
)	
U.S. DEPARTMENT OF JUSTICE)	
Defendant.)	
)	

MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Heritage Foundation and Mike Howell respectfully move this Court to issue a preliminary injunction enjoining Defendant U.S. Department of Justice ("DOJ") from unlawfully impeding Plaintiffs' access to records under the Freedom of Information Act, 5 U.S.C. § 552. Plaintiffs seek preliminary injunctive relief ordering DOJ: (1)to process Plaintiffs' FOIA Request dated September 11, 2024, on an expedited basis pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(iv); and (2) produce all non-exempt responsive records by October 15, 2024.

The grounds for this motion are set forth in the accompanying Memorandum in Support of Plaintiffs' Motion for a Preliminary Injunction and the Declaration of Eric Neal Cornett. Pursuant to Local Rule 65.1(d), Plaintiffs ask that the Court schedule a hearing on this motion at the Court's earliest possible convenience.

Dated: October 3, 2024 Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

(Oral Argument Requested)

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INTRODUCTION

The underlying case is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to compel the production of certain records related to any external final advice the Department of Justice's ("DOJ") Office of Legal Counsel ("OLC") provided regarding the 25th Amendment, from June 1, 2024 to present. *See* Plaintiffs' FOIA ("Request" or "Plaintiffs' FOIA Request") (ECF No. 1-5).

Section 4 of the 25th Amendment establishes the procedure by which the Vice President and a majority of the "principal officers of the executive departments" may transfer power from the President to the Vice President, including over the President's objections. U.S. Const. Amend. XXV, § 4. On July 21, 2024, following a disastrous debate performance and a historically unprecedented pressure campaign from members of his own party, President Joseph R. Biden dropped out of the 2024 Presidential Election and endorsed Vice President Kamala Harris. Following President Biden's decision to drop out, many in the press began reporting President Biden was presented by members of his own party with a no-win situation: either suspend his campaign and step aside or become the first President to be removed from power under Section 4 of the 25th Amendment. See Seymour Hersh, Leaving Las Vegas, Seymour Hersh (Jul. 27, 2024). See Ex. 1 to the Declaration of Eric Neal Cornett (Oct. 2, 2024) ("Cornett Decl.").

The FOIA Request sought expedited processing because it concerned "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) ("DOJ Regulation"). *See* Request at 5–7.

Whether Vice President Harris or others in the Biden-Harris Administration sought advice from OLC about invoking the 25th Amendment raises serious questions about the Government's integrity which affects public confidence in both President Biden's continued fitness for office and Vice President Harris's future fitness for the highest office. Questions concerning the potential invocation of the 25th Amendment as to President Biden have been the subjects of "widespread and exceptional" media interest. Indeed, there has even been press coverage of *this* lawsuit. *See* Cornett Decl. Ex. 2.

Plaintiffs' Request goes directly to this issue. The American People have a right to know whether the Vice President and the Cabinet believe the President is competent and if the Vice President—and current candidate for President—has misled the American people about President Biden's competency. Because the 25th Amendment is notoriously vague any consideration of its invocation would virtually compel consultation with OLC. Indeed, OLC's own existing body of precedent on this subject simply does not provide sufficient guidance regarding invocation against a President on grounds of mental incompetency.

The President's competency has been a public issue since the February release of Special Counsel Robert K. Hur's Report. Cornett Decl. Ex. 3 ("Hurr Report"). Special Counsel Hur was clear in his report that he considered evidence of President Biden's cognitive decline and found that it was clear that President Biden had "diminished faculties and faulty memory" well before Special Counsel Hur's interview with him. In the Report, Special Counsel Hur is clear that "[President] Biden's apparent lapses and failures in February and April 2017 will likely appear consistent with the diminished faculties and faulty memory he showed in [ghostwriter] Zwonitzer's interview recordings and in [the Special Counsel's] interview of him." Hur Report at

247–48. Special Counsel Hur was explicit in testifying before Congress that this analysis was directly comparative of President Biden's "diminished faculties and faulty memory" from February and April of 2017 to October 2023:

Ms. HAGEMAN. OK. You did not compare President Biden's current memory or condition with his memory or condition when he was in the Senate or when he left the Vice Presidency and took the classified documents subject to your investigation, is that right?

Mr. HUR. Actually, I believe that's not correct, Congresswoman. One of the things that's in the report is an assessment of the President's memory, based on recordings from the 2016–2017 timeframe, recordings of conversations between Mr. Biden and his ghostwriter, and comparing that with the President's memory that he exhibited during our interview of him in October 2023. So, there was a comparison there.

H. Comm. on the Jud.: Hearing on the Report of Special Counsel Robert K. Hur, 118th Cong. 72 (2024) (Cornett Decl. at Ex. 4) ("Hur Hearing"). Moreover, Special Counsel Hur is clear that in making his conclusions about President Biden's "diminished faculties and faulty memory," he relied, at least in part, on the President Biden-Zwonitzer audio recordings. See Declaration of Bradley Weinsheimer at ¶¶ 7–8, Heritage Foundation v. U.S. Dep't of Justice, No. 24-cv-00645 (DLF) (ECF No. 27).

President Biden's recent public appearances suggest that he is suffering steady progressive cognitive decline that may be accelerating. *See, e.g.*, Cornett Decl. at Ex. 5. Vice President Harris is widely perceived as having been aware of his decline. *See* Cornett Decl. at Ex. 6. ("Among those who believe Biden's health issues were kept under wraps, 92% said they think the vice president was well aware of the situation."). These issues weigh heavy on the American public.

Plaintiffs' entitlement to injunctive relief is clear. They are being denied a statutory right entirely about timing and priority. First and foremost, this case concerns whether the President of the United States remains fit for service. Specifically, the records sought by Plaintiffs' Request

will reveal key information about whether those charged by the Constitution with ensuring the President is competent to discharge the duties of his office secretly believe he is incompetent to do so. The importance of this question could not be more grave as the United States faces a string of foreign and domestic crises. There is a long and bipartisan history of Presidents concealing their incapacities from the American people. This is *precisely* the sort of harm that FOIA was designed to remedy.

Second, this case concerns the major campaign issue of whether Vice President Harris believed President Biden to be cognitively impaired—but covered it up. By October 15, 2024, large numbers of ballots will have been cast and voting well underway. The United States no longer has election days, but election seasons. Without an order compelling production of all non-exempt records, Plaintiffs—and by extension the American People—will suffer irreparable harm.

Plaintiffs attempted to get answers to these questions through the DOJ's FOIA process. But have gotten nowhere despite seeking a precise and narrow set of records for a tiny temporal window. The Government failed to make any determination on the Request. *See* Compl. at ¶ 19. On the issue of expedited processing, Defendant ignored the statutory 10-calendar-day deadline for making a decision. *See* Compl. at ¶ 20.

Plaintiffs filed their Complaint in this action challenging the denial of expedited processing on September 23, 2024. Plaintiffs contacted the Government on September 25 and October 1, 2024, to confer with the Government and avert motions practice on production. On October 2, 2024, Plaintiffs notified the Government that this Motion would be filed by the end of the day absent substantial progress. Lacking substantive progress, Plaintiffs could not further delay filing

this Motion.¹ That said, Plaintiffs will continue to confer during the briefing of this Motion as has been done in other similar cases. *See, e.g.*, Trans. of Status Conf., *Brennan Ctr. v. Dep't of Com.*, No. 20-cv-2674 (TJK) (Oct. 8, 2020) (Cornett Decl. Ex. 7). Defendant has not taken a position on this Motion.

LEGAL STANDARD

1. A plaintiff "seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). It is unclear whether the D.C. Circuit still follows the "sliding scale" approach such that "if the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor" (Davis v. Pension Benefit Guar. Corp., 571 F.3d 1288, 1291–92 (D.C. Cir. 2009)), or reads Winter as requiring a showing of both a likelihood of success on the merits and irreparable harm. Compare Davis, 571 F.3d at 1292 (reserving) with Davis, 571 F.3d at 1288 (Kavanaugh, J., concurring) (Winter requires showing "both a likelihood of success and a likelihood of irreparable harm, among other things"); Sherley v. Sebelius, 644 F.3d 388, 392–93 (D.C. Cir. 2011) (suggesting the Davis concurrence may be correct, but ultimately reserving while noting a Circuit

¹ Plaintiffs will not file a Reply and will orally argue any issues in reply at the hearing on this Motion unless directed otherwise by the Court.

split on the issue). Regardless, the issue is academic here because Plaintiffs prevail under either standard.

2. Review of a denial of expedited processing under FOIA generally is *de novo*. *See Al-Fayed v. CIA*, 254 F.3d 300, 308 (D.C. Cir. 2001) (Garland, J.). But when the ground for expedition arises under a regulation promogulated by an agency pursuant to its authority under FOIA (5 U.S.C. § 552(a)(6)(E)(i)(II)) to create grounds for expedited processing in addition to the statutory "compelling need" ground, a different standard of review governs:

A regulation promulgated in response to such an express delegation of authority to an individual agency is entitled to judicial deference, *see United States v. Mead Corp.*, 533 U.S. 218,____, 121 S.Ct. 2164, 2171, 150 L.Ed.2d 292,____(2001), as is each agency's reasonable interpretation of its own such regulations, *see United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, ____, 121 S.Ct. 1433, 1444–45, 149 L.Ed.2d 401 (2001).

Id. at 307 n.7. Therefore, the *Al-Fayed* Court analyzed whether "the agencies reasonably determined" that the expedited processing requests "did not meet the expanded criteria." *Id.*²

Courts have not agreed on the application of *Al-Fayed*'s standard for non-statutory expedited processing to a particular case. But that dispute is not in issue here, because Plaintiffs easily succeed under the view most deferential to the Agency which reads *Al-Fayed* to require a *State Farm* reasonableness review of the agency's action as well as deference to the agency's construction of its own regulation. *See, e.g., CREW v. DOJ*, 436 F.Supp.3d 354, 359–60 (D.D.C. 2020) ("*CREW II*"); *EPIC v. DOJ*, 322 F.Supp.2d 1, 5 n.1 (D.D.C. 2003) ("*EPIC I*"), vacated as

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² Plaintiffs expressly reserve and preserve the right to argue to the appropriate Court that the *Al-Fayed* Court's administrative deference should be re-assed in light of *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

moot, No. 04-5063, 2004 WL 2713119 (D.C. Cir. Nov. 24, 2004); *see also ACLU v. DOJ*, 321 F.Supp.2d 24, 31 (D.D.C. 2004) (applying "the reasonableness test").

The State Farm reasonableness standard, while deferential, requires "that an agency provide [a] reasoned explanation for its action." FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009). If an agency changes course, it must "ordinarily . . . display awareness that it is changing position," as well as "that there are good reasons for the new policy. *Id.*; see also Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mutual Ins. Co., 463 U.S. 29, 52 (1983). Applying these principles to the specific context of entitlement to expedited processing under 28 C.F.R. § 16.5(e)(1)(iv), an agency receives little-to-no deference when it fails to provide a basis for its denial of expedited processing. Under such circumstances, there simply is no agency decision to which to defer. See CREW II, 436 F.Supp.3d at 361 ("Since the agency did nothing more than parrot its own regulatory language, and offered no reasoning or analysis, its decision, as in the APA context, is entitled to little deference."). Post hoc justifications are not to be heard; what matters is the agency rationale (or lack thereof) at the time of decision. Id. at 361 n. 2 ("Since the agency did not identify any deficiency in this regard as a basis for its decision, it cannot argue now that its decision was appropriate based on some newly developed theory that was not stated in the record before the Court for review.").

3. Judicial review of an expedited processing determination is "based on the record before the agency at the time of the determination." 5 U.S.C. § 552(a)(6)(E)(iii). As there is no determination on expedited processing at issue here, Plaintiffs view the relevant record as that before DHS at the time of this motion.

4. Whether the Department is processing quickly enough—*i.e.*, "as soon as practicable," (5 U.S.C. § 552(a)(6)(E)(iii)) is separate and apart from the determination of entitlement to expedition and accordingly is reviewable on the Motion record. *Cf. Prot. Democracy v. U.S. Dep't of Def.*, 263 F.Supp.3d 293, 300 (D.D.C. 2017) ("*Prot. Democracy I*") (considering evidence outside of that submitted to the agency in support of expedited processing on irreparable harm analysis on motion for preliminary injunction to compel an agency to grant expedited processing).

ARGUMENT

Plaintiffs are entitled to a preliminary injunction. Courts in this District have regularly granted preliminary injunctions to enforce the timing provisions of FOIA's expedited processing provisions as well as to order production by a date certain to ensure information is made available to the American people prior to a critical event—in this case the daily governance of our Nation and the 2024 General Election—after which the records would lose much of their value and saliency. Plaintiffs have a clear likelihood of success on the merits.

Plaintiffs have presented clear evidence that the Request concerns a matter of "widespread and exceptional media interest." The collected press articles go directly to the key questions described above. Extensive reporting of questions concerning whether Vice President Harris or others in government requested final advice about invoking the 25th Amendment raises "possible questions about the government's integrity which affect public confidence." July polling by the YouGov for the Times/SAY found that 54% of voters thought that there had been a cover-up of President Biden's health. *See* Cornett Decl. Ex. 8 at 28. There is overwhelming public interest in understanding President Biden's current competency, whether Vice President Harris seriously

considered invoking the 25th Amendment, and if she did, whether she has been forthright with the American people.

Plaintiffs will suffer irreparable harm absent a preliminary injunction.

First, Plaintiffs have a statutory entitlement concerning *timing*—they have a statutory right to have their request processed *more quickly* than other requests. That statutory right is exclusively about time and priority in a set temporal window; if lost it cannot be remedied by other relief and thus it is the entire game. Because that right originates from a statute that *requires* entry of injunctive relief upon proof of Plaintiffs' case on the merits, denial of that right yields irreparable harm. And in cases where a preliminary injunction is sought to compel expedited processing, the public interest and the equities largely merge with the merits. Accordingly, those equities weigh in favor of granting Plaintiffs' motion for a preliminary injunction.

Second, it is imperative to know whether those charged by the Constitution with ensuring the President remains fit for office believe he is unfit. That is a question of fundamental importance. Absent immediate production, Plaintiffs will suffer irreparable harm.

Third, absent production by October 15, 2024, Plaintiffs will be irreparably harmed. The records sought by Plaintiffs go directly to a major issue in the 2024 General Election. And under current election law a substantial number of states will have significant voting commencing shortly before October 15, 2024. The value of the records sought by the Request will plummet if not produced some time prior to the Election. The American People are entitled to view these records before casting a vote.

Plaintiffs are entitled to a preliminary injunction compelling DOJ to: (1) process the Request on an expedited basis pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(iv); and (2) produce all non-exempt responsive records by October 15, 2024.

I. PRELIMINARY INJUNCTIONS IN FOIA CASES.

To be sure, a motion for a preliminary injunction does not typically arise in the garden-variety FOIA case. But motions for preliminary injunctions *are* regularly brought in the procedural sub-set of FOIA cases where the requestor seeks but is denied expedited processing or seeks production by a date certain. Numerous courts—including in this District—have entered preliminary injunctions to compel expedited processing and production by a date certain:

- Brennan Ctr. v. Dep't of Com., 498 F.Supp.3d 87 (D.D.C. 2020) (Kelly, J.) (date certain);
- Prot. Democracy Project v. DOJ, 498 F.Supp.3d 132 (D.D.C. 2020) (Sullivan, J.) ("Prot. Democracy II") (date certain);
- Am. Immigr. Council v. DHS, 470 F.Supp.3d 32 (D.D.C. 2020) (Hogan, J.) (date certain);
- Am. Oversight v. Dep't of State, 414 F.Supp.3d 182 (D.D.C. 2019) ("Am. Oversight II") (Cooper, J.) (date certain);
- Ctr. for Pub. Integrity v. DOD, 411 F.Supp.3d 5 (D.D.C. 2019) (Kollar-Kotelly, J.);
- Prot. Democracy Project, Inc. v. DOD, 263 F.Supp.3d 293 (D.D.C. 2017) (Cooper, J.) ("Prot. Democracy I");
- Elec. Frontier Found. v. ODNI, 542 F.Supp.2d 1181 (N.D. Cal. 2008) ("EFF II") (date certain);
- *Elec. Frontier Found. v. ODNI*, No. 07-cv-5278 (SI), 2007 WL 4208311 (N.D. Cal. Nov. 27, 2007) ("*EFF I*") (date certain);
- EPIC v. DOJ, 416 F.Supp.2d 30 (D.D.C. 2006) (Kennedy, J.) ("EPIC II") (date certain); and
- Wash. Post v. Dep't Homeland Sec., 459 F.Supp.2d 61 (D.D.C. 2006) (Urbina, J.) (date certain).
- Aguilera v. FBI, 941 F.Supp. 144 (D.D.C. 1996) (Sullivan, J.) (date certain).

Based on the first principles set forth in the statute, this makes sense—a plaintiff with a statutory entitlement to expedited processing has a statutory right to expedition, *i.e.*, to have their request processed *more quickly*. Additionally, that right can include production of relevant records prior to an impending event of critical public importance after the records would lose much of their

significance. Preserving the statutory right under FOIA to *actual* expedition in both instances can only be vindicated by preliminary relief.

II. PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Plaintiffs Are Entitled to Expedited Processing.

In this posture, Plaintiffs must demonstrate that they are "entitled to expedited processing and not just whether [they are] entitled to a response." *Ctr. For Pub. Integrity*, 411 F.Supp.3d at 11 (quoting *Landmark Legal Found. v. EPA*, 910 F.Supp.2d 270, 274 (D.D.C. 2012)); *accord Brennan Ctr.*, 498 F.Supp.3d at 96. Plaintiffs easily do so.

1. Construction of 28 C.F.R. § 16.5(e)(1)(iv).

Courts have held that the DOJ Regulation requires the requester to show: (1) that the request involves a "matter of widespread and exceptional media interest"; and (2) that the matter is one "in which there exists possible questions about the integrity of the government that affect public confidence." *Id.*; see also Brennan Ctr., 498 F.Supp.3d at 97; Edmonds v. FBI, No. 02-cv-1294 (ESH), 2002 WL 32539613, *3 (D.D.C. Dec. 3, 2002). There is no "third" prong of this test requiring Plaintiffs to show "prejudice or a matter of current exigency to the American public" to satisfy the DOJ Regulation. Edmonds, 2002 WL 32539613, at *3.

Part 1 of the Test. The DOJ Regulation requires showing that the relevant questions concerning government integrity are also the subject of widespread national media attention. See Am. Oversight v. DOJ, 292 F.Supp.3d 501, 507–08 (D.D.C. 2018) ("Am. Oversight I") (denying motion for expedited processing because general media interest in Solicitor General's nomination is insufficient to show media interest in possible ethics questions concerning the nomination). There need not be a showing that the disclosure would shed considerable light on

agency operations; only that there is "exceptional" and "widespread" media interest. *See Edmonds*, 2002 WL 32539613, at *3; *cf. CREW v. DOJ*, 870 F.Supp.2d 70, 81 n.14 (D.D.C. 2012) ("*CREW I*"), *rev'd on other grounds*, 746 F.3d 1082 (D.C. Cir. 2014). While the media interest needs to be "widespread" and "exceptional," it need not be overwhelming. *See, e.g.*, *Brennan Ctr.*, 498 F.Supp.3d at 97 (test met by requestor's citation to "more than fifty recent articles" on the subject of the request, which was "considerably more than has sufficed in other cases"); *ACLU*, 321 F.Supp.2d at 31–32 (rejecting DOJ's position that requester's citation to what the court described as "only a handful of articles" was insufficient to show "widespread and exceptional media interest" because those articles "were published in a variety of publications and repeatedly reference the ongoing national discussion about the Patriot Act and Section 215" (second quotation added)); *Edmonds*, 2002 WL 32539613, at *3 (numerous national newspaper and network television broadcasts concerning a whistleblower's allegations of security lapses in FBI translator program met test).³

The fit between the call of the request and the matter of "widespread and exceptional" media interest need not be exact—mere reasonableness suffices. *See Brennan Ctr.*, 498 F.Supp.3d at 98.

Part 2 of the Test. The DOJ Regulation requires showing that "there exists possible questions about the government's integrity that affect public confidence." CREW II, 436 F.Supp.3d at 361 (quoting 28 C.F.R. § 16.5(e)(1)(iv)). It does not "require the requester to prove wrongdoing by the government in order to obtain documents on an expedited basis." Id. Nor does

³ Cf. 28 C.F.R. § 16.5(e)(3) ("The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an 'urgency to inform' the public on the topic."); 6 C.F.R. § 5.5(e)(3) (same).

it require "suggest[ing] any dishonesty." *Brennan Ctr.*, 498 F.Supp.3d at 97. Merely raising questions as to the "soundness" of a high-profile government decision suffices. *Id.* at 97 ("see Integrity, Black's Law Dictionary (11th ed. 2019) (defining 'integrity' to include 'soundness'); Integrity, American Heritage Dictionary (5th ed. 2018) (same)").

"The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues so potentially significant as to reduce public confidence in governmental institutions." Am. Oversight I, 292 F.Supp.3d at 508. This is not a high bar. See, e.g., Brennan Ctr., 498 F.Supp.3d at 97 (possible questions regarding accuracy or legality of census calculations implicate "government integrity"); CREW II, 436 F.Supp.3d at 361 (complaint sufficient to survive a motion to dismiss where it alleged Attorney General's action regarding disclosure of Mueller Report "supported an inference that at best, the Attorney General undertook to frame the public discussion on his own terms while the report itself remained under wraps, and at worst, that he distorted the truth"); ACLU, 321 F.Supp.2d at 32 (allegations in press that Section 215 of the Patriot Act may be unconstitutional, was subject to proposed repeal, and reports that Members of Congress were concerned about potential abuses of Section 215 even though that statute apparently "had never been used" "implicate[] government integrity" and hence are sufficient to meet test despite appearing to be necessarily speculative (internal citation omitted)); Edmonds, 2002 WL 32539613, at *3-4 (test met where plaintiff sought records about their whistleblower disclosures regarding allegations of security lapses in FBI translators program, national news covered the issue, and two

Senators expressed concern regarding "the significant security issues raised by plaintiff's allegations and the integrity of the FBI").⁴

2. Whether President Biden Remains Competent for Office and Whether Vice President Harris or Other Cabinet Officials Sought Advice on Invoking the 25th Amendment Are "Matter[s] of Widespread and Exceptional Media Interest."

Start and end with a review of the media coverage. *See Am. Oversight I*, 292 F.Supp.3d at 508. As detailed in the Complaint, Plaintiffs' expedited processing request records significant press interest in both President Biden's continued competency and what Vice President Harris knew about President Biden's competency and when. *See* Compl. ¶ 17. Recall that only a "handful" of articles suffices (*Brennan Ctr*, 498 F.Supp.3d at 97 (internal citations and quotation omitted); *ACLU*, 321 F.Supp.2d at 32), and "more than fifty" is more than sufficient. *Brennan Ctr*., 498 F.Supp.3d at 97. Plaintiffs provided 161 pages of news articles discussing President

Judicial reports indicate that DOJ grants expedition under the DOJ Regulation in many circumstances. *See, e.g., CREW I,* 870 F.Supp.2d at 81 n. 14 (expedition granted to request seeking records on FBI's closed investigation of Congressman Tom DeLay for misconduct which did not result in charges, but received considerable media attention); *CREW v. DOJ,* 820 F.Supp.2d 39, 42, 46 (D.D.C. 2011) (expedition granted to request seeking information concerning possible deletion of Office of Legal Counsel emails where the possible deletion was flagged as a hindrance in an internal investigation, covered in the media, and was the subject of Congressional concerns); *Elec. Frontier Found. v. DOJ,* 563 F.Supp.2d 188, 189–91 (D.D.C. 2008) (expedition granted to request seeking information regarding storage of information obtained by National Security Letters in FBI's Data Warehouse); *CREW v. DOJ,* No. 05-cv-2078 (EGS), 2006 WL 1518964, *1 (D.D.C. June 1, 2006) (expedition granted to request concerning government's decision to seek a reduced penalty in tobacco litigation where government's decision was subject to intensive news coverage and prompted concern from "several Congressman" which caused a request for an Inspector General investigation of "improper political interference" with the decision).

Biden's competency and Vice President Harris's possible use of the 25th Amendment. See Request, App. A.

These articles repeatedly raise the question of whether Vice President Harris or other Cabinet officials were part of a concerted effort by members of their party to use the 25th Amendment to force President Biden out of the 2024 Presidential race and then conceal concerns regarding the President's infirmity.⁵

There is no doubt that the coverage directly raises "possible questions about the government's integrity." *Cf. Brennan Ctr.*, 498 F.Supp.3d at 98 (nexus required between extensive media coverage and "possible questions about the government's integrity"); *Am. Oversight I*, 292 F.Supp.3d at 507–08 (similar). Moreover, when Plaintiffs filed their Complaint, *Fox News* reported on this case. Cornett Decl. at Ex. 2. Plaintiffs have provided the most direct possible evidence of "widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence"—the underlying questions and this case received press coverage.

3. Questions as to Whether President Biden Remains Competent for Office and Whether Vice President Harris or Others Sought Advice on Invoking the 25th Amendment Raise "Possible Questions About the Integrity of the Government that Affect Public Confidence."

Did Vice President Harris or other members of the Cabinet question President Biden's fitness for office and thus seek final advice as to invoking the 25th Amendment from OLC?⁶

⁵ That some of these articles covered statements by President Donald J. Trump regarding the 25th Amendment and President Biden does not alter the analysis. What matters is that the press *covered* those statements.

⁶ OLC's legal opinions are controlling on the Executive Branch. Of import here, OLC is charged with "assisting the Attorney General in the performance of his functions as legal adviser to the

Moreover, if the Vice President did request that advice, what has changed to make it no longer applicable other than President Biden dropping out of the race and endorsing her? Are the Vice President or others concealing suspected Presidential incapacity? The answers to these questions have direct and profound significance to the current and on-going governance of the country as well as electoral salience to the American people in the 2024 General Election. To state the blatantly obvious, these questions and the attendant "widespread and exceptional" media coverage plainly raise *possible* questions about the government's integrity which affect public confidence. *See* Compl. at ¶17. Indeed, that the same questions above are repeatedly raised in media reports is itself largely dispositive on this issue. *See Am. Oversight I*, 292 F.Supp.3d at 508.

Yes, these questions do not focus on a specific allegation of illegality or criminality. But that is not required. Mere allegations of *possible* improper exercises of discretion are all that is

President and as a member of, and legal adviser to, the Cabinet." 28 C.F.R. § 0.25. The scope of the 25th Amendment is precisely the sort of question that would be put to OLC as part and parcel of its invocation. What constates a "inability" under Section 4 of the 25th Amendment was deliberately left murky in the Amendment's drafting. See A Sitting President's Amenability to Indictment and Criminal Prosecution, 24 Op. OLC. 222, 248 n.18 (2000) (collecting history); cf. Regency Act of 1937, 1 Edw 8 & 1 Geo 6, Chap. 16 §2(1) (requiring "evidence which shall include the evidence of physicians that the Sovereign is by reason of infirmity of mind or body incapable for the time being of performing the royal functions or that they are satisfied by evidence that the Sovereign is for some definite cause not available for the performance of those functions"). That question is subject to such lively debate legally and politically, (see e.g., Letter to Speaker Nancy Pelosi from Vice President Michael Pence on 25th Amendment Resolutions, 2021 WL 100727 (Jan. 12, 2021)) that it has carried over into popular culture, perhaps best shown in the "trial" of President David Palmer in Season 2 of the iconic series 24. OLC would also be expected to opine on a number of "difficult procedural questions", to start who constitutes a "principal officer[] of the executive department" and may acting officers vote? Operation of the Twenty-Fifth Amendment Respecting Presidential Succession, 9 Op. OLC 65, 68–69 (1985). Those questions are not free form doubt. Compare Operation of the Twenty-Fifth Amendment, 9 Op. OLC 68-69 (stating that a "principal officer[] of the executive department" is listed in 5 U.S.C. § 101 and the "acting" question is open), with Presidential Succession and Delegation in Case of Disability, 5 Op. OLC 91, 92 (1981) (suggestion that any removal should proceed with sufficient votes to" satisfy any definition" and that the "acting" question is open.).

required. If Vice President Harris or others requested the advice and chose not to act on it, that suffices. *See, e.g., Brennan Ctr.*, 498 F.Supp.3d at 97 (standard met by reports that census calculation methods may produce inaccurate request); *id.* (media coverage "need not suggest any dishonesty or intentional wrongdoing on Defendants' part"); *id.* (questioning wisdom of government action suffices); *CREW II*, 436 F.Supp.3d at 361 ("CREW's submission supported an inference that at best, the Attorney General undertook to frame the public discussion on his own terms while the report itself remained under wraps, and at worst, that he distorted the truth."); *ACLU*, 321 F.Supp.2d at 32 (standard met by *potential* abuses of statute).

That these questions concern Defendant's actions related to the President and Vice President, discrete individuals, does not alter the analysis. What matters is the *profile* of DOJ's actions in that case. *Edmonds*, 2002 WL 32539613, at *3 (records concerning whistleblowers' allegations of FBI wrongdoing met test where they received extensive coverage: "This flurry of articles and television coverage, which has continued at least until last month, cannot be cast aside by a sleight-of-hand as defendant attempts to do by categorizing plaintiff's requests as being merely 'personal to her' and of no 'wider public concern.'"); *cf. White v. DOJ*, 16 F.4th 539, 544 (7th Cir. 2021) (expedited processing properly denied because prisoner's attack on his conviction did not meet expedition criteria); *CREW I*, 870 F.Supp.2d at 75 n.1, 81 n.14 (DOJ granted expedited processing concerning high profile criminal investigation of a Congressman that resulted in no political charges).

Again, that the widespread media reports only raise questions (supported by a robust factual basis) and do not provide proof of misconduct does not undermine Plaintiffs' case. ""[P]ossible questions about the government's integrity that affect public confidence" suffice.

CREW II, 436 F.Supp.3d at 361 (quoting 28 C.F.R. § 16.5(e)(1)(iv)); accord Brennan Ctr., 498 F.Supp.3d at 97 (articles that "raise questions" going to "the government's integrity' that 'affect public confidence'" and then report on those issues are sufficient (quoting 28 C.F.R. § 16.5(e)(1)(iv)); Edmonds, 2002 WL 32539613, at *3 (widely reported whistleblower allegations meet standard).

B. Plaintiffs Are Entitled to Production of All Non-Exempt Responsive Records By October 15, 2024.

1. FOIA Requires Production "as Soon as Practicable."

As explained *supra*, the law requires that Defendant grant expedited processing to the Request because it concerns ""[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv). When expedited processing has been granted, "an agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph." 5 U.S.C. § 552(a)(6)(E)(iii). Courts have rejected government submissions that expedited processing is merely an agency ordering mechanism and does not require actual expedition. See EFF I, 2007 WL 4208311 *4; EPIC II, 416 F.Supp.2d at 37–38. Rather, courts have repeatedly held that they have ample authority to enforce the "as soon as practicable" provision and that what matters under that provision is not the administrative classification of the request, but whether the agency is actually processing the request "as soon as practicable." See EFF I, 2007 WL 4208311 *4 ("Here, defendant has already determined that plaintiffs' request is entitled to expedited processing. Thus, the only question remaining is whether defendant is actually processing the request 'as soon as practicable.""); EPIC II, 416 F.Supp.2d at 41 (question is whether the agency has "actually expedit[ed] its processing."); see also, Brennan

Ctr., 498 F.Supp.3d at 100–101; Am. Immigr. Council, 470 F.Supp.3d at 36–37; Gerstein v. CIA, No. 06-cv-4643 (MMC), 2006 WL 3462659, at *3 (N.D. Cal. Nov. 29, 2006). Courts also have inherent power to control timing in FOIA responses. See Am. Oversight II, 414 F.Supp.3d at 186.⁷

In applying this test, courts have been less than clear on the precise contours of the statutory phrase "as soon as practicable." But that is of no moment here because of the extreme gravity and urgency of this case. Whatever the outer limits of that phrase, its core meaning clearly encompasses cases like this one where production by a date certain is essential to avoid the records becoming stale and being "of little value" to "inform the public of ongoing proceedings of national importance." *Brennan Ctr.*, 498 F.Supp.3d at 99 (internal citations omitted) (collecting authorities). "[U]nder those circumstances, a plaintiff may demonstrate a likelihood that it is entitled to have processing completed quickly enough so that 'the value of the information would not be lessened or lost." *Brennan Ctr.*, 498 F.Supp.2d at 99 (quoting *Ctr. for Public Integrity*, 411 F. Supp. 3d at 12); *see also*, *Am. Immigr. Council*, 470 F.Supp.3d at 37 ("Plaintiffs' request

But all the statute requires is that, once a request is expedited, the agency process it as soon as practicable. The plaintiffs provide no authority for the proposition that *within* the category of expedited requests, DOJ has an obligation to prioritize productions based on their "gravity and urgency." To the contrary, an agency faces the same obligation for "any" expedited request: namely, to process it "as soon as practicable." 5 U.S.C. § 552(a)(6)(E)(iii) (emphasis added).

Heritage Found., 2023 WL 4678763, at *5. But that is not the whole story. Judge Friedrich made clear in a hearing on whether to vacate her opinion under the *Munsingwear* doctrine that "I can envision a situation, I will tell you now, where an exigent request would jump the queue. But on this FOIA request, I didn't see it." Trans. at 7:6–8, *Heritage Found. et al. v. DOJ*, NO. 23-cv-1854 (DLF) (Oct. 30, 2023); *see also id.* at 9:7–12.

⁷ Heritage Found. et al. v. DOJ, No. 23-cv-1854 (DLF), 2023 WL 4678763 (D.D.C July 19, 2023), vacatur denied, 2023 WL 8880337 (D.D.C Dec. 22, 2023) is not to the contrary. True, there, Judge Friedrich wrote:

concerns a serious and time-sensitive matter, and it is entitled to an order requiring Defendants to process and produce responsive documents on a more expeditious timeline than that proposed by Defendants."); *Am. Oversight II*, 414 F.Supp.3d at 186–87.

2. Whether Relevant Officials Under Section 4 of the 25th Amendment Question the President's Continued Fitness for Office is a Foundational Issue.

When Special Counsel Robert K. Hur released his Report and recommended against prosecuting President Biden despite a case that could go to the jury (Hur Hearing at 68), a key factor was President Biden's "diminished faculties and faulty memory." Cornett Decl. at Ex. 3 at 248. If officials responsible for assessing the President's fitness under the 25th Amendment had concerns, considered invoking it, but chose not to act, this raises a critical national issue, given the President's role as head of the Executive Branch. He is the living breathing embodiment of a unitary Executive. *See, e.g., Trump v. United States*, 144 S.Ct. 2312, 2329 (2024) (the President is "the only person who alone composes a branch of government" (internal citation and quotation omitted)). Whether the Vice President or others doubt that the man always accompanied by the nuclear football is fit for office cannot be any more fundamental to the people's right to know "what their government is up to." *CREW v. DOJ*, 746 F.3d 1082, 1093 (D.C. Cir. 2014) ("*CREW III*") (citations omitted). That common sense conclusion was confirmed by the White House itself recently when it provided daily updates on the President's recent bout with COVID-19—there is

⁸ History confirms this logic. President Woodrow Wilson suffered a massive stroke that left him incapacitated from 1919 through the rest of his Presidency. *See* Crispell, Kenneth R., & Carlos F. Gomez, *Hidden Illness in the White House* 67–74 (Duke Univ. Press 1988)). President John F. Kennedy's habitual consumption of narcotics with side effects of irrational judgement and paranoia is well documented. *See* Robert Dallek, *An Unfinished Life: John F. Kennedy, 1917-1963* 576 (Little, Brown & Co. 2003)).

an urgent public interest in the President's health and thus fitness for office. If President Biden was not fit to run for re-election due to "diminished faculties and faulty memory", how is he fit to run the country? Matters cannot be more urgent both within the United States and abroad as exhibited by the escalating conflict in the Middle East.

3. If Vice President Harris or Other Cabinet Members Sought Advice on the 25th Amendment and If VP Harris Covered up a Presidential Decline Are Central Questions and Issues in the 2024 Presidential Election.

Whether Vice President Harris or others in the Biden-Harris Administration sought advice on invoking the 25th Amendment and the implications of such an ask go to answering a central issue in the upcoming 2024 General Election. The Vice President was swift in her condemnation of Special Counsel Hur. So too with many others in the Biden-Harris Administration. If Vice President Harris or others later sought advice on the 25th Amendment and did not act on that advice or retract earlier statements, the question of "who know what when?" as to the Vice President's possible cover-up of President Biden's mental decline is supercharged. The American People deserve as much information as possible to answer the questions posed by Plaintiffs prior to casting their ballots. That coverage even extended to *this* lawsuit, and it could not be more clear that the same questions asked by this case are central issues in the 2024 General Election. *See*, *e.g.*, Cornett Decl. Ex. 2.

4. A Significant Amount of Voting Will Have Commenced On October 15, 2024.

In recent times, changes in voting laws have seen voting by mail or voting in-person commence ever earlier. Accordingly, information going directly to key issues in the 2024 Presidential Election must be made public far before November 5, 2024. Nine states—Arkansas,

Kentucky, Minnesota, North Carolina, Pennsylvania, South Dakota, Tennessee, West Virginia, and Wisconsin—begin mailing ballots more than 45 days before the election. *See* A.C.A. § 7-5-407; M.S.A. §§ 203B.081 & 203B.085; N.C.G.S.A. § 163-227.10; 25 P.S. § 3146.2a; S.D.C.L. §§ 12-19-1.2 & 12-19-21; T.C.A. § 2-6-202; W. Va. Code, § 3-3-5(e)(1); W.S.A. § 7.15. Processing begins in Delaware thirty days prior to Election Day. 15 Del. C. § 5510.

In person absentee voting commences in Pennsylvania 50 days prior to the election. *See* 25 P.S. § 3146.2a. Early voting starts in Virginia 45 days before the election. *See* VA Code Ann. §25.2-701.1. In person absentee voting starts in Maine when ballots are ready, which typically is 30 to 45 days before the election. *See* Cornett Decl. Ex. 9 at 13.

These states are not insignificant, Pennsylvania and Wisconsin are widely considered key swing states in the 2024 General Election. North Carolina, Virginia, and Maine's 2d Congressional District are all minor swing states.

Moreover, early voting or voting by mail is not the rarity or novelty it once was. Witness the Election Assistance Commission's 2020 Report to Congress:

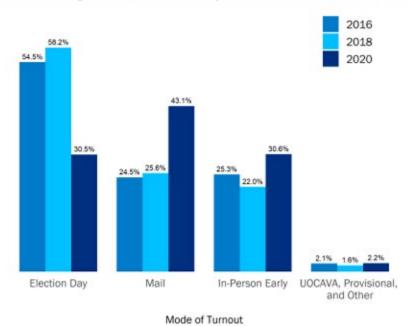


Figure 3. Mail Voting Was the Most Common Way for Voters to Cast Their Ballots in 2020

Cornett Decl. at Ex. 10 at 10.

There is no reason to believe that the general trend of increased participation outside of the traditional in-person Election Day voting will wane in 2024; it may well increase.

5. FOIA Requires Production by October 15, 2024.

Again, under 5 U.S.C. § 552(a)(6)(E)(iii) a Court has broad discretion to conclude "as soon as practicable" means "under the circumstances" production by a date certain. *Brennan Ctr.*, 498 F.Supp.3d at 99. As Judge Kelly has noted, "[t]he Court's analysis on this point tracks closely with its evaluation of irreparable harm." *Id*.

Courts have granted preliminary injunctions requiring production by a date certain "so to avoid the records requested becoming stale after that date, and thus being 'of little value' to 'inform the public of ongoing proceedings of national importance." *Brennan Ctr.*, 498 F.Supp.3d at 99 (quoting *Ctr. for Public Integrity*, 411 F. Supp. 3d at 12 (in turn quoting *Payne Enters., Inc. v.*

United States, 837 F.2d 486, 494 (D.C. Cir. 1988))). In such a case "a plaintiff may demonstrate a likelihood that it is entitled to have processing completed quickly enough so that 'the value of the information would not be lessened or lost." *Brennan Ctr.*, 498 F.Supp.3d at 99 (quoting *Ctr. for Public Integrity*, 411 F.Supp.3d at 12).

Here the urgency is obvious. Whether Vice President Harris or other relevant officials sought final advice from OLC about invoking the 25th Amendment—and the implications of that for President Biden's competency and Vice President Harris' candor with the American people—are critical issues for the governance of the country and the 2024 election.

- 1. Information essential to the functioning of the country is obviously of the utmost urgency. *Cf. Am. Immigr. Council*, 470 F.Supp.3d at 38 ("Plaintiff seeks the requested information to inform the public about ICE's response to the COVID-19 pandemic and the impact of that response on the thousands of immigrant detainees who are presently in ICE custody. A delay in the release of the requested information would cause irreparable harm."); *Pub. Health & Med. Prof. v. FDA*, 672 F.Supp.3d 253, 255–56 (N.D. Tex. 2023) ("Plaintiffs have shown an urgent need to inform the public about the health and safety of the COVID-19 vaccines based on the massive push to vaccinate, persistent effort to eradicate COVID-19, and continued government and private efforts to enforce these vaccines.").
- 2. Courts have been clear that the need for information before an Election (or significant legislative event) requires production prior to the Election. *See, e.g., Brennan Ctr.*, 498 F.Supp.3d at 100 (2020 Census reapportionment); *Prot. Democracy II*, 498 F.Supp.3d 132, 142 (D.D.C. 2020) (records relating to the United States Postal Service's involvement in Department of Justice's voting fraud task force before 2020 election); *Am. Oversight II*, 414 F.Supp.3d at 188

(impeachment inquiry); *Ctr. for Pub. Integrity*, 411 F.Supp.3d at 15 (same); *Wash. Post*, 459 F.Supp.2d at 74 (records of visitors to White House Complex and Vice President's residence prior to 2006 elections). So too, issues going to the security and well-being of the Nation.

C. Defendant Should Not be Heard to Claim the Responsive Records Are Exempt at this Stage.

To be sure, some courts have concluded that whether the records are likely subject to withholding is relevant to whether to grant a preliminary injunction. See, e.g., Am. Oversight II, 414 F.Supp.3d at 187; Ctr. Public Integrity, 411 F.Supp.3d at 13; EPIC II, 15 F.Supp.3d at 46. But those cases have set a high threshold for invoking this consideration, requiring a showing that most (if not all of the records) are exempt. Compare Am. Oversight II, 414 F.Supp.3d at 187 ("State rightly points out that American Oversight will not be irreparably harmed by further delay if the documents it seeks can be lawfully withheld from disclosure under FOIA's exemptions. Certain categories of the requested documents may well meet that description. Others, however, would not appear to be subject to any FOIA exemptions. This is especially true for communications between Department officials and Mr. Giuliani, who is not a government employee. Accordingly, the Court finds that the harm of delay beyond the anticipated timeline of the impeachment inquiry would be irreparable, especially with respect to those categories of requested records that are unlikely to be subject to FOIA exemptions."); Ctr. for Pub. Integrity, 411 F.Supp.3d at 13 ("While some of the requested information may very well be exempt from disclosure, Plaintiff's Motion requests only non-exempt information. And, at this point in the litigation, knowing nothing about the content of the responsive documents, the Court is not prepared to find that all of the requested information is exempt from FOIA"), with EPIC v. DOJ, 15 F.Supp.3d 32, 46 (D.D.C. 2014) ("EPIC III") ("most if not all" of an entire category of records

sought by Plaintiff were "classified"). Put different all Plaintiffs need to show at this preliminary posture is that they can make *some* significant use of records—or segregable portions thereof—that are likely non-exempt.

This test makes sense because at the end of the day the question is rightly viewed through a lens of irreparable harm and redressability. *See, e.g., Am. Oversight II*, 414 F.Supp.3d at 187 ("State rightly points out that American Oversight will not be irreparably harmed by further delay if the documents it seeks can be lawfully withheld from disclosure under FOIA's exemptions"); *EPIC III*, 15 F.Supp.3d at 46 ("EPIC cannot claim to be injured—much less "irreparably" so—if the NSD withholds documents that EPIC is not entitled to access in the first instance"). The denial of significant non-exempt responsive documents (or even newsworthy information about those documents) is fully cognizable harm even if other documents are withheld; the harm is absent only

Heritage Foundation charted a different course and adopted a test more deferential to the Government concluding that "[a]t least at this stage, however, it appears to the Court that the documents most likely to vindicate the plaintiffs' asserted interests justifying injunctive relief are those that are also most likely to be exempt from disclosure under FOIA." Heritage Found., 2023 WL 4678763. That opinion is against the weight of authority and should be rejected for the reasons previously explained. Moreover, even under that deferential test, Defendant fails here. The key records are not likely to be exempt.

⁹ EPIC III actually cuts in favor of this test despite a preliminary injunction being denied in that case. In EPIC III, Plaintiffs sought Attorney General reports to certain Congressional Committees on certain surveillance tools; information provided to certain Congressional Committees on those tools; and records used to prepare the foregoing. 15 F.Supp.3d at 36. "[M]ost if not all" of the Attorney General reports were classified. Id. at 46. (An open and shut case of exemption unlike the exemptions asserted here). Accordingly, the EPIC III Court wrote "certain documents in all of the requested categories are likely to fall under FOIA Exemptions." Id. Then, critically, the EPIC III Court concluded that on those facts, EPIC's claim of irreparable harm fell as the very records it needed "so that the public can participate fully in the ongoing debate" were clearly subject to withholding. Id. The EPIC III Court noted that EPIC appeared to acknowledge that the usefulness of the records was limited (noting EPIC requested expedited production of a Vaughn Index). Id. at 46 n.9. In other words, the touchstone of the analysis was whether the non-exempt records would further the public debate.

if there are likely no (or but a handful) of non-exempt responsive records.

Moreover, nothing negates the fact that "[t]he *agency* bears the burden of justifying the application of any exemptions, 'which are exclusive and must be narrowly construed." *Lewis v. Dep't of Treas.*, No. 17-cv-943 (DLF), 2020 WL 1667656, at *2 (D.D.C Apr. 3, 2020) (quoting *Mobley v. CIA*, 806 F.3d 568, 580 (D.C. Cir. 2015) (emphasis added)). The Defendant must meet *some* form of that burden even in the preliminary injunction context. *Cf. Ctr. for Pub. Integrity*, 411 F.Supp.3d at 13 ("And, at this point in the litigation, knowing nothing about the content of the responsive documents, the Court is not prepared to find that all of the requested information is exempt from FOIA.").

Defendant cannot make such a showing here. The request may of course include *some* exempt records, but it also will almost certainly include significant non-exempt records. The position of the Department on points of law concerning key questions under the 25th Amendment is not exempt; nor the opinion of law itself deliberative in that it represents a final position of law that is divorced from any decision relying on that law. *Cf. CREW v. DOJ*, 45 F.4th 963, 973 (D.C. Cir. 2022) (finding that as the Department never considered charging President Trump, the memorandum analyzing evidence against President was not neither pre-decisional nor deliberative.).

Finally, as the court in *Center for Public Integrity* observed, at the end of the day this Court knows "nothing about the content of the responsive documents" (411 F.Supp.3d at 13) and, apparently, neither does the Government.

III. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION.

A. Plaintiff Will Suffer Irreparable Harm to Their Statutory Entitlement to

Expedited Processing.

Plaintiffs have demonstrated a likelihood of success on the merits, i.e., that they have demonstrated a statutory right to expedited processing. See, e.g., Brennan Ctr., 498 F.Supp.3d at 96; Ctr. For Pub. Integrity, 411 F.Supp.3d at 11. That statutory right to expedited processing is entirely focused on *time*: Plaintiffs are statutorily entitled to receive their documents *more quickly* than garden variety requestors. *Timing* is the fundamental basis of the statutory right. *See* 5 U.S.C. § 552(a)(6)(E) (entire section of FOIA providing "[e]ach agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records" and establishing statutory framework for regulatory implementation of the same."); see also, e.g., Edmonds v. FBI, 417 F.3d 1319, 1324 (D.C. Cir. 2005) (Garland, J.) ("The 1996 FOIA amendments underlined Congress' recognition of the value in hastening release of certain information, by creating a statutory right to expedited processing and providing for judicial review of its denial."). That timing decision is made by Congress and DOJ through 28 C.F.R. § 16.5(e)(1)(iv). DHS concluded that there is substantial public interest in having information about "a matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence" produced more quickly. That decision necessarily reflects a judgement that this category of information is most useful to the public now rather than later. See Edmonds, 417 F.3d at 1324 ("We reject the government's further suggestion that whatever benefit Edmonds obtained from expedited processing was too insubstantial to entitle her to a fee award.... Plainly, there is value to obtaining something earlier than one otherwise would. That is why people commonly pay—and delivery services commonly charge—a premium for next-day delivery of important documents.");

cf. Payne Enter., Inc. v. United States, 837 F.2d 486, 494 (D.C. Cir. 1988) ("stale information is of little value").

Because this statutory right turns *entirely* on timing, it cannot be remedied *post hoc*. FOIA records improperly withheld in a run-of-the-mill FOIA case can always be produced after adjudication down the road. FOIA records produced slowly are eventually produced so there is a complete remedy: the requestor may obtain the records he is entitled to. But here, the *entire* candle is time; the statutory entitlement to expedition only matters while the records are being processed, after that finite temporal window the point is moot. *See* 5 U.S.C. § 552(a)(6)(E)(iv) ("[a] district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request."); *see also, e.g., Edmonds*, 417 F.3d at 1324 ("When, pursuant to court order, the FBI finished processing Edmonds' request two months earlier than it would have in the absence of the order, she vindicated that statutory right."); *Muttitt v. Dep't of State*, 926 F.Supp.2d 284, 296–97 (D.D.C. 2013) (expedited processing claim mooted by final production). Thus, a failure to expedite effectively destroys the entire statutory right.

Expedited processing is also a right of relative priority assigned via statute and regulatory determinations of which FOIA requests are more important. DOJ multitracks their FOIA requests. Under FOIA "[e]ach agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests." 5 U.S.C. § 552(a)(6)(D). DOJ has done so. *See* 28 C.F.R. § 16.5(b). And an expedited request takes priority. *Id.* at § 16.5(e)(4) ("If expedited processing is granted, the request shall be given priority, placed in the processing track for

expedited requests, and shall be processed as soon as practicable."). Thus, denying expedited processing denies priority—an entitlement pointedly provided by statute and regulation that is, again, *entirely* time based and cannot be restored when lost.

Moreover, the decision on timing embodied in 28 C.F.R. § 16.5(e)(1)(iv) is a decision made against the background of FOIA's unusual requirement that generally a court must grant equitable relief if plaintiffs prevail. *See, e.g., Wash. Post v. Dep't of State*, 685 F.2d 698, 704 (D.C. Cir. 1982) (holding court lacks equitable discretion to refuse to order disclosure of non-exempt documents regardless of how grave the potential consequences of disclosure and explaining "[t]he most that a court could do in such a situation would be, in response to a strong showing of imminent and demonstrable danger to a compelling national interest, to stay its judgment for a time to give Congress an opportunity to correct its oversight, if such it be."), *vacated as moot*, 464 U.S. 979 (1983) (mem.); *Soucie v. David*, 448 F.2d 1067, 1076 (D.C. Cir. 1971) ("Congress clearly has the power to eliminate ordinary discretionary barriers to injunctive relief, and we believe that Congress intended to do so here").

Accordingly, a wrongful denial of a statutory right to expedited processing necessarily causes irreparable harm because the statutory right is solely one of relative timing and the clock cannot be wound back to restore to Plaintiffs the time lost each day the Request is not expedited. The statutory right concerns timing in a limited temporal window; effective relief cannot come via another mechanism or *post hoc*. Put differently, as to a claim of expedited processing "only an injunction could vindicate the objectives of [FOIA]." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 314 (1982); *see also Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 542–43 (1987). That an injunction is the only effective relief here means that the harm is irreparable.

Plaintiffs' submission on this point is narrow—it applies only where Plaintiffs have shown they *are* entitled to expedited processing. Thus, a holding that an improper denial of expedited processing is itself (absent some extraordinary circumstance) irreparable harm would have no application in the vast majority of FOIA cases. Again, Plaintiffs freely admit that this submission collapses the likelihood of success on the merits with a showing of irreparable harm, but there is nothing new in such an analysis where only an injunction can effectively remedy the statutory violation. *See, e.g., Tenn. Valley Authority v. Hill*, 437 U.S. 153, 193–94 (1978) (under statutory scheme violation of the statute required entry of injunction per Congress' balancing of the equities itself in the statutory scheme). It is the correct analysis in this context as is demonstrated by several FOIA opinions in the district.

Take *EPIC II*. There DOJ argued as to "Irreparable Injury" that because DOJ had granted EPIC expedited processing, EPIC had received full relief and was not entitled to an order compelling production by a date certain. 416 F.Supp.2d at 40–41. The Court rejected this argument, writing that "[a]s EPIC contends, 'merely paying lip service' to EPIC's statutory right does not negate 'the harm that results from the agency's failure to *actually* expedite its processing.'

There is nothing improper about a court largely collapsing the questions of success on the merits on a statutory violation and irreparable harm where the statutory violation concerned a question of timing. See, e.g., Jasperson v. Fed. Bureau of Prisons, 460 F.Supp.2d 76, 90–91 (D.D.C 2006) (failure to provide a prisoner with legally required individualized assessment as to suitability for placement in a halfway house prior to incarceration would constitute irreparable harm "from the moment he surrenders to BOP custody"); Apotex. Inc. v. FDA, No. 06-cv-627 (JDB), 2006 WL 1030151, at *17 (D.D.C. Apr. 19, 2023) ("But unlike the harm that Apotex allegedly faces, the potential injury that the intervenor-defendants face is not 'merely economic.' Rather, they stand to lose a statutory entitlement [(180 day generic exclusivity period)], which is a harm that has been recognized as sufficiently irreparable. See, e.g., Mova [Pharm. Corp. v. Shalala], 140 F.3d [1060,][] 1067 n. 6 [(D.C. Cir. 1998)]. Once the statutory entitlement has been lost, it cannot be recaptured.").

Pl.'s Reply at 7 (emphasis in original). Unless the requests are processed without delay, EPIC's right to expedition will be lost." *Id.* at 41. *EPIC II* did not involve any claim that records would lose saliency by a date certain. The court again linked the merits of the expedited processing claim to irreparable harm. *See id.* ("Moreover, DOJ's arguments challenging the irreparable nature of the harm sustained by EPIC as a result of DOJ's delay is severely undermined by its determination that EPIC's FOIA requests merit expedition. Such a determination necessarily required DOJ to find that there was an '*urgency* to inform the public' about the warrantless surveillance program. Pl.'s Mot., Exhs. 12, 13 (emphasis added). Given this concession, the court finds it hard to accept DOJ's current argument that disclosure is not urgent and that further delay will not harm EPIC."). Removing any doubt, the court then wrote "[b]eyond losing its right to expedited processing, EPIC will *also* be precluded, absent a preliminary injunction, from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of the Administration's warrantless surveillance program", *i.e.*, the nature of the asserted right was a separate ground of irreparable harm. *Id.* (emphasis added).

Wash. Post v. DHS, to be sure, cites the nature of the asserted "urgency," (459 F.Supp.2d at 74–75) but it also quite clearly holds: "Turning to the irreparable injury component of the preliminary injunction analysis, the plaintiff argues that the 'very nature of the right that plaintiff seeks to vindicate in this action—expedited processing—depends on timeliness.' Pl's Mot. at 15. The court agrees." Id. at 74. The court reinforced this point, writing "[w]ithout a preliminary injunction directing the Secret Service to process the plaintiff's FOIA request in an expedited fashion, the plaintiff would lose out on its statutory right to expedited processing and on the timesensitive public interests which underlay the request." Id. at 75 (emphasis added). Plainly by

using a conjunctive, the *Wash*. *Post* court recognized the denial of the statutory right can cause irreparable harm in this context. *Wash*. *Post* thus contains two alternative holdings. If the decision rises or falls on urgency, then the conjunctive is unnecessary.

Heritage Foundation v. EPA is not to the contrary. No. 23-cv-748 (JEB), 2023 WL 2954418 (D.D.C. Apr. 14, 2023). There, the court addressed an argument Plaintiffs did not make—that "they will suffer irreparable harm because '[t]ime cannot be wound back,' and so '[t]he time lost to Plaintiffs . . . is thus irreparable." Id. at *5 (internal citation omitted). But Plaintiffs' argument was the same as it makes here—where Plaintiffs have shown they are entitled to expedited processing a denial of that expedition is irreparable because it is a statutory right that is entirely about time that cannot be restored. The opinion in Heritage Foundation v. EPA says nothing about this statutory argument because the court there did not consider it.

B. Plaintiffs Will Suffer Irreparable Harm if the Records are Not Produced By October 15, 2024.

The irreparable informational injury here is as simple as it is obvious. The records sought by the Request go directly to whether the Vice President or other cabinet officials believe President Biden is competent and whether the Vice President covered up President Biden's cognitive decline.

1. Wall to wall press coverage documented and reported that members of President Biden's own political party forced him to step aside in the 2024 General Election because they shared Special Counsel Hur's concerns regarding the President's "diminished faculties and faulty memory." The coverage here suggests that part of the leverage against President Biden was threatened invocation of the 25th Amendment. If the Vice President or Cabinet Members thought that President Biden was not fit to run for re-election due to "diminished faculties and faulty

memory," how is he fit to run the country? Matters *cannot* be more urgent. *Cf. Am. Immigr.*, 470 F.Supp.3d at 38 ("Plaintiff seeks the requested information to inform the public about ICE's response to the COVID-19 pandemic and the impact of that response on the thousands of immigrant detainees who are presently in ICE custody. A delay in the release of the requested information would cause irreparable harm."); *Pub. Health & Med. Prof.*, 672 F.Supp.3d at 255–56 ("Plaintiffs have shown an urgent need to inform the public about the health and safety of the COVID-19 vaccines based on the massive push to vaccinate, persistent effort to eradicate COVID-19, and continued government and private efforts to enforce these vaccines."). That this harm is not of a fixed end "date" is of no moment—is of so rare and severe a sort that "irreparable harm is already occurring each day" the President governs "without an informed public able to access relevant information." *Ctr.* for *Pub. Integrity*, 411 F.Supp.3d at 13; *see also e.g.*, *Am. Immigr. Council*, 470 F.Supp.3d at 38.

2. If the records are produced after voting is well underway the American People who have voted cannot use those to inform their votes on an important issue. Definitionally then, they will be "stale after that date, and thus being 'of little value' to 'inform the public of ongoing proceedings of national importance." *Brennan Ctr.*, 498 F.Supp.3d at 99 (quoting *Ctr. for Public Integrity*, 411 F.Supp.3d at 12 (in turn quoting *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988))). Put differently their value will be lessened or lost." *Brennan Ctr.*, 498 F.Supp.3d at 99 (quoting *Ctr. for Public Integrity*, 411 F.Supp.3d at 12).

Courts in this District have not hesitated to find that these circumstances constitute irreparable harm. As Judge Sullivan put it in a case seeking information regarding the Postal Service and voting fraud:

The Court finds Protect Democracy has established a likelihood of irreparable harm absent a preliminary injunction. As stated above, the Court has concluded that the subject matter of Protect Democracy's FOIA request is time sensitive due to the impending election, in which voting is already underway. . . . Plaintiff has established that the American public has a need to know information regarding investigations into matters potentially affecting voting rights while the inquiries are still ongoing.

Prot. Democracy II, 498 F.Supp.3d at 142; accord Wash. Post, 459 F.Supp.2d at 75 ("Because the urgency with which the plaintiff makes its FOIA request is predicated on a matter of current national debate, due to the impending election, a likelihood for irreparable harm exists if the plaintiff's FOIA request does not receive expedited treatment."). Courts have routinely granted preliminary injunctions requiring production of relevant records prior to legislative votes on measures of great importance under the same rationale. See, e.g., Brennan Ctr., 498 F.Supp.3d at 101 (re-apportionment per 2020 census); Am. Oversight II, 414 F.Supp.3d at 186–87 (impeachment); Ctr. for Pub. Integrity, 411 F.Supp.3d at 13 (impeachment); EFF II, 542 F.Supp.2d at 1187 (FISA Amendments); EFF I, 2007 WL 4208311, at * 7 (Protect America Act and FISA).

This conclusion is not altered by the fact that the elections today are a fluid months long event and in theory records produced say October 30, 2024 would have *some* salience to *some* component of the electorate thereafter. Nor is it altered by the fact that as to some the harm has already occurred—there are many other American citizens who have not (yet) been harmed. *Protect Democracy II* itself answers those points as, there, the injunction was granted in part because "voting is already underway." *Prot. Democracy II*, 498 F.Supp.3d at 142. What matters is that the harm has occurred in a significant way and is on-going every day. *Cf. e.g., Am. Immigr. Council*, 470 F.Supp.3d at 38 ("Defendants attempt to downplay the urgency of Plaintiff's request, asserting that Plaintiff 'cannot point to any concrete deadline by which it needs the records' because '[t]he COVID-19 pandemic continues.' Opp'n at 16. But the fact that the COVID-19

pandemic is an ongoing public health crisis only bolsters Plaintiff's claim of irreparable harm."); Ctr. for Pub. Integrity, 411 F.Supp.3d at 13 ("The Court finds that the lack of a precise end-date for the impeachment proceedings is not detrimental to Plaintiff's claim of irreparable harm. The impeachment proceedings are ongoing. And, in order to ensure informed public participation in the proceedings, the public needs access to relevant information. As such, irreparable harm is already occurring each day the impeachment proceedings move forward without an informed public able to access relevant information.").

There is irreparable harm here.

IV. THE EQUITIES FAVOR GRANTING A PRELIMINARY INJUNCTION.

Where the government is a party, the equities and the public interest merge. *See, e.g., Nken v. Holder*, 556 U.S. 418, 435 (2009); *Brennan Ctr.*, 498 F.Supp.3d at 103.

The public interest expects faithful enforcement of FOIA and Department Regulations. See, e.g., Wash. Post, 459 F.Supp.2d at 76 ("If anything, the public's interest in this case is best assessed through the statutory provisions passed by the public's elected representatives."); EPIC II, 416 F.Supp.2d at 42 ("The public interest prong is met because 'there is an overriding public interest . . . in the general importance of an agency's faithful adherence to its statutory mandate." (internal citation omitted)). There is also a public interest that is "best 'served by the expedited release of the requested documents because it furthers FOIA's core purpose of "shed[ding] light on an agency's performance of its statutory duties." Prot. Democracy II, 498 F.Supp.3d at 144 (quoting Elec. Privacy Info. Ctr., 416 F.Supp.2d at 42 (alteration in original) (citation omitted)). This is especially so when the topic of the request—as here—has received "great public and media attention." See, e.g., EPIC II, 416 F.Supp.2d at 42.

Accordingly, in the context of a motion for a preliminary injunction seeking to compel expedited processing of a FOIA request, the public interest largely merges with the merits. *See, e.g., Brennan Ctr.*, 498 F.Supp.3d at 103 (finding that expedition is warranted leads directly to conclusion that the public interest favors a preliminary injunction).

As to harm, to be sure, the expedition of Plaintiffs' FOIA request will place *some* burden on DOJ resources and will disfavor other requestors by placing Plaintiffs' FOIA Request ahead of theirs. But the entire point of expedited processing under FOIA and the DOJ's own regulations is a judgement by both Congress and the agency that these harms and burdens are outweighed by the need to process certain requests on an expedited basis to ensure transparency into salient and time-sensitive issues of the day. *See, e.g., Edmonds*, 2002 WL 32539613, at *4 ("While defendant could justifiably argue that the Court's application of the relevant regulation will result in an even greater burden on its already strained resources and will disadvantage other FOIA requesters, the Court is constrained to enforce the regulation as written."). Part of the statutory entitlement *is* priority. Accordingly, Plaintiffs have shown a likelihood of success on the merits under the existing statutory and regulatory judgement that expedition is required. *See, e.g., Wash. Post*, 459 F.Supp.2d at 76 ("pursuant to the statutory provision mandating expedited treatment, the public's interest in expedited processing of the plaintiff's request outweighs any general interest that it has in first-in-first-out processing of FOIA requests.").

CONCLUSION

This Court should enter a preliminary injunction compelling DOJ to: (1) process Plaintiff's FOIA Request on an expedited basis pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(iv); and (2) produce all non-exempt responsive records by October 15, 2024.

Dated: October 3, 2024 Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

	<u></u>
HERITAGE FOUNDATION &)
MIKE HOWELL)
Plaintiffs, v.)) Case No. 24-cv-2715 (APM)
U.S. DEPARTMENT OF JUSTICE Defendant.))))
[PROI	POSEDJ ORDER
Upon consideration of Plaintiffs' M	Iotion for a Preliminary Injunction, Defendant's
Response thereto, and the entire record, it i	s hereby:
ORDERED that Plaintiffs' Motion	for a Preliminary Injunction is GRANTED ; and it is
Further	
ORDERED that Defendant the U.S.	S. Department of Justice shall process Plaintiffs' FOIA
Request dated September 11, 2024, on an e	expedited basis pursuant to 5 U.S.C. § 552(a)(6)(E) and
28 C.F.R. § 16.5(e)(1)(iv).	
ORDERED that Defendant the U.S.	S. Department of Justice shall produce all non-exempt
records responsive to Plaintiffs' FOIA Req	uest on or before October 15, 2024.
Date:	AMIT P. MEHTA
	United States District Judge

Copies:

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HERITAGE FOUNDATION, et al.

Plaintiffs,

v.

Case No. 1:24-cv-2715 (APM)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

DECLARATION OF ERIC NEAL CORNETT

- 1. My name is Eric Neal Cornett. I am counsel to Plaintiffs in this action.
- 2. Exhibit 1 attached hereto is a true and correct copy of an article by Seymour Hersh, *Leaving Las Vegas* (Jul. 27, 2024).
- 3. Exhibit 2 attached hereto is a true and correct copy of a *Fox News* article by Charles Creitz, *Biden administration hit with FOIA suit seeking 25th Amendment-related comms* (September 25, 2024), https://www.foxnews.com/politics/biden-administration-hit-foia-suit-seeking-25th-amendment-related-comms.
- 4. Exhibit 3 attached hereto is a true and correct copy of Special Counsel Robert K. Hur's Report of the Special Counsel on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr. (Feb. 2024).
- 5. Exhibit 4 attached hereto is a true and correct copy of the transcript of the Hearing on the Report of Special Counsel Robert K. Hur Before the H. Comm. on the Judiciary, 118th Cong. 67 (2024).

Exhibit 5 attached hereto is a true and correct copy of a *Fox News* article by

Anders Hagstrom, Biden loses track of event, yells "Who's Next?" at press conference with India PM (Sep. 22, 2024), https://www.foxnews.com/politics/biden-loses-track-event-yells-

whos-next-press-conference-india-pm.

6.

7. Exhibit 6 attached hereto is a true and correct copy of a *Fox News* article by

Melissa Rudy, Biden cognitive health concerns: What did Kamala Harris know? Experts warn of

denial dangers (Aug. 1, 2024), https://www.foxnews.com/health/biden-cognitive-health-

concerns-kamala-harris-experts-warn-denial-dangers.

8. Exhibit 7 attached here is a true and correct copy of a status conference transcript

from Brennan Ctr. v. Dep't of Com., No. 20-cv-2674 (TJK) (Oct. 8, 2020).

9. Exhibit 8 is a true and correct copy of the YouGov The Times/SAY Poll of

registered voters conducted July 22-23, 2024.

10. Exhibit 9 is a print-friendly copy of the National Conference of State Legislatures

website summarizing state in-person early voting statutes retrieved October 2, 2024.

11. Exhibit 10 is a true and correct copy of the United States Election Assistance

Commission's Report to the 117th Congress titled, *Election Administration and Voting Survey*

2020 Comprehensive Report (2021).

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: October 3, 2024

/s/ Eric Neal Cornett
Eric Neal Cornett

EXHIBIT 1

(2) LEAVING LAS VEGAS - Seymour Hersh

seymourhersh.substack.com/p/leaving-las-vegas		
Seymour Hersh		
	7	

President Joe Biden pauses while speaking at the 115th NAACP National Convention at the Mandalay Bay Convention Center on July 16 in Las Vegas. / Photo by Mario Tama/Getty Images.

In late 1967, as the Vietnam War was raging and President Lyndon B. Johnson was becoming increasingly unpopular, I was recruited to handle the press and write speeches for Senator Eugene McCarthy of Minnesota, the only Democrat gutsy enough to run against the Democratic president.

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Months later, working round the clock in a cluttered suite in a New Hampshire motel, I was curious about a courier from New York City who flew up most nights on the last Eastern Airlines flight. The courier would dash to the suite with a canvas bag attached to his wrist and turn it over to one of the campaign's richest and most enthusiastic benefactors. The guy was a multi-millionaire who ran a major stock market fund but was happy to sit in the suite I was then sharing with Richard Goodwin, a real political pro—unlike me and the college brats on the campaign—and just watch and do the various errands that needed doing.

One night I asked the millionaire what was in the bag. He threw it to me, with a key. I unlocked it and found myself staring at dozens of shiny packages of 100 dollar bills. I had no idea then or now whether the funds were properly reported and did not ask. So that's how it works, I thought, and I tossed the bag back. I knew then I was not long for the world of presidential politics.

It's not surprising that the long overdue unraveling of President Joe Biden's re-election campaign happened when it became impossible to keep his increasing impairment covered up. It was the bigtime money backers of the Democratic Party who called off the game of see no evil, hear no evil, after Biden's shocking performance in his June debate with Donald Trump. They balked at continuing to give millions of dollars to the party now that there was evidence that the president is not always there.

You'd think it would be a vigilant press corps, led by the *New York Times* and the *Washington Post*, who first broached the issue of Biden's impairment, but those papers missed the story. The first significant report came in early June from the *Wall Street Journal*, whose consistently brilliant news section—considered suspect by the *Times* and *Post* and many readers because of the paper's conservative editorial page and the fact that it is part of Rupert Murdoch's News Corp—broke the story on the front page under the headline, "Behind Closed Doors, Biden Shows Signs of Slipping."

The White House press office quickly responded that both of those quoted in the story were Republicans who are supporters of Trump. The strategy somehow worked. Fear of Trump took priority over doing the right thing. Ditto for CNN and MSNBC, whose panels of former White House officials often can be fun to watch, especially while chewing lots of cotton candy. Viewers of the equally biased Fox News undoubtedly had similarcandy to crunch.

Who in Washington didn't know that Biden was failing? We all did, up to a point. I had learned months earlier from a federal official that those in the front rows of university events where Biden was speaking were warned not to move if the president tripped while walking to the podium. Secret Service agents were on hand to pick him up immediately. There would be no front-page photos of a college valedictorian helping the president climb to his feet.

The American public could see Biden's slow decline. The *Journal* reported that nearly three-fourths of those polled thought Biden was "too old to seek another term." Cabinet meetings in the past few years largely disappeared or turned into rote sessions, as recorded by the C-SPAN, which faithfully televises all White House events. Biden would join the seated Cabinet heads and read from a prepared text, with each page covered with a plastic sheet. It was far from vibrant television.

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After the debate, there was mounting pressure on Biden to drop out. The White House and the president himself denied that he was suffering from anything more than a bad day, a cold, and jet lag. There were newspaper stories about Hunter Biden, the president's convicted son, keeping by his side and warning all White House staffers that anyone who even hinted at the truth would be fired. That message quickly was leaked to the press. Soon the White House press corps suddenly discovered that they were being misled by the president's press secretary. There were lots of tortured questions and broken hearts, but the message was the same: the president is in good health and is going to run for re-election this fall and carry on serving for four more years after he defeats Trump.

On Monday, July 15, Biden took off on Air Force One on a campaign trip to Nevada, a tossup state that Biden won in 2020 by a little more than 30,000 votes. On Tuesday he gave the keynote address to 5,000 members of the NAACP at its annual convention. The next day, the president, apparently stricken while campaigning with a yet-to-be-revealed illness, broke from his schedule and made a police escort race to Air Force One after initially telling police they were heading to the nearest emergency room.

A series of blog posts, local police reports, internet messages, and report in the *Daily Mail* disclosed further details of Biden's trip to Las Vegas and his abrupt return home to Delaware. I went over these reports this week with a senior official in Washington who helped me fashion an account of a White House in complete disarray, culminating in the president's withdrawal from the race. It's a story not unlike *Seven Days in May*, the Cold War thriller in which a colonel played by Kirk Douglas foils a coup staged by a general played by Burt Lancaster. None of what you read below comes from an official account by the White House.

At that point, according to Emily Goodin, a *Daily Mail* reporter who was in the traveling press pool, the president was "deathly pale" and Air Force One flew at maximum speed to Delaware, where the president has a weekend retreat at Rehoboth Beach. The press pool was told that Biden had COVID. Nothing more was said on Air Force One. After Biden's return to Delaware, the White House told the public that Biden had contracted a COVID infection and would be in isolation. He was said to have upper respiratory symptoms, a runny nose, a cough, and was fatigued.

That was the last straw for a core group of Congressional leaders, government officials and some senior Biden funders who were withholding huge amounts of committed contributions. "There was pressure on donors to come across on their pending commitments," the official told me. "It was understood that Biden had a physical problem in Las Vegas and the family was saying no" to continued pressure from donors and senior Democrats in Congress to withdraw from the presidential campaign. Initially, the president could not be reached.

By Saturday, July 20, former President Barack Obama was deeply involved, and there was talk that he would place a call to Biden. It was not clear whether Biden had been examined or just what happened to him in Las Vegas. "The Big Three," the official said, referring to former House Speaker Nancy Pelosi, Senate Majority Leader Charles Schumer and House Minority Leader Hakeem Jeffries, continued to be directly involved. "On Sunday morning," the official told me, with the approval of Pelosi and Schumer, "Obama called Biden after breakfast and said, 'Here's the deal.

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We have Kamala's approval to invoke the 25th Amendment." The amendment provides that when the president is determined by the vice president and others to be unfit to carry out the powers and duties of his office, the vice president shall assume those duties.

"It was clear at this point," the official said, "that she would get the nod"—that is, the support to run for the presidency in the November election. "But Obama also made it clear," the official said, "that he was not going to immediately endorse her. But the group had decided that her work as a prosecutor would help her deal with Trump in a debate."

One possible drawback, I was told, was Harris's sometime disdain for the work of the US Intelligence Community. She is known not to be especially interested in the President's Daily Brief, a highly classified summary of current intelligence that is prepared overnight by the Office of the Director of National Intelligence and delivered by hand to the most vital offices in Washington, including the vice president's. The document, which includes signals intelligence, is to be read by the addressee in the presence of the delivering intelligence officer. I was told that Harris often showed little interest in reading the document and at some point asked the agency to stop delivering it to her. Now, as a presidential candidate, she is being kept up to date on all significant intelligence matters.

A key factor in the decision to force Biden out of office by invoking the 25th Amendment was a series of increasingly negative polls on the president's standing against Trump that had been commissioned by the funders, the official said. "The downward slope was increasing." Polling would also be important for the vice president, I was told, and it was agreed that if the polls did not continue to show her gaining traction, other options would be considered, including an open convention. I was unable to learn if Harris was aware of such considerations or whether she intends to abide by them.

The official, who has decades of experience in fundraising, told me that Obama emerged as the strongman throughout the negotiations. "He had an agenda and he wanted to seek it through to the end, and he wanted to have control over who would be elected."

A few days after we talked, with Harris getting off to a solid start, Obama and his wife announced their endorsement of Harris and told her, over the phone in a staged TV event, that they would do all they could to campaign for her and to support her.

But she had better perform.





162 Restacks



<u>1,377</u>



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•••

Biden administration hit with FOIA suit seeking 25th Amendment-related comms

foxnews.com/politics/biden-administration-hit-foia-suit-seeking-25th-amendment-related-comms

Charles Creitz

Biden holds first Cabinet meeting in nearly a year

President Biden speaks about Israel-Lebanon tensions and chances of a cease-fire in Gaza.

A conservative think tank and its public-policy oversight arm filed a Freedom of Information Act (FOIA) suit against the Biden administration seeking any records relating to advice the Justice Department's Office of Legal Counsel (OLC) may have offered in regard to the 25th Amendment.

Heritage Foundation Oversight Project attorney Kyle Brosnan characterized the OLC as the equivalent of a White House "law firm" that provides legal advice to the executive branch and its officers, adding the timeline for any responsive documents is June 1 to the present day.

Under Section 4 of the 25th Amendment, a majority of the "principal officers" of the Cabinet would transmit to the Senate president pro tem – currently Sen. Patty Murray, D-Wash. – a declaration that the sitting president can no longer perform his duties. The vice president would then be named "acting president." The amendment was ratified following the Kennedy assassination.

In the past, temporary cases have arisen, such as President George W. Bush providing a written declaration that Vice President Dick Cheney would assume his powers while he underwent a medical procedure.

DEMOCRAT STATE OFFICIALS LARGELY BACK BIDEN AFTER DEBATE, AS PARTY CHARI SUGGESTS GOP PULLS TRUMP NOM

EXHIBIT 2

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President Biden speaks to the United Nations. (Getty Images)

In that regard, prior to filing the suit, Brosnan said the Heritage Foundation made a media request through its press arm, the Daily Signal, to the offices of each of the Cabinet secretaries, and then followed up with FOIA requests with each for such communications.



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In a Wednesday interview with the two attorneys, Howell added that concerns about President Biden's ability to perform his duties are not new, and the media have particularly recently appeared to make such a case, and that discussions in the media and elsewhere spurred the Oversight Project to use legal means to find out whether any such communications exist.

"We don't have to <u>take George Clooney's word</u> for it," he said, referring to how the longtime Democrat and actor publicly stated following the CNN debate that Biden showed signs of decline at a prior fundraiser.

He further pointed to <u>first lady Jill Biden's unusually prominent role</u> in a recent Cabinet meeting, which was met with some public backlash.

Howell said Congress has largely shirked its duty to provide oversight when it comes to the question, "Who is really running our country?"

FLASHBACK: BIDEN'S CABINET DOUBLES DOWN ON SUPPORT FOR PRESIDENT FOLLOWING DEBATE



The Heritage Foundation building on July 30, 2024, in Washington, D.C. (Andrew Harnik/Getty Images)

"The media clearly decided it can't be Kamala Harris, who would be the constitutional successor or somebody else other than Harris/Biden. Right now, an unelected person is, most likely performing the duties of the president with Biden [conducting] ceremonial duties only when his physical state allows. And so Congress controls the timeline," he said.

Another reason the 25th Amendment is a key topic at present is that there is a very real chance that former President Trump could have been put in a coma or killed by recent attempted assassins, Howell said.

He predicted the trend could continue if Trump were elected, given the heated political rhetoric in some corners on the left.

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President Biden flanked Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin, speaks during a Cabinet meeting at the White House on Friday, Sept. 20. (AP/Manuel Balce Ceneta)

However, positing that Democrats have been loath to even consider utilizing the amendment under the current presidency, it gives Trump and Republicans room to excuse a future Trump presidency from being held to a higher standard when it comes to cognition or ability to perform duties.

"Any of those [assassination attempts] are one day likely to partially... The left has no leg to stand on to say the 25th Amendment needs to be invoked."

Fox News Digital has reached out to the Justice Department and the White House for comment on the lawsuit.

Charles Creitz is a reporter for Fox News Digital.

He joined Fox News in 2013 as a writer and production assistant.

Charles covers media, politics and culture for Fox News Digital.

Charles is a Pennsylvania native and graduated from Temple University with a B.A. in Broadcast Journalism. Story tips can be sent to charles.creitz@fox.com.

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EXHIBIT 3



U.S. Department of Justice

Special Counsel's Office

February 5, 2024

The Attorney General of the United States

Re: Report of the Special Counsel on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.

Dear Attorney General Garland:

Enclosed please find a "confidential report explaining the prosecution or declination decisions" I have reached, as required by 28 C.F.R. § 600.8(c).

As we previously discussed, at the request of the White House Counsel and personal counsel to President Biden (collectively, "counsel"), I agreed, with certain conditions including nondisclosure, to allow counsel to review a draft of the report for purposes of determining whether to assert any claim of privilege, and otherwise providing comments to the Special Counsel's Office. Counsel reviewed a draft of the report on February 3 and 4, 2024.

Earlier today, counsel submitted to my office the enclosed letter. After reviewing their letter, my team and I corrected the following minor errors:

- The draft report stated that "[w]e reviewed the materials that were deemed to be classified at the Top Secret/Sensitive Compartmented Information level when the National Security Council conducted prepublication review for the Reagan Diaries." Draft Report n.811. We have amended that sentence by adding "some of" after the word "reviewed."
- In Chapter Twelve, the draft report cited Chapter Four in a footnote. Draft Report n.892. We have amended that footnote to read "See id.; NARA Archivist 1 Tr. at 56-59, 77-78, 81-82, 93-94, 122-23."
- The draft report included a section heading that read, "MARKED CLASSIFIED DOCUMENT IN SECOND-FLOOR OFFICE." Draft Report at 333. We have amended that heading to read, "MARKED CLASSIFIED DOCUMENT IN THIRD-LEVEL DEN."

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The Attorney General of the United States February 5, 2024 Page 2

My team and I also corrected several typographical errors that we identified on our own, and we removed a watermark and headers that designated the document as a confidential draft.

After reviewing the draft report, the relevant intelligence agencies have identified no content that is classified or otherwise unfit for public disclosure. The White House Counsel has not conveyed to me the President's decisions as to assertions of executive privilege; I understand that the White House Counsel will convey such decisions to you directly.

Thank you for allowing the Special Counsel's Office to conduct our investigation independently and for supporting us with the necessary resources.

I am extraordinarily grateful for the thorough, careful, and diligent work of the Department of Justice employees who worked on this matter. I am deeply honored to have served with them.

Respectfully,

Robert K. Hur Special Counsel

Enclosures: Report

Letter from counsel

Report on the Investigation Into
Unauthorized Removal, Retention, and Disclosure of
Classified Documents Discovered at Locations
Including the Penn Biden Center and the
Delaware Private Residence of
President Joseph R. Biden, Jr.

Special Counsel Robert K. Hur

Submitted pursuant to 28 C.F.R. § 600.8(c)

Washington, D.C.

February 2024

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EXECUTIVE SUMMARY

We conclude that no criminal charges are warranted in this matter. We would reach the same conclusion even if Department of Justice policy did not foreclose criminal charges against a sitting president. ²

Our investigation uncovered evidence that President Biden willfully retained and disclosed classified materials after his vice presidency when he was a private citizen. These materials included (1) marked classified documents about military and foreign policy in Afghanistan, and (2) notebooks containing Mr. Biden's handwritten entries about issues of national security and foreign policy implicating sensitive intelligence sources and methods. FBI agents recovered these materials from the garage, offices, and basement den in Mr. Biden's Wilmington, Delaware home.

However, for the reasons summarized below, we conclude that the evidence does not establish Mr. Biden's guilt beyond a reasonable doubt. Prosecution of Mr. Biden is also unwarranted based on our consideration of the aggravating and mitigating factors set forth in the Department of Justice's Principles of Federal Prosecution. For these reasons, we decline prosecution of Mr. Biden.

* * *

The classified documents and other materials recovered in this case spanned Mr. Biden's career in national public life. During that career, Mr. Biden has long seen

¹ We submit this report to the Attorney General pursuant to 28 C.F.R. § 600.8(c), which states that, "[a]t the conclusion of the Special Counsel's work, he or she shall provide the Attorney General a confidential report explaining the prosecution or declination decisions reached by the Special Counsel."

² A Sitting President's Amenability to Indictment and Criminal Prosecution, 24 Op. O.L.C. 222, 260 (2000).

running for president as early as 1980 and did so in 1988, 2008, and 2020. He believed his record during decades in the Senate made him worthy of the presidency, and he collected papers and artifacts related to significant issues and events in his career. He used these materials to write memoirs published in 2007 and 2017, to document his legacy, and to cite as evidence that he was a man of presidential timber.

In 2009, then-Vice President Biden strongly opposed the military's plans to send more troops to Afghanistan. U.S. policy in Afghanistan was deeply important to Mr. Biden, and he labored to dissuade President Obama from escalating America's involvement there and repeating what Mr. Biden believed was a mistake akin to Vietnam. Despite Mr. Biden's advice, President Obama ordered a surge of additional U.S. troops, and Mr. Biden's views endured sharp criticism from others within and outside of the administration. But he always believed history would prove him right. He retained materials documenting his opposition to the troop surge, including a classified handwritten memo he sent President Obama over the 2009 Thanksgiving holiday, and related marked classified documents. FBI agents recovered these materials from Mr. Biden's Delaware garage and home office in December 2022 and January 2023.

Also, during his eight years as vice president, Mr. Biden regularly wrote notes by hand in notebooks. Some of these notes related to classified subjects, including the President's Daily Brief and National Security Council meetings, and some of the notes are themselves classified. After the vice presidency, Mr. Biden kept these

classified notebooks in unsecured and unauthorized spaces at his Virginia and Delaware homes and used some of the notebooks as reference material for his second memoir, *Promise Me, Dad*, which was published in 2017. To our knowledge, no one has identified any classified information published in *Promise Me, Dad*, but Mr. Biden shared information, including some classified information, from those notebooks with his ghostwriter. FBI agents recovered the notebooks from the office and basement den in Mr. Biden's Delaware home in January 2023.

* * *

Marked classified documents about Afghanistan. These documents from fall 2009 have classification markings up to the Top Secret/Sensitive Compartmented Information level. They were found in a box in Mr. Biden's Delaware garage that contained other materials of great personal significance to him and that he appears to have personally used and accessed. The marked classified documents were found along with drafts of the handwritten 2009 Thanksgiving memo Mr. Biden sent President Obama in a last-ditch effort to persuade him not to send additional troops to Afghanistan. These materials were proof of the stand Mr. Biden took in what he regarded as among the most important decisions of his vice presidency.

Mr. Biden wrote his 2007 and 2017 memoirs with the help of a ghostwriter. In a recorded conversation with his ghostwriter in February 2017, about a month after he left office, Mr. Biden said, while referencing his 2009 Thanksgiving memo, that he had "just found all the classified stuff downstairs." At the time, he was renting a home in Virginia, where he met his ghostwriter to work on his second memoir. Downstairs from where they met was Mr. Biden's office, where he stored his papers. He moved

out of the Virginia home in 2019, consolidating his belongings in Delaware—where FBI agents later found marked classified documents about the Afghanistan troop surge in his garage.

Evidence supports the inference that when Mr. Biden said in 2017 that he had "just found all the classified stuff downstairs" in Virginia, he was referring to the same marked classified documents about Afghanistan that FBI agents found in 2022 in his Delaware garage.

Nevertheless, we do not believe this evidence is sufficient, as jurors would likely find reasonable doubt for one or more of several reasons. Both when he served as vice president and when the Afghanistan documents were found in Mr. Biden's Delaware garage in 2022, his possession of them in his Delaware home was not a basis for prosecution because as vice president and president, he had authority to keep classified documents in his home. The best case for charges would rely on Mr. Biden's possession of the Afghanistan documents in his Virginia home in February 2017, when he was a private citizen and when he told his ghostwriter he had just found classified material.

Several defenses are likely to create reasonable doubt as to such charges. For example, Mr. Biden could have found the classified Afghanistan documents at his Virginia home in 2017 and then forgotten about them soon after. This could convince some reasonable jurors that he did not retain them willfully. When Mr. Biden told his ghostwriter about finding "all the classified stuff downstairs," his tone was matter-of-fact. For a person who had viewed classified documents nearly every day

for eight years as vice president, including regularly in his home, finding classified documents at home less than a month after leaving office could have been an unremarkable and forgettable event. Notably, the classified Afghanistan documents did not come up again in Mr. Biden's dozens of hours of recorded conversations with the ghostwriter, or in his book. And the place where the Afghanistan documents were eventually found in Mr. Biden's Delaware garage—in a badly damaged box surrounded by household detritus—suggests the documents might have been forgotten.

In addition, Mr. Biden's memory was significantly limited, both during his recorded interviews with the ghostwriter in 2017, and in his interview with our office in 2023. And his cooperation with our investigation, including by reporting to the government that the Afghanistan documents were in his Delaware garage, will likely convince some jurors that he made an innocent mistake, rather than acting willfully—that is, with intent to break the law—as the statute requires.

Another viable defense is that Mr. Biden might not have retained the classified Afghanistan documents in his Virginia home at all. They could have been stored, by mistake and without his knowledge, at his Delaware home since the time he was vice president, as were other classified documents recovered during our investigation. This would rebut charges that he willfully retained the documents in Virginia.

Given Mr. Biden's limited precision and recall during his interviews with his ghostwriter and with our office, jurors may hesitate to place too much evidentiary weight on a single eight-word utterance to his ghostwriter about finding classified documents in Virginia, in the absence of other, more direct evidence. We searched for such additional evidence and found it wanting. In particular, no witness, photo, email, text message, or any other evidence conclusively places the Afghanistan documents at the Virginia home in 2017.

In addition to this shortage of evidence, there are other innocent explanations for the documents that we cannot refute. When Mr. Biden told his ghostwriter he "just found all the classified stuff downstairs," he could have been referring to something other than the Afghanistan documents, and our report discusses these possibilities in detail.

We have also considered that, at trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory. Based on our direct interactions with and observations of him, he is someone for whom many jurors will want to identify reasonable doubt. It would be difficult to convince a jury that they should convict him—by then a former president well into his eighties—of a serious felony that requires a mental state of willfulness.

We conclude the evidence is not sufficient to convict, and we decline to recommend prosecution of Mr. Biden for his retention of the classified Afghanistan documents.

* * *

Notebooks containing classified information. FBI agents recovered from unlocked drawers in the office and basement den of Mr. Biden's Delaware home a set

of notebooks he used as vice president. Evidence shows that he knew the notebooks contained classified information. Mr. Biden wrote down obviously sensitive information discussed during intelligence briefings with President Obama and meetings in the White House Situation Room about matters of national security and military and foreign policy. And while reading his notebook entries aloud during meetings with his ghostwriter, Mr. Biden sometimes skipped over presumptively classified material and warned his ghostwriter the entries might be classified, but at least three times Mr. Biden read from classified entries aloud to his ghostwriter nearly verbatim.

Some evidence also suggests Mr. Biden knew he could not keep classified handwritten notes at home after leaving office. Mr. Biden, who had decades of experience with classified information, was deeply familiar with the measures taken to safeguard classified information and the need for those measures to prevent harm to national security. Asked about reports that former President Trump had kept classified documents at his own home, Mr. Biden wondered how "anyone could be that irresponsible" and voiced concern about "[w]hat data was in there that may compromise sources and methods." While vice president, he kept his notebooks in a White House safe for a time, in contrast with his decision after leaving office to keep them at home in unlocked drawers.

When Mr. Biden left office, he also knew his staff decided to store *notecards* containing his classified notes in a Secure Compartmented Information Facility (SCIF) at the National Archives, and he knew his *notebooks* contained the same type

of classified information. As he told his ghostwriter during a recorded interview, the same staff who arranged to secure his classified notecards "didn't even know" he had retained possession of his classified notebooks. Twice in 2017, Mr. Biden visited the National Archives SCIF to review his classified notecards while writing his book. Yet he kept his notebooks, which also contained classified information, in unlocked drawers at home. He had strong motivations to do so and to ignore the rules for properly handling the classified information in his notebooks. He consulted the notebooks liberally during hours of discussions with his ghostwriter and viewed them as highly private and valued possessions with which he was unwilling to part.

We do not, however, believe this evidence would meet the government's burden at trial—particularly the requirement to prove that Mr. Biden intended to do something the law forbids. Consistent with statements Mr. Biden made during our interview of him and arguments made by the White House Counsel and Mr. Biden's personal counsel, we expect Mr. Biden's defense at trial would be that he thought his notebooks were his personal property and he was allowed to take them home, even if they contained classified information. During our interview of him, Mr. Biden was emphatic, declaring that his notebooks are "my property" and that "every president before me has done the exact same thing," that is, kept handwritten classified materials after leaving office. He also cited the diaries that President Reagan kept in his private home after leaving office, noting that they included classified information.

Contemporaneous evidence suggests that when Mr. Biden left office in 2017, he believed he was allowed to keep the notebooks in his home. In a recorded conversation with his ghostwriter in April 2017, Mr. Biden explained that, despite his staff's views to the contrary, he did not think he was required to turn in his notecards to the National Archives—where they were stored in a SCIF—and he had not wanted to do so. At trial, he would argue plausibly that he thought the same about his notebooks.

If this is what Mr. Biden thought, we believe he was mistaken about what the law permits, but this view finds some support in historical practice. The clearest example is President Reagan, who left the White House in 1989 with eight years' worth of handwritten diaries, which he appears to have kept at his California home even though they contained Top Secret information. During criminal litigation involving a former Reagan administration official in 1989 and 1990, the Department of Justice stated in public court filings that the "currently classified" diaries were Mr. Reagan's "personal records." Yet we know of no steps the Department or other agencies took to investigate Mr. Reagan for mishandling classified information or to retrieve or secure his diaries. Most jurors would likely find evidence of this precedent and Mr. Biden's claimed reliance on it, which we expect would be admitted at trial, to be compelling evidence that Mr. Biden did not act willfully.

As with the marked classified documents, because the evidence is not sufficient to convict Mr. Biden for willfully retaining the notebooks, we decline prosecution.

We also considered whether Mr. Biden willfully disclosed national defense information to his ghostwriter by reading aloud certain classified notebook passages to the ghostwriter nearly verbatim on at least three occasions. Mr. Biden should have known that by reading his unfiltered notes about classified meetings in the Situation Room, he risked sharing classified information with his ghostwriter. But the evidence does not show that when Mr. Biden shared the specific passages with his ghostwriter, Mr. Biden knew the passages were classified and intended to share classified information. Mr. Biden's lapses in attention and vigilance demonstrate why former officials should not keep classified materials unsecured at home and read them aloud to others, but jurors could well conclude that Mr. Biden's actions were unintentional. We therefore decline to charge Mr. Biden for disclosure of these passages to his ghostwriter.

* * *

Principles of Federal Prosecution. We have also evaluated "all relevant considerations" in aggravation and mitigation, as outlined in the Justice Manual, and determined that on balance, these factors do not support prosecution of Mr. Biden.³

Historically, after leaving office, many former presidents and vice presidents have knowingly taken home sensitive materials related to national security from their administrations without being charged with crimes. This historical record is important context for judging whether and why to charge a former vice president—and former president, as Mr. Biden would be when susceptible to prosecution—for similar actions taken by several of his predecessors.

With one exception, there is no record of the Department of Justice prosecuting a former president or vice president for mishandling classified documents from his

³ U.S. Dep't of Just., Just. Manual §§ 9-27.001, 9-27.220, 9-27.230 (2023).

own administration. The exception is former President Trump. It is not our role to assess the criminal charges pending against Mr. Trump, but several material distinctions between Mr. Trump's case and Mr. Biden's are clear. Unlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump, if proven, would present serious aggravating facts.

Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite. According to the indictment, he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it. In contrast, Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations including his homes, sat for a voluntary interview, and in other ways cooperated with the investigation.

In reaching our decision, we did not consider every circumstance in which criminal charges against a former president or vice president for mishandling classified information may be warranted. But on the facts of this case, "the fundamental interests of society" do not "require" criminal charges against Mr. Biden.⁴ For this additional reason, applying the Principles of Federal Prosecution set forth in the Justice Manual, we decline prosecution.

The practices of retaining classified material in unsecured locations and reading classified material to one's ghostwriter present serious risks to national

⁴ U.S. Dep't of Just., Just. Manual §§ 9-27.001, 9-27.220 (2023).

security, given the vulnerability of extraordinarily sensitive information to loss or compromise to America's adversaries. The Department routinely highlights such risks when pursuing classified mishandling prosecutions. But addressing those risks through criminal charges, the only means available to this office, is not the proper remedy here.

* * *

Other classified materials. For other recovered classified documents, after a thorough investigation the decision to decline criminal charges was straightforward. The FBI recovered additional marked classified documents at the Penn Biden Center, elsewhere in Mr. Biden's Delaware home, and in collections of his Senate papers at the University of Delaware, but the evidence suggests that Mr. Biden did not willfully retain these documents and that they could plausibly have been brought to these locations by mistake. We also investigated whether persons other than Mr. Biden knowingly mishandled these classified documents, and our investigation showed that they did not. In reaching these conclusions, we note the numerous previous instances in which marked classified documents have been discovered intermixed with the personal papers of former Executive Branch officials and members of Congress.

* * *

Mr. Biden's ghostwriter and destruction of evidence. After learning of the special counsel's appointment in this matter, Mr. Biden's ghostwriter deleted audio recordings he had created of his discussions with Mr. Biden during the writing of Mr. Biden's 2017 memoir. The recordings had significant evidentiary value.

After telling the Special Counsel's Office what he had done, the ghostwriter turned over his computer and external hard drive and consented to their search. Based on the FBI's analysis, it appears the FBI recovered all deleted audio files relating to the memoir, though portions of a few of the files appear to be missing, which is possible when forensic tools are used to recover deleted files. The ghostwriter kept, and did not delete or attempt to delete, his near-verbatim transcripts of the recordings and produced those transcripts to us, including for each of the incomplete recovered files.

We considered whether to charge the ghostwriter with obstruction of justice, but we believe the evidence would be insufficient to obtain a conviction and therefore declined to prosecute him.

While the ghostwriter admitted that he deleted the recordings after he learned of the special counsel's investigation, the evidence falls short of proving beyond a reasonable doubt that he intended to impede an investigation, which is the intent required by law. In his interviews, the ghostwriter offered plausible, innocent reasons for why he deleted the recordings. He also preserved his transcripts that contain some of the most incriminating information against Mr. Biden—including his statement about finding "all the classified stuff downstairs" in 2017—which is inconsistent with an intent to impede an investigation by destroying evidence. And the ghostwriter voluntarily produced to investigators his notes and the devices from which the recordings were recovered.

For these reasons, we believe that the admissible evidence would not suffice to obtain a conviction of the ghostwriter for obstruction of justice. On balance, relevant aggravating and mitigating factors also do not support his prosecution.

* * *

CHAPTER ONE

LEGAL FRAMEWORK GOVERNING CLASSIFIED INFORMATION

The Constitution vests the president with "authority to classify and control access to information bearing on national security." By executive order, presidents since Franklin Roosevelt have prescribed a system for classifying and safeguarding national security information. In 1994, Congress directed the president to establish by executive order or regulation uniform procedures governing access to classified information across the executive branch. President Obama issued the current order when Mr. Biden was vice president. Among other things, the order sets forth rules that determine whether a person may access classified information and how that information must be handled.

The 1994 statute—and, by implication, the current executive order governing classified information—do not apply to a sitting president or vice president, members of Congress, justices of the Supreme Court, and federal judges. 10

There is, however, no statutory exception for a former president or vice president, and the restrictions on access to classified information in the executive

⁵ Dep't of the Navy v. Egan, 484 U.S. 518, 527 (1988); see U.S. CONST. art. II, § 2.

 $^{^6}$ Kevin R. Kosar, Cong. Rsch. Serv., R41528, Classified Information Policy and Executive Order 13526 3 (2010).

⁷ 50 U.S.C. § 3161.

⁸ Classified National Security Information, Executive Order 13526, 75 Fed. Reg. 707 (2009).

⁹ *Id.* § 4.1.

¹⁰ 50 U.S.C. §§ 3161(a), 3163.

order and the rules prescribed under its authority appear to apply to such former officials.¹¹

The order defines classified information to include: (a) military plans, weapons systems, or operations; (b) foreign government information; and (c) intelligence activities, including covert actions and intelligence sources, methods, or cryptology. ¹² Information is classified only if "its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security." ¹³ Information is classified as "Confidential" if its unauthorized disclosure reasonably could be expected to cause *damage* to the national security. It is classified as "Secret" if its unauthorized disclosure reasonably could be expected to cause *serious damage* to the national security. And it is classified as "Top Secret" if its unauthorized disclosure reasonably could be expected to cause *exceptionally grave damage* to the national security. ¹⁴

The order also sets forth conditions that any person (other than the current officeholders listed above) must meet to access to classified information.¹⁵ To receive such access, a person is required to:

- 1. Have a favorable determination of eligibility (generally after completion of a background investigation);
- 2. Sign an approved nondisclosure agreement; and

¹¹ 50 U.S.C. § 3163; Executive Order 13526 §§ 4.1(a), 4.4; *Trump v. United States*, No. 22-13005, 2022 WL 4366684, at *8 (11th Cir. Sept. 21, 2022) (per curiam).

¹² Executive Order 13526 § 1.4.

¹³ *Id*. § 1.4.

¹⁴ *Id.* § 1.2.

¹⁵ *Id.* § 4.1.

3. Have a need-to-know the information.¹⁶

For former presidents and vice presidents, the order expressly allows for the need-to-know requirement (but not the others listed above) to be waived by an agency. A former official may obtain such a waiver only if a senior official of the agency that originated the classified information determines in writing that access is consistent with the interest of the national security, takes appropriate steps to protect [the] classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with [the executive order].

In addition to establishing rules that govern access to classified information, the order also requires agency heads to establish controls over how it must be stored. 19 Among other things, Top Secret and Secret information must be kept in a storage container approved by the General Services Administration or an approved and locked storage area. 20 Information that is even more sensitive—called Sensitive Compartmented Information and sometimes referred to as "codeword" information—must be stored in an accredited Sensitive Compartmented Information Facility, or SCIF. 21

¹⁶ *Id.* § 4.1(a).

¹⁷ *Id.* § 4.4.

¹⁸ Id. § 4.4; Trump v. United States, No. 22-13005, 2022 WL 4366684, at *8.

¹⁹ Executive Order 13526 § 4.1(g).

²⁰ See 32 C.F.R. §§ 2001.43(b)(1) and (2), 2001.53.

²¹ Office of the Director of National Intelligence, Intelligence Community Directive 705 (2010). Sensitive Compartmented Information is a subset of classified information "concerning or derived from intelligence sources, methods or analytical processes that is required to be protected within formal access control systems established by the [Director of

The restrictions described above apply to classified information in any documentary form, whether it is printed, typed, or handwritten.²²

National Intelligence]." Office of the Director of National Intelligence, Intelligence Community Directive 703, "Protection of Classified National Intelligence, Including Sensitive Compartmented Information," § D2 (2013).

²² See Executive Order 13526 §§ 1.1, 2.1, 6.1(i), 6.1(p), 6.1(t).

CHAPTER TWO

OVERVIEW OF THE INVESTIGATION

I. DISCOVERY OF CLASSIFIED DOCUMENTS

A. Personal counsel to Mr. Biden discovered marked classified documents at the Penn Biden Center

On November 2, 2022, Patrick Moore—one of Mr. Biden's personal counsel—reviewed boxes of material belonging to Mr. Biden, which were stored at the Penn Biden Center for Diplomacy and Global Engagement in Washington, D.C., an office space formerly used by Mr. Biden. During this review, Moore found documents with classification markings dating to Mr. Biden's vice presidency.

Moore notified Robert Bauer, another personal counsel to Mr. Biden, who then notified the White House Counsel. That evening, the White House Counsel's Office informed the general counsel for the National Archives and Records Administration.²³

The next morning, November 3, 2022, the National Archives sent two archivists to retrieve the documents and the three boxes in which they were found.²⁴ Upon reviewing the documents in a SCIF, the National Archives found nine documents, totaling 44 pages, with classification markings.²⁵ The documents were

²³ NARA General Counsel 11/10/22, FBI Serial 4 at 1-2; FBI Serial 4 1A5 at 2-3. An FBI Serial refers to a numbered entry in the FBI's case file, which may have evidentiary attachments that are often designated as "1A" files. When an FBI agent logs a new report, for example, into the case file, the report is given a serial number corresponding to the order in which the new file was logged.

²⁴ NARA Archivist 2 11/10/22, FBI Serial 3 at 1-2; NARA COS 11/16/22, FBI Serial 6 at 1-2; NARA COO 11/15/22, FBI Serial 10 at 2-3; NARA General Counsel 11/10/22, FBI Serial 4 at 2.

²⁵ NARA Archivist 2 11/10/22, FBI Serial 3 at 2; NARA COO 11/15/1022, FBI Serial 10 at 3 and 1A8 11-422 e-mail with notes on boxes.

classified up to the Top Secret level and included codes indicating some of the information was Sensitive Compartmented Information.²⁶ The marked classified documents were located in two of the three boxes.⁴ All three boxes contained records dating from Mr. Biden's time as vice president.²⁷

The day after the National Archives retrieved the classified documents, on November 4, 2022, the Archives notified officials in the National Security Division of the Department of Justice (DOJ) and the Office of the Director of National Intelligence of the discovery of "classified records related to President Biden's time as Vice President." A few days later, on November 9, the FBI opened an initial assessment to begin investigating the matter. 29

The following day, November 10, the Chief of DOJ's Counterintelligence and Export Control Section sent Bauer a letter describing the steps that Bauer and others acting on the president's behalf should take.³⁰ The Chief informed Bauer that "[t]he prospect that classified material may have been stored in an unsecure location over a prolonged period may have national security implications."³¹ He also told Bauer that, pending further action by DOJ, the Penn Biden Center and Mr. Biden's post-Vice Presidential Office should (1) secure "rooms and locations that contain any

²⁶ NARA Archivist 2 11/10/22, FBI Serial 3 at 2; NARA COO 11/15/22, FBI Serial 10 at 3 and 1A8 11-422 e-mail with notes on boxes.

²⁷ NARA COO 11/15/22, FBI Serial 10 at 3.

²⁸ 11/4/22 e-mail from NARA OIG, FBI Serial 28, 1A35.

²⁹ The FBI opened an initial assessment on November 9, 2022. See FBI Serial 1; FBI Serial 2; FBI Serial 28. On January 13, 2023, the FBI converted the initial assessment to a full investigation after receiving approval from the Attorney General and other appropriate authorities. FBI Serial 68.

³⁰ 11/10/22 ltr. from CES Chief, FBI Serial 9, 1A7.

³¹ *Id*.

additional potential government records and materials from President Biden's time as Vice-President," (2) preserve the status quo as to the location of such materials and refrain from reviewing them, (3) preserve all video footage, visitor logs, and other access records from the Penn Biden Center, (4) provide a list of all locations where material from Mr. Biden's time as vice president have been stored, and (5) give express consent for FBI and Department of Justice personnel to review the records retrieved by the National Archives.³²

Bauer responded the next day stating that President Biden had no objection to the requested steps and would "cooperate fully with the Department and, as directed by the Department, with [the Archives]." Bauer stated, "[w]e do not know of any rooms or locations that contain additional potential government records and materials from President Biden's time as Vice President, but will immediately acknowledge and act as directed in the event we learn of any, as we did here." ³⁴

On November 14, 2022, the Attorney General assigned John Lausch, then the U.S. Attorney for the Northern District of Illinois, to lead the initial investigation and assess whether the Attorney General should appoint a special counsel to investigate the matter.³⁵ Among other steps, investigators interviewed witnesses, reviewed the recovered documents, obtained security video footage from the Penn Biden Center,

³² 11/10/22 ltr. from CES Chief, FBI Serial 9, 1A7.

^{33 11/11/22} e-mail from Bauer, FBI Serial 9, 1A7.

 $^{^{34}}$ *Id*.

³⁵ Attorney General Merrick B. Garland Delivers Remarks on the Appointment of a Special Counsel, Office of Public Affairs, U.S. Dep't of Justice (Jan. 12, 2023), https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-appointment-special-counsel-0 (last visited Feb. 2, 2024).

and conducted a consensual search of the Penn Biden Center to ensure there were no other classified materials there.³⁶

B. Personal counsel discovered marked classified documents relating to Afghanistan in Mr. Biden's Delaware garage

On December 20, 2022, nearly seven weeks after the initial discovery of classified documents at the Penn Biden Center, Bauer and Moore traveled to Mr. Biden's personal residence in Wilmington, Delaware to search the garage for classified documents or other Obama-era presidential records.³⁷ They later explained that through discussions with current and former Biden staffers, they came to believe that documents from Mr. Biden's time as vice president may have been moved into the garage.³⁸ We considered the possibility that Mr. Biden alerted his counsel that classified documents were in the garage, but our investigation revealed no evidence of such a discussion because, it if happened, it would be protected by the attorney-client privilege.

Bauer searched a closet in the garage and found documents with classification markings inside a binder.³⁹ After Bauer made this discovery, Moore found documents with classification markings in an unsealed box in another area of the garage, including documents from 2009 relating to U.S. policy in Afghanistan.⁴⁰ After finding

³⁶ E.g., NARA COS 11/16/22, FBI Serial 6; NARA COO 11/15/22, FBI Serial 10; NARA Archivist 3 11/16/22, FBI Serial 7; Moore 11/18/22, FBI Serial 16; Staff Assistant 3 12/21/22, FBI Serial 36; Executive Assistant 1/4/22, FBI Serial 64; FBI Serial 19; FBI Serial 26; FBI Serial 41; FBI Serial 693; FBI Serial 14.

³⁷ See Moore 2/17/23, FBI Serial 96; 12/28/22 Narrative from Bauer, FBI Serial 8 1A5.

³⁸ See Moore 12/21/22, FBI Serial 33.

³⁹ *Id.* at 2; 12/28/22 Narrative from Bauer at 2, FBI Serial 8 1A5.

 $^{^{40}}$ Moore 12/21/22, FBI Serial 33 at 2; 12/28/22 Narrative from Bauer at 2, FBI Serial 8 1A5; FBI Serial 75 at 2.

these marked classified documents in two locations in the garage, Bauer and Moore stopped their search. 41

Later that same day, Bauer notified Lausch of the discoveries in Mr. Biden's garage. 42 On Mr. Biden's behalf, Bauer provided consent for FBI agents to search the garage and seize classified or other government records from the time of the Obama administration. 43

The FBI dispatched two agents to retrieve the boxes in the garage the following day. 44 The agents met Moore at the garage, expecting he would point them to all of the boxes potentially containing classified material. 45 Upon learning, however, that counsel had not searched the entire garage, the agents conducted a limited search of the garage intended to determine whether it contained other classified documents. 46 The agents seized the containers Mr. Biden's counsel had identified and several other containers, documents, and materials. 47

The two agents lacked sufficient resources to conduct a comprehensive search of the entire garage given the volume of material stored there. 48 Accordingly, Lausch e-mailed Bauer and asked that he ensure "that the garage remains secure, access to it is strictly limited, and no items are removed from that location until a further

 $^{^{41}}$ Moore 12/21/22, FBI Serial 33 at 2; 12/28/22 Narrative from Bauer at 2, FBI Serial 8 1A5.

 $^{^{42}}$ Moore 2/17/23, FBI Serial 96 at 3-4, 11; Moore 11/18/22, FBI Serial 16 at 2; 12/28/22 Narrative from Bauer, FBI Serial 8 1A5.

⁴³ 12/20/22 Consent to Search, FBI Serial 35 1A39.

⁴⁴ FBI Serials 29, 35.

⁴⁵ FBI Serial 35 at 1.

⁴⁶ *Id.* at 1-2.

⁴⁷ *Id.* at 3-5; FBI Serial 29.

⁴⁸ FBI Serial 35 at 1-2.

review of the remaining materials occurs."⁴⁹ Lausch also wrote that they needed to "continu[e] our conversation about the Department receiving appropriate assurances that no records from President Biden's prior term as Vice-President remain at any unauthorized location, including within the Wilmington Residence, or any other residence, storage facility, or space."⁵⁰

C. Personal counsel discovered more marked classified documents in Mr. Biden's basement den

After the holidays, Bauer and Jennifer Miller, another personal counsel for Mr. Biden, continued their efforts to determine whether there were any other classified records in Mr. Biden's Delaware home.⁵¹ On the evening of January 11, 2023, counsel traveled to the house to search areas other than the garage.⁵² Bauer and Miller remained together during the search.⁵³ They first searched Mr. Biden's primary office—sometimes called "the library"—on the main floor of the house.⁵⁴ They identified no documents with classification markings there.⁵⁵ They moved on to the den in the basement.⁵⁶ There, in a wooden two-drawer file cabinet, counsel found a document with classification markings from the Obama administration in a notebook

⁴⁹ Id.; 12/22/22 e-mail from Lausch to Bauer; FBI Serial 34, 1A38.

⁵⁰ 12/22/22 e-mail from Lausch to Bauer; FBI Serial 34, 1A38.

⁵¹ Miller Tr. at 9-10; FBI Serial 51.

⁵² FBI Serial 51; 1/17/23 Description of Searches from Bauer, FBI Serial 55, 1A67; Miller Tr. at 4-5.

⁵³ Miller Tr. at 10-12; FBI Serial 51.

 $^{^{54}}$ 1/17/23 Description of Searches from Bauer at 1-7, FBI Serial 55, 1A67; Miller Tr. at 6.

⁵⁵ See 1/17/23 Description of Searches from Bauer at 1-7, FBI Serial 55, 1A67.

⁵⁶ 1/17/23 Description of Searches from Bauer at 7; Miller Tr. at 40.

labeled "1/6/12 #2 Foreign Policy." ⁵⁷ Bauer and Miller stopped their detailed search at this point and performed a cursory visual inspection of the rest of the house after that. ⁵⁸

The next day, January 12, 2023, Bauer informed Lausch of the discovery in the basement den.⁵⁹ The FBI sent agents to the house that evening to recover the classified material.⁶⁰ Bauer informed Lausch that, at that time, Bauer did not have Mr. Biden's consent for the FBI to search and seize his notebook that contained the marked classified document. Thus, on Bauer's instructions, Richard Sauber of the White House Counsel's Office met agents at the house and escorted them to the marked classified material found in the notebook in the basement cabinet.⁶¹

Agents observed Sauber pick up the notebook and leaf through it. Sauber and the agents eventually found two documents with classification markings: (1) a three-page PowerPoint presentation marked as "Secret//NOFORN//Pre-decisional" dated May 22, 2013, relating to Afghanistan; and (2) a three-page memorandum labeled "TS/SCI"—shorthand for Top Secret/Sensitive Compartmented Information—dated November 1, 2013, relating to Iraq.⁶² The agents seized the documents with classification markings and secured the "1/6/12 #2 Foreign Policy" notebook in a locking classified-document courier bag.⁶³ After discussions with Lausch, Sauber

⁵⁷ 1/17/23 Description of Searches from Bauer at 7; Miller Tr. at 40-42, 44; FBI Serial 44.

⁵⁸ 1/17/23 Description of Searches from Bauer at 7-8; Miller Tr. at 46, 51, 59.

⁵⁹ 1/13/23 Conference Call with Bob Bauer and personal counsel, FBI Serial 51 at 1-2.

⁶⁰ See FBI Serial 44.

⁶¹ FBI Serials 44, 694.

⁶² FBI Serial 43; FBI Serial 44 at 1-2.

⁶³ FBI Serial 44 at 2; FBI Serial 160 at 2.

provided the "1/6/12 #2 Foreign Policy" notebook to FBI agents two days later.⁶⁴ The notebook, like other notebooks described below, contained Mr. Biden's handwritten notes as vice president relating to foreign policy and national security.⁶⁵

D. The Attorney General appointed a special counsel to investigate

On January 12, 2023—the same day FBI agents retrieved marked classified documents from the basement cabinet—the Attorney General appointed Robert Hur as special counsel to investigate the matter.⁶⁶ The Attorney General's Order authorized Hur to conduct the investigation initially led by Lausch, "including possible unauthorized removal and retention of classified documents or other records discovered at the Penn Biden Center for Diplomacy and Global Engagement and the Wilmington, Delaware, private residence of President Joseph R. Biden, Jr., as well as any matters that arose from the initial investigation or may arise directly from the special counsel's investigation or that are within the scope of 28 C.F.R. § 600.4(a)."⁶⁷

E. FBI agents discovered more marked classified documents and handwritten classified notes in various parts of Mr. Biden's home

After the discovery of the classified documents in Mr. Biden's basement, Mr. Biden consented to a search of the entirety of the Delaware home by the FBI for

⁶⁴ FBI Serials 46, 51.

⁶⁵ Notebook 1B15; FBI Serial 199.

⁶⁶ Office of the Attorney General, Order No. 5588-2023, Appointment of Robert K. Hur as Special Counsel (January 12, 2023).

⁶⁷ Id. Section 600.4(a) of Title 28 of the Code of Federal Regulations provides, in relevant part, that the jurisdiction of a special counsel "shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses." 28 C.F.R. § 600.4(a).

relevant materials, including documents with classification markings and other potentially classified information.⁶⁸

FBI agents searched the home on January 20, 2023.⁶⁹ Agents searched all areas of the house, including the garage, which agents had partially searched on December 21, 2022.⁷⁰ The house has a lower-level basement, a first-level main floor, a second level with the primary bedroom, and a third-level top floor with additional rooms and attic storage space.⁷¹ Agents seized items that fell primarily into two categories: (1) boxes or folders containing documents with classification markings, most of which date to the 1970s and relate to foreign trips Mr. Biden took as a senator; and (2) notebooks containing his handwritten notes from his time as vice president relating to foreign policy and national security. Two of these notebooks had marked classified documents stored inside them, and several notebooks contained handwritten information that was itself classified.⁷²

In Mr. Biden's garage, agents found several documents with classification markings dating from Mr. Biden's time in the Senate in the 1970s and 1980s.⁷³ Some of those documents relate to foreign trips Mr. Biden took as a senator, some of which he chronicled in his 2007 memoir, *Promises to Keep*. Agents found those Senate-era documents in a storage closet in Mr. Biden's garage.

⁶⁸ 1/20/23 Consent to Search for the Wilmington House, FBI Serial 77.

⁶⁹ FBI Serial 77.

⁷⁰ FBI Serials 77, 35.

⁷¹ FBI Serial 77.

⁷² *Id.*; FBI Serial 676.

⁷⁸ FBI Serials 77, 639; Recovered documents D1-D17, D17-1 to D19.

In Mr. Biden's main-floor office, basement den, and second-floor office, agents found and seized seventeen notebooks and a stack of notecards, all of which contained Mr. Biden's handwritten notes on foreign policy and national security matters as vice president. Two of the notebooks, found in the main-floor office, had documents with classification markings stored inside them.

Elsewhere in the house, agents found one document with classification markings in the third-level den. ⁷⁶ And in an office attached to the primary bedroom on the second level agents found a binder (similar to a binder previously found in the garage), which contained most of the same marked classified documents as the binder found in the garage. ⁷⁷

F. FBI agents found more marked classified documents from the Senate era at the University of Delaware

Between January and June 2023, FBI agents searched over 300 boxes containing Mr. Biden's Senate papers, which were stored in two locations at the University of Delaware. Within those boxes, agents found documents with potential classification markings, dating from 1977 to 1991, during Mr. Biden's service in the Senate.⁷⁸

II. SUMMARY OF INVESTIGATIVE ACTIVITY

The FBI and the Special Counsel's Office undertook an extensive investigation into Mr. Biden's handling of classified information and of the classified documents

⁷⁴ FBI Serial 77.

⁷⁵ *Id.*; FBI Serials 178, 682.

⁷⁶ FBI Serial 77.

⁷⁷ *Id.*; FBI Serial 701.

⁷⁸ FBI Serials 83, 91, 98, 290.

the FBI seized. We applied our best efforts to conduct the investigation thoroughly and expeditiously.

Investigators conducted 173 interviews of 147 witnesses, including Mr. Biden himself. All told, the investigation collected over seven million documents, including e-mails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources.

We also coordinated with the government agencies that had equities in the classified and potentially classified documents the FBI seized from locations associated with Mr. Biden. The agencies conducted classification review of seized documents to recommend the appropriate classification level, compartmentation, and dissemination controls for each document. Investigators met with subject-matter experts in the intelligence community to determine whether the documents contained information that a jury could conclude was national defense information under the Espionage Act.⁷⁹

Mr. Biden's notebooks, which contained, among other things, his handwritten notes taken during classified meetings as vice president, presented a challenge. None of the pages contained classification markings but investigators assessed some of the content was potentially classified. Classification review by intelligence agencies of unmarked information is more challenging and time-consuming than for marked documents. We therefore reviewed all of Mr. Biden's handwritten notes and selected thirty-seven excerpts totaling 109 notebook pages to submit for classification review.

 $^{^{79}}$ See Chapter 9, Section I.B for a discussion of the term "national defense information."

Investigators selected entries they believed were most likely highly classified and that a jury of laypeople would find was national defense information under the Espionage Act.

For both marked classified documents and unmarked documents, the Office of the Director of National Intelligence reviewed each document and provided a list of agencies with potential equities in each document. The FBI requested classification review from each identified agency accordingly. For documents where multiple agencies had equities, the Special Counsel's Office used the highest level of classification identified by an agency as the current classification of the document. Results of the classification review are summarized in Appendix A, which provides an unclassified summary of the recovered documents submitted for classification review.

Classification review conducted in the context of a criminal investigation has limitations. Agencies with equities in the information in the seized documents have applied their best efforts to determine the current classification of the material we submitted to them. In so doing, some have indicated that classification determinations are subject to change. Real-world events and changed circumstances can affect the harm to national security that would result from unauthorized disclosure of the information. Changed circumstances and events could therefore result in future modifications to classification determinations.

Some agencies have also noted that, in the typical context of a classification review, such as pursuant to a Freedom of Information Act request, they consult with

one another before making a final classification determination. That is to ensure an agency does not, for example, release information another agency considers classified. In this investigation, however, the Special Counsel's Office and FBI have asked agencies to determine only the classification of information belonging to them, without consulting other agencies to determine the overall classification of a document. Consistent with how the Department of Justice has handled the issue in similar investigations, the Special Counsel's Office enlisted the help of the Office of the Director of National Intelligence to determine which information should be submitted to which agency. Classification determinations provided to the Special Counsel's Office, therefore, are not "final" determinations of the agencies, in the sense that each agency cannot unequivocally state the classification level of a document without having undertaken that interagency coordination themselves. Instead, agencies have provided classification determinations specific to the information they originated or own, and nothing more.

Finally, the National Security Council is an equity holder in a large volume of the classified or potentially classified information recovered in this investigation. The National Security Council, however, works in direct support of Mr. Biden in his current position as president. To avoid a conflict of interest in having Mr. Biden's own National Security Council determine the classification level of documents recovered in this investigation, the White House asked the Department of State to "stand in" for the National Security Council in conducting classification review of White House or National Security Council information. The State Department did so by applying

the National Security Council's classification guide to the documents with such information, rather than by following its internal State Department classification review process. The State Department, however, is not the National Security Council. And the classification authorities at the State Department do not have the legal authority to classify information belonging to the National Security Council. Results received from the State Department as a "stand-in" for the National Security Council, therefore, are the government's current best estimate of classification under the circumstances. The National Security Council could reach different conclusions.

CHAPTER THREE

HANDLING OF CLASSIFIED INFORMATION IN THE OFFICE OF THE VICE PRESIDENT

As vice president, Mr. Biden received and stored classified materials at the White House, his official residence at the Naval Observatory, his private home in Delaware, and—very briefly—his rental home in Virginia.⁸⁰ He relied on staff to help deliver, store, and retrieve these classified materials.

The task of tracking and retrieving these documents was challenging given the relatively small size of Mr. Biden's staff and the volume of classified material Mr. Biden received through various channels on a near-daily and often urgent basis. While many members of Mr. Biden's staff sought to ensure that classified information was handled and stored properly, the Office of Vice President as a whole was unable to account for all the classified material Mr. Biden received and retained. Mr. Biden was known to remove and keep classified material from his briefing books for future use, and his staff struggled—and sometimes failed—to retrieve these materials. And there was no procedure at all for tracking some of the classified material Mr. Biden received outside his briefing books.

Mr. Biden also kept some material on his person or in his briefcase that he carried between the West Wing and his residences.⁸¹ Staff did not go through the briefcase to retrieve or archive material from it.⁸²

⁸⁰ See Chapter Seven.

⁸¹ Staff Assistant 3 10/4/23 Tr. at 49; Executive Assistant 9/28/23 Tr. at 73-74; Personal Aide 1 4/26/23 Tr. at 58; Personal Aide 2 Tr. at 35.

⁸² See Staff Assistant 3 10/4/23 Tr. at 67-68; Military Aide 10 Tr. at 22.

These gaps in the tracking and retrieval of Mr. Biden's classified materials made it more difficult to determine when, how, and why many of the classified documents later found in Mr. Biden's home and think tank ended up where they did not belong.

I. STRUCTURE OF THE OFFICE OF THE VICE PRESIDENT

Numerous witnesses told us that Mr. Biden relied on his staff to help transport, store, or return classified materials he received as vice president, and to ensure that those materials were handled properly.⁸³ As summarized below, several groups of staff were involved with the handling of classified material.

National Security Affairs staff. The Office of the Vice President had its own National Security Affairs staff that supported the vice president, his national security advisor, and his deputy national security advisor.⁸⁴ This office was distinct from President Obama's much larger National Security Council staff, which had its own systems for tracking and logging classified material that went to the president.⁸⁵

The National Security Affairs staff consisted of (1) the national security advisor and staff, and (2) the Executive Secretary team. The national security advisor's staff included a mix of political staff and detailees from agencies such as the State Department; they provided substantive advice to the vice president on matters of foreign policy and national security. 86 While the national security advisors often

⁸³ Military Aide 4 Tr. at 7; Military Aide 9 Tr. at 7.

⁸⁴ See, e.g., Executive Secretary 3 Tr. at 14-17.

⁸⁵ NSC Records Director Tr. at 18-31; McKeon Tr. at 36-40; Executive Secretary 1 Tr. at 73; Executive Secretary 3 Tr. at 14-15; Bakotic 7/19/23 Tr. at 9.

 $^{^{86}}$ 11/1/16 Memorandum from Outgoing OVP NSA, SCOH-000143. See also OVP NSA Staffer 3 Tr. at 5.

attended meetings and briefings with Mr. Biden where classified documents were discussed, these advisors did not view themselves as responsible for retrieving any classified materials from Mr. Biden or ensuring that he stored them properly.⁸⁷

The Executive Secretary team had an administrative role: It compiled, provided, tracked, and retrieved classified material for Mr. Biden. 88 It was a small group, composed mostly of detailees from agencies, who provided administrative support and assisted in compiling classified briefing books for Mr. Biden. 89 The Executive Secretary—an experienced, career military officer—worked closely with the Director of Programs, who continued through the transition from the Bush administration and served through the entirety of the Obama administration. 90

The Executive Secretary team had little direct access to Mr. Biden and relied on others to deliver and retrieve classified briefing books.⁹¹ These others included military aides, naval enlisted aides, personal aides, and front office assistants.

⁸⁷ OVP NSA Staffer 2 Tr. at 41-42; OVP NSA Staffer 1 Tr. at 41; Blinken Tr. at 13; Sullivan Tr. at 19.

⁸⁸ See, e.g., Director of Programs Tr. at 55-58, 105; Executive Secretary 1 Tr. at 14-18, 65; Executive Secretary 3 Tr. at 13; Bakotic 7/19/23 Tr. at 9-10; Executive Secretary 2 Tr. at 6, 9, 30; 11/1/16 Memorandum from Outgoing OVP NSA, SCOH-000143.

⁸⁹ Executive Secretary 1 Tr. at 14, 21-22; Bakotic 7/19/23 Tr. at 10; Director of Programs Tr. at 17-18; Executive Secretary 2 Tr. at 9; Executive Secretary Staffer 3 Tr. at 24-25; Executive Secretary Staffer 1 Tr. at 34, 41; Executive Secretary Staffer 2 7/7/23 Tr. at 8-9.

⁹⁰ Executive Secretary 1 Tr. at 7, 11-12, 17, 65; Executive Secretary 2 Tr. at 5, 8; Executive Secretary 3 Tr. at 11-13, 37-39; Bakotic 7/19/23 Tr. at 6-12; 11/1/16 Memorandum from Outgoing OVP NSA, SCOH-000143; Director of Programs Tr. at 5-6.

⁹¹ See, e.g., Director of Programs Tr. at 12; Executive Secretary 3 Tr. at 46; Bakotic 7/19/23 Tr. at 52-53; 1/14/17 e-mail amongst OVP National Security Affairs staff, Military Aides, and Naval Enlisted Aides, SCOH-000447.

Military aides. Military aides were servicemembers on detail from the Department of Defense.⁹² Their primary role was to ensure continuity of operations should something happen to the president.⁹³ They also helped deliver classified material from the National Security Affairs staff to Mr. Biden when he was not at the White House, and brought classified material back when Mr. Biden was finished with it.⁹⁴ This included printing classified materials and compiling classified binders for Mr. Biden when he was traveling.⁹⁵

Military aides were not responsible for ensuring that all materials delivered to the vice president were retrieved or properly disposed of, or for otherwise tracking classified documents. 96 But they assisted with the handling of classified documents because of their high-level security clearances, proximity to the vice president, and access to proper storage containers for classified material, such as lockable bags. 97

Naval enlisted aides. Naval enlisted aides supported Mr. Biden at the Naval Observatory and at his personal home in Delaware, as well as on all foreign and domestic travel. 98 Their primary duties included cooking, cleaning, and laundry for the vice president. 99 Like military aides, they served as go-betweens for the delivery and retrieval of classified information due to their security clearances and proximity

⁹² See, e.g., Military Aide 9 Tr. at 7.

⁹³ Military Aide 4 Tr. at 7; Military Aide 9 Tr. at 7.

 $^{^{94}}$ Military Aide 4 Tr. at 13-14, 17; Military Aide 5 Tr. at 10-11, 13-14; Military Aide 8 Tr. at 24-25, 44; Military Aide 11 Tr. at 25; NEA 2 Tr. at 33-34.

⁹⁵ See, e.g., Military Aide 4 Tr. at 8-9.

⁹⁶ See, e.g., Military Aide 3 Tr. at 32-33.

⁹⁷ See, e.g., Military Aide 1 Tr. at 14-15; Military Aide 8 Tr. at 24-25; Military Aide 10 Tr. at 23-24; Military Aide 12 Tr. at 14, 16.

⁹⁸ NEA 5 Tr. at 16-18.

⁹⁹ *Id.* at 13-14.

to the vice president. ¹⁰⁰ They were the only staff members who regularly accessed Mr. Biden's private spaces on the second floor of the Naval Observatory Residence and at the Delaware residence. ¹⁰¹ At times they delivered classified material to him on the second floor of the Naval Observatory, ¹⁰² and when Mr. Biden left classified material out and unattended in those private spaces, they retrieved and secured it. ¹⁰³

Mr. Biden regularly received and reviewed classified material in the Naval Observatory and his Delaware home and left that material out where the naval enlisted aides collected it when he was finished with it. During his vice presidency, naval enlisted aides occasionally found classified material in various locations on the second floor of the Naval Observatory and in Delaware. They either sent those materials back to the White House directly or through the military aides, who brought them to the Executive Secretary team for proper disposal. 105

Personal aides ("body men"). Mr. Biden's personal aide, or "body man," who was always physically present with him at the White House and when traveling except to Delaware, also delivered and retrieved classified documents for him. 106 Personal aides typically had Top Secret/Sensitive Compartmented Information

¹⁰⁰ NEA 5 Tr. at 7, 28; NEA 1 Tr. at 13.

¹⁰¹ See, e.g., NEA 5 Tr. at 29; Military Aide 3 Tr. at 31; Military Aide 5 Tr. at 21; Residence Manager Tr. at 13; Personal Aide 1 4/26/23 Tr. at 113-14; Personal Aide 2 Tr. at 32, 36.

¹⁰² NEA 5 Tr. at 28-30.

¹⁰³ *Id.* at 28-30, 35-36.

¹⁰⁴ NEA 2 Tr. at 30-31, 36; NEA 3 Tr. at 12, 40; NEA 4 Tr. at 11, 15, 21-22, 24, 25, 34; NEA 5 Tr. at 53-54, 59, 84-85; NEA 6 Tr. at 14-15, 24. *But see* NEA 1 Tr. at 18, 25, 31, 32, 44 (did not recall seeing classified material left out at Naval Observatory or Delaware).

¹⁰⁵ See, e.g., Military Aide 5 Tr. at 11; Military Aide 1 Tr. at 9; Military Aide 3 Tr. at 30-31; NEA 2 Tr. at 19-20; NEA 5 Tr. at 42-43, 104, 107-108; NEA 6 Tr. at 15, 18.

¹⁰⁶ Personal Aide 1 4/26/23 Tr. at 20, 22.

clearances and were read into codeword compartments (involving Sensitive Compartmented Information) as needed. 107 They handled the logistics of Mr. Biden's schedule and ensured he had everything he needed. 108 They coordinated with military aides and National Security Affairs staff to handle the flow of classified material to and from Mr. Biden, but they did not track it. 109

Front office assistants. At the White House, two assistants sat in the front office of Mr. Biden's West Wing office along with the personal aide and, at various times, a Counselor to the Vice President. Staffers believed the West Wing office was a SCIF or otherwise approved for the discussion of classified information and treated it as such. The assistants did not intentionally keep classified material for Mr. Biden in their front office space, and recalled that the only storage area they knew of for classified material in the Vice President's West Wing space was the safe in his office closet, which they generally did not access. Assistants retrieved unclassified material from an outbox on Mr. Biden's desk, kept it in a box in their office space, and periodically sent it to the White House Office of Records Management to be archived in compliance with the Presidential Records Act. 113 When

¹⁰⁷ Personal Aide 1 4/26/23 Tr. at 18; Personal Aide 2 Tr. at 29-30; Personal Aide 3 3/28/23 Tr. at 21; 2/3/09 e-mail from OVP Counsel to Personal Aide 1, 1B001_03201938.

¹⁰⁸ Personal Aide 1 4/26/23 Tr. at 19-20.

 $^{^{109}}$ Id. at 20-22, 52, 145-146 (delivery and retrieval of classified material at the Wilmington Residence "wasn't my role").

¹¹⁰ See, e.g., Staff Assistant 2 Tr. at 25; Executive Assistant 1/4/23 Tr. at 6-7, 17-19.

¹¹¹ Executive Assistant 1/4/23 Tr. at 28; Staff Assistant 2 Tr. at 33-34; Director of Programs Tr. at 25-26; Blinken Tr. at 23-24.

¹¹² Staff Assistant 2 Tr. at 31-32; Executive Assistant 1/4/23 Tr. at 32; Staff Assistant 3 10/4/23 Tr. at 18.

¹¹³ Staff Assistant 2 Tr. at 19-20; Staff Assistant 1 Tr. at 49; Staff Assistant 3 10/4/23 Tr. at 15-16; 5/22/12 Duties and Responsibilities, 1B001_02941293.

Mr. Biden left classified material in his outbox or handed it to an assistant, the assistant typically called his National Security Affairs team to retrieve it or returned it to the Situation Room.¹¹⁴

Counsel to the Vice President. The various staff members within the Office of Vice President responsible for delivering, storing, retrieving, and tracking classified documents relied on guidance from the Counsel to the Vice President. Mr. Biden had his own Counsel, separate from the White House Counsel's Office. The Counsel had a Top Secret/Sensitive Compartmented Information clearance. In the early days of the administration, Cynthia Hogan, Mr. Biden's first Counsel, developed policies and procedures for the proper handling and storage of classified materials in the Office of the Vice President.

The White House Counsel's Office and other White House components also provided guidance on the proper handling of classified material. According to schedules and other documents, Hogan met with a number of White House employees

¹¹⁴ Staff Assistant 2 Tr. at 19-21, 37-38, 45; Staff Assistant 3 10/4/23 Tr. at 17; Executive Assistant 9/28/23 Tr. at 33-35; 5/22/12 Duties and Responsibilities, 1B001_02941293; August 2016 West Wing Guide, SCOH-000427; 9/6/11 e-mail from front office assistant to Executive Secretary team, 1B001_02872534; 4/3/12 e-mail from front office assistant to Executive Secretary team, 1B001_02854428. But see Staff Assistant 1 Tr. at 62-63 (never returned classified material to his National Security Staff, his personal aide "did all of that").

¹¹⁵ See, e.g., 8/17/10 Memo from OVP Counsel to Mr. Biden re "Handling of Classified Documents," NARAWH_00000050; 8/23/10 e-mail from Military Aide 14 to OVP military aides re "Handling of Classified Material," NARAWH_00014447.

¹¹⁶ Hogan 5/23/23 Tr. at 23-24.

 $^{^{117}}$ 2/25/09 e-mail from OVP Counsel, NARAWH_00002839; Lambros Tr. at 20; Nourse Tr. at 48; McGrail 5/2/23 Tr. at 54.

¹¹⁸ Hogan 5/23/23 Tr. at 24-29.

to discuss the handling of classified material, including employees from the National Security Council and the White House Office of Records Management.¹¹⁹

II. THE PRESIDENTIAL RECORDS ACT AND ARCHIVING OF RECORDS

Mr. Biden's staff was also responsible for ensuring that documents were properly archived as required by the Presidential Records Act. 120 The Act gives the United States "complete ownership, possession, and control" of all presidential records and vice-presidential records, which must be retained and sent to the National Archives at the end of the administration. 121 The statute defines presidential records and vice-presidential records broadly to include documentary materials created or received "in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties" of the president or vice president, including memoranda, correspondence, papers, photographs, and electronic records. 122

Mr. Biden's Executive Secretary team was responsible for ensuring that classified documents were properly archived according to the Act. 123 The White House Office of Records Management handled the archiving of unclassified documents. 124

¹¹⁹ OVP Counsel's Office Weekly Report for Feb. 12 to Feb. 19, 2009, 1B001_00040596_0001-0002; OVP Counsel's Office Weekly Report for Feb. 27 to March 5, 2009, 1B001_00040491_0018-0019; OVP Counsel's Office Weekly Report for June 4-10, 2009, 1B001_00049811_0011-0015.

¹²⁰ WH Records Director Tr. at 14-16.

¹²¹ 44 U.S.C. §§ 2201-09; 9/26/16 Memo by White House Counsel re Preservation and Retention of Records, NARAWH 00000905.

 $^{^{122}}$ 44 U.S.C. §§ 2201(2), 2207. We discuss the Presidential Records Act again in Chapters Nine and Ten.

¹²³ WH Records Director Tr. at 14-16.

¹²⁴ *Id.* at 13-14.

During the first week of the administration, a member of the White House Counsel's Office briefed Mr. Biden on the Act's recordkeeping requirements. Hogan put in place a procedure to make sure that presidential and vice presidential records were collected and properly archived. She circulated a White House Counsel memo on the Act's requirements to employees in the Office of the Vice President. He also met with Mr. Biden's personal aide to discuss the Act and its recordkeeping requirements, including the need to collect and preserve Mr. Biden's briefing books.

III. THE HANDLING OF CLASSIFIED MATERIAL IN THE OFFICE OF THE VICE PRESIDENT

A. Classified products

Mr. Biden received classified documents in three primary forms: a classified binder prepared by his national security staff; the President's Daily Brief; and materials delivered to him as needed by his staff.

Classified briefing book. Most days, the Executive Secretary team compiled a classified briefing book for Mr. Biden. 128 It was a binder of materials drafted or selected by Mr. Biden's advisors to prepare him for the day and upcoming trips. 129

¹²⁵ 1/25/09 Memo re Briefing from White House Counsel on the Presidential Records Act and Ethics Rules, NARAWH_00000049; 1/26/09 Mr. Biden's Schedule for January 26, 2009, 1B001_03202545.

^{126 3/17/09} e-mail from Hogan to All OVP employees, 1B001_03199194; 3/11/09 Memo re the Presidential Records Act from White House Counsel to All EOP Staff, 1B001_03199195.

 $^{^{127}}$ 1/23/09 e-mail from Hogan to Personal Aide 1, 1B001_03061921.

¹²⁸ See, e.g., Executive Secretary 2 Tr. at 9; 7/18/12 e-mail to all OVP staff, 1B001_00213201; 7/29/15 e-mail between Personal Aide and Mr. Biden, 1B001_02072094.

 $^{^{129}}$ See, e.g., Executive Secretary 3 Tr. at 14, 16, 21-24, 29-30; Executive Secretary 1 Tr. at 20.

The Executive Secretary team assembled the book and ensured its delivery to Mr. Biden, in coordination with other staff as described above. The Executive Secretary team also tracked the book's return. Once returned, the books were stored in a safe in the Executive Secretary team's office. Periodically, the team sent the books to the White House Office of Records Management to be archived.

President's Daily Brief. The Office of the Director of National Intelligence compiled a collection of intelligence community products known as the President's Daily Brief. Mr. Biden was assigned his own briefer, who also briefed his national security advisor, deputy national security advisor, and his last chief of staff. The Director of National Intelligence required inclusion of a core group of articles, while the briefer supplemented articles tailored to Mr. Biden's interests and requests. 135

Early in his vice presidency, Mr. Biden declined to receive oral briefings from his own briefer and instead joined President Obama for his briefings in the Oval

¹³⁰ See, e.g., Executive Secretary 3 Tr. at 28, 33-34; Executive Secretary 1 Tr. at 26; Executive Secretary 2 Tr. at 13-14; 10/26/16 e-mail amongst OVP staff, SCOH-000239.

¹³¹ Executive Secretary 3 Tr. at 34-35; Director of Programs Tr. at 55-56; Executive Secretary Staffer 2 7/7/23 Tr. at 24-25.

¹³² Director of Programs Tr. at 53-54.

¹³³ Id. at 53, 61, 100; Executive Secretary 3 Tr. at 35; 2/4/09 e-mail from Hogan to Personal Aide 1, 1B001_03201837; 6/19/09 National Security Advisory Staff Assistant Standard Operating Procedures, NARAWH 00000712.

¹³⁴ PDB Briefer 1 Tr. at 3.

¹³⁵ *Id.* at 22-24, 36-37.

Office. 136 Throughout his tenure, Mr. Biden received a written brief, first on paper in a binder, and beginning in 2014, on a portable electronic device. 137

Mr. Biden's briefer generally retrieved the copy of the brief delivered to Mr. Biden. Mr. Biden's Executive Secretary team stored the briefs in their safe until the briefer retrieved them. 138

"As-needed" materials. Mr. Biden also received classified documents on an as-needed basis, hand-delivered to him by staff or printed to his West Wing office on a secure printer. 139 The Naval Observatory also had a classified printer the military aides used to print and deliver such materials to Mr. Biden there. 140 The Executive Secretary team lacked a formal system for tracking classified documents delivered to

¹³⁶ PDB Briefer 1 Tr. at 20-22; 1/28/09 e-mail to Personal Aide 1 listing Mr. Biden's schedule, 1B001_03202433; 12/15/09 e-mail between listing Mr. Biden's schedule, 1B001_03185236 ("9:45-10:15 am- Attend POTUS PDB"); 9/12/11 e-mail listing Mr. Biden's schedule, 1B001_02872037 ("9:30-10:00am POTUS PDB in Oval").

¹³⁷ PDB Briefer 1 Tr. at 42-43. In the early years, the PDB was printed for the Vice President, received at the Naval Observatory, and brought with him to the West Wing. 2/10/10-2/11/10 e-mail between Executive Secretary 1 and staff, 1B001_03060726. When interviewed, Mr. Biden said he received the PDB in a binder. Biden 10/8/23 Tr. at 19. When Mr. Biden was traveling, he received the PDB in paper copy via secure fax. PDB Briefer 1 Tr. at 40-43. See also 1/13/17 e-mail amongst Secret Service describing PDB delivery, USSS-0000477389.

¹³⁸ PDB Briefer 1 Tr. at 42-44; PDB Briefer 2 Tr. at 15, 24, 33.

¹³⁹ OVP NSA Staffer 2 Tr. at 24-26; 10/15/14 e-mail from Director of Programs to Executive Assistant ("There is a high side printer under your desk that I understand does not work correctly."), 1B001_03521121; 11/30/16 e-mail amongst OVP staff (requesting "toner for the classified printer"), SCOH-000224; 9/13/16 e-mail (discussing fixing the "classified printer"), SCOH-000269; 8/29/16 e-mail (requesting assistance with the "high side printer" in "the Vice President's West Wing Office"), SCOH-000425.

Affairs staff ("If they have a SECRET or higher classification, please have the WHSR send them to our VP MILAIDE (high side) printer here at the VPR."), 1B001_03155733; 11/17/16 e-mail amongst military aides and OVP National Security Affairs staff ("There is one piece of traffic/cable that I just printed to the Naval Observatory printer. Mil Aides, can you please deliver with morning traffic?"), SCOH-000241; Military Aide 5 Tr. at 10; Military Aide 1 Tr. at 8-9. The naval enlisted aides did not have access to a classified computer. NEA 5 Tr. at 30-31.

Mr. Biden on an as-needed basis, and no one else in the Office of the Vice President appears to have tracked them either. Several of the marked classified documents recovered by the FBI in this investigation appear to have been given to Mr. Biden outside the briefing books. 142

B. Efforts to retrieve and track classified material

In the early days of Mr. Biden's vice presidency, his Counsel, Hogan, instructed Mr. Biden's personal aide that all classified material provided to Mr. Biden should be returned to the Executive Secretary team. 143 Although there was a safe in Mr. Biden's office, Hogan told Mr. Biden's personal aide that "we don't want to store any classified material in the [West Wing] office, so just look to hand this stuff off as soon as it comes to you." 144

The Executive Secretary team sought to retrieve Mr. Biden's classified briefing books every day but could not always do so. 145 At times, he kept one or more classified briefing books for his own reference or because he was not done with the material. 146

¹⁴¹ Executive Secretary Staffer 2 7/7/23 Tr. at 32-35; OVP NSA Staffer 2 Tr. at 40-42; OVP NSA Staffer 1 Tr. at 41; Blinken Tr. at 13.

¹⁴² For example, document A2 was a memorandum recovered at the Penn Biden Center. See Chapter Fourteen. E-mail correspondence indicates it was printed to the West Wing printer, after the regular classified briefing book (which also contained a copy of the document) was returned. 9/27/16 Memo amongst OVP NSA and West Wing staff, 1B001_02306967. See also Chapter Sixteen.

¹⁴³ 2/4/09 e-mail from Hogan to Personal Aide 1, 1B001_03061837.

¹⁴⁴ 2/16/09 e-mail from Hogan to Personal Aide 1, 1B001_03201046.

¹⁴⁵ Director of Programs Tr. at 54, 57-58, 78.

¹⁴⁶ *Id.* at 54, 57-59; Executive Secretary Staffer 2 7/7/23 Tr. at 28-29. 11/8/10 e-mails amongst Personal Aide 1, military aides, and Executive Secretary team, 1B001_03161903.

And on occasion, he removed one or more briefing memos from the classified briefing book before returning it. 147

In 2010, the Executive Secretary team raised concerns about the number of classified briefing books that Mr. Biden had not returned, and the fact that, even when they were returned, some of the content was missing. 148 These concerns were raised with Hogan as well as Mr. Biden's personal aide and military aides. E-mails indicate that the Executive Secretary team alerted Hogan to the issue at least in June 2010, when nearly thirty of the classified briefing books from the first six months of 2010 were outstanding, and in August 2010, when Mr. Biden failed to return Top Secret, Sensitive Compartmented Information (also referred to as "codeword") contents of a classified briefing book that he had received during a trip to the Hamptons, in New York. 149 We were unable to determine whether these materials were ever recovered, although they were likely found and disposed of by military aides or naval enlisted aides. 150

¹⁴⁷ Director of Programs Tr. at 54-60; Executive Secretary Staffer 2 7/7/23 Tr. at 28-29; 11/8/10 e-mails amongst Personal Aide 1, military aides, and Executive Secretary team, 1B001_03161903.

¹⁴⁸ Director of Programs Tr. at 69-76, 90-91; Executive Secretary 3 Tr. at 36-37; Executive Secretary Staffer 2 7/7/23 Tr. at 28-29 (seeing the same in 2016-18).

¹⁴⁹ 6/29/10 e-mail from Director of Programs to Personal Aide 1 and military aides, 1B001_03171078; 8/16/10 e-mail from Executive Secretary to Hogan, 1B001_03168570; 8/17/10 e-mails between Military Aide 14 and Personal Aide 1, 1B001_03168569; Military Aide 10 Tr. at 24-25.

¹⁵⁰ 8/17/10 to 8/18/10 e-mails between Hogan and the Executive Secretary team and naval enlisted aides, NARAWH_00017121; Executive Secretary Staffer 2 7/7/23 Tr. at 31-33.

The return of classified briefing books without all of their contents frustrated the Executive Secretary team.¹⁵¹ In response, Hogan implemented additional security procedures described below.¹⁵² But even after those measures were implemented, the Executive Secretary team continued to struggle to retrieve classified briefing books from Mr. Biden.

We were able to trace one of the marked classified documents recovered by the FBI to a briefing book—a 2015 memorandum recovered from the Penn Biden Center. But we were not able to determine whether other recovered documents came from briefing books or were handed or sent to Mr. Biden on an as-needed basis.

C. August 2010 briefing of Mr. Biden on the handling of classified material

Days after the Top Secret, codeword book went missing in 2010, Hogan met with Mr. Biden to discuss the handling of classified material. ¹⁵⁴ Before the meeting, she prepared a briefing memo for him. ¹⁵⁵ The memo, which was addressed to Mr. Biden and dated August 17, 2010, outlined "our procedures for handling your

¹⁵¹ Director of Programs Tr. at 72-73; Executive Secretary 3 Tr. at 36-37; 11/8/10 e-mail from Director of Programs to military aides and others, 1B001_03161902. *See also* Executive Secretary Staffer 2 7/7/23 Tr. at 30-31 (seeing the same in 2016-2018).

¹⁵² Director of Programs Tr. at 72-75, 90-91; 8/17/10 Memo from OVP Counsel to Mr. Biden re "Handling of Classified Documents," NARAWH_00000050.

¹⁵³ A review of the classified book or binder from the Archives showed that the binder from the date of document A8 was missing a tab and attachment which matched document A8. FBI Serial 692. Document A8 was also hole-punched, indicating it may have been the copy that was originally placed in that binder. FBI Serial 238.

¹⁵⁴ 8/17/10 e-mails between Military Aide 10, Military Aide 12, and Personal Aide 1, 1B001_03168569; 8/16/10 e-mail from Executive Secretary to Hogan, 1B001_03168570; 8/19/10 e-mail from OVP Counsel to Executive Secretary and others, 1B001_03168426.

¹⁵⁵ 8/17/10 Memo from OVP Counsel to Mr. Biden re "Handling of Classified Documents," NARAWH_00000050.

classified briefing material" that "must be maintained at all times," including the following:

- "Classified information of any kind may only be reviewed or discussed in secured locations, and never in a public place such as on a train."
- "The [classified briefing] books must remain in your custody, or that of your cleared staff, at all times unless they are in your safe. Classified material must be returned to your national security staff as soon as you are finished with them."
- "Classified materials may never be left unattended, but must be secured in an appropriate safe or transferred to an individual authorized to transport them in an appropriate locked bag whenever they are not in your personal custody."
- "Whenever possible, classified materials should remain at the White House complex. . . . If you need to receive classified materials while at your residence at NAVOBS or in Delaware, the military aides will bring the material to you and then wait to take the material back when you are finished so that it can be stored safely." 156

When interviewed, Hogan did not recall the August 2010 meeting with Mr. Biden. She did, however, identify her handwritten talking points on "best practices." ¹⁵⁷ Even though she did not remember their content, she identified her handwriting and said she likely created them in advance of her meeting with Mr. Biden. ¹⁵⁸ According to her talking points, she briefed Mr. Biden on such best practices as making sure that "classified info stays in the WH complex whenever possible" and is "returned to N[ational] S[ecurity] staff at end of each day." ¹⁵⁹ She also counseled Mr. Biden that any classified material taken from the White House must be

¹⁵⁶ 8/17/10 Memo from Hogan to Mr. Biden re "Handling of Classified Documents," NARAWH_ 00000050.

¹⁵⁷ Undated handwritten notes, NARAWH 00000050 at 4

¹⁵⁸ Hogan 9/19/23 Tr. at 66-69.

¹⁵⁹ Undated handwritten notes, NARAWH_00000050 at 4.

transported by military aides in locked bags and that military aides must retrieve the classified material when Mr. Biden was done with it. 160

After the briefing, Mr. Biden sent Hogan an e-mail through one of his front office assistants, thanking her for the "security briefing." ¹⁶¹

Despite the Hogan memo's language that the Office of the Vice President "must" follow certain procedures for handling classified information, Hogan conceived of the memo as describing "best practices" rather than legal requirements. 162 That view is consistent with the executive order governing handling and storage of classified information, which, as explained in Chapter One, does not apply to a sitting vice president. As outlined below, Mr. Biden and his staff did not follow Hogan's guidance to the letter.

D. The handling of classified material in Mr. Biden's personal spaces after August 2010

As part of his duties as vice president, Mr. Biden accessed and stored classified material in the Naval Observatory and at his Delaware home, outside of containers normally authorized for such information. His staff, following Hogan's advice, tried

¹⁶⁰ Undated handwritten notes, NARAWH_00000050. *See also* 8/23/10 e-mail from Military Aide 14 to other OVP military aides re "Handling of Classified Material," NARAWH_00014447; Hogan 5/23/23 Tr. at 53-55.

¹⁶¹ 8/17/20 e-mail from front office assistant to OVP Counsel, NARAWH_00017043.

¹⁶² Hogan 9/19/23 Tr. at 65-68, 81, 113-14; 8/17/10 Memo from Hogan to Mr. Biden re "Handling of Classified Documents," NARAWH_00000050.

to ensure that classified material was handled securely.

1. Tracking of classified briefing books

In the wake of the August 2010 Hamptons trip and the difficulty in retrieving Top Secret, codeword documents, Executive Secretary staff implemented a more formal system for tracking Mr. Biden's classified briefing books. The team began numbering and recording the contents of each book, 163 and created a spreadsheet that logged the date, book number, how the book was delivered, and date of return. 164 Despite these new procedures, the Executive Secretary team continued to struggle to retrieve Mr. Biden's classified briefing books. 165

2. Delivery of classified material to personal spaces

Hogan orally instructed military aides that the classified briefing books must be delivered directly to Mr. Biden and "could not be left on the 'round table" in the front hall on the main floor of the Naval Observatory residence. ¹⁶⁶ During our interview, Hogan said that she "wanted to make sure that a book with classified information wasn't just sitting on the hallway table." ¹⁶⁷ According to notes taken by one of Mr. Biden's military aides, Hogan instructed that "if [Mr. Biden] asks us to

¹⁶³ 8/23/10 e-mail from Director of Programs to OVP National Security Staff, NARAWH_00017126; 8/17/10 Memo from Hogan to Mr. Biden re "Handling of Classified Documents," NARAWH_00000050.

¹⁶⁴ 8/23/10 e-mail from Director of Programs to OVP National Security Staff, NARAWH_00017126; VP Classified book tracking.xlsx, NARAWH_00014902.

¹⁶⁵ Executive Secretary Staffer 2 7/7/23 Tr. at 25-28; In November 2010, Military Aide 14 e-mailed Personal Aide 1 asking him to help retrieve multiple of Mr. Biden's classified briefing books. 11/8/10 e-mail from Director of Programs to military aides and others, 1B001_03161902.

¹⁶⁶ Hogan 5/23/23 Tr. at 45-46. 8/23/10 e-mail from Military Aide 14 to OVP Military Aides re "Handling of Classified Material," NARAWH_00014447.

¹⁶⁷ Hogan 5/23/23 Tr. at 46-47.

leave it on the 'round table' we should place it on the table and then maintain eyes on it until he picks it up." ¹⁶⁸ But in practice, military aides regularly left his classified briefing books unattended on the round table at Mr. Biden's request. ¹⁶⁹

3. Storage of classified material in personal spaces

According to a military aide's notes of a meeting with Hogan in August 2010, she communicated to staff that Mr. Biden "understands that classified material needs to be kept in one of two places a. Personal Custody, or b. a safe." His staff then installed identical safes for him to use to store classified material, installing one safe

¹⁶⁸ *Id.* 8/23/10 e-mail from Military Aide 14 to OVP Military Aides re "Handling of Classified Material," NARAWH 00014447.

¹⁶⁹ Military Aide 1 Tr. at 10-11, 42-44; Military Aide 4 Tr. at 9, 16 ("He knew that at some point in the evening there would be a book available for him on the table."); Military Aide 8 Tr. at 21-22 ("We would make contact with him and he would say, hey, can you leave it on the table at the bottom of the stairs in the Naval Observatory. So, he would request that and we would leave it for him to retrieve."); Military Aide 10 Tr. at 15 ("his direction to me was to put it on a table in the foyer [H]is direction to me was to set it on that table."). But see Military Aide 11 Tr. at 28 ("You couldn't . . . [I]f you couldn't positively hand it off to somebody, you didn't. I wasn't going to leave, you know, secrets sitting on the kitchen counter in the Naval Observatory."); Military Aide 13 Tr. at 15 ("All of the handoffs that I'm thinking about, I don't think we left classified sitting around for him."). Some military aides described ensuring the material was picked up from the table that evening. Military Aide 3 Tr. at 40 ("I wouldn't stand there waiting for him to come down and get them, say if he was, you know, upstairs. But I would make sure they were picked up."); Military Aide 6 Tr. at 30 ("[W]e would leave them on the table on the first floor, and I would always kind of wait, and he would walk or let the dog out, Champ, and so you'd see that he let [the] dog out, and then I would go back up to make sure that those documents were not on the table after I saw him."). At least one military aide pushed back if the material was particularly sensitive. Military Aide 5 Tr. at 13-15, 33 (would not leave anything above Top Secret/Sensitive Compartmented Information classification on the round table and Mr. Biden would be informed it couldn't be left on the table; would not leave the book on the table for more than 30 minutes.). On at least one occasion, Mr. Biden's personal aide sent an e-mail to Mr. Biden himself via Mr. Biden's personal e-mail account notifying him that the "classified book was delivered and is on the round table downstairs[.]" 7/11/11 e-mail from personal aide to Mr. Biden, 1B001_03223432. ¹⁷⁰ 8/23/10 e-mail from Military Aide 14 to OVP Military Aides, NARAWH_00014447.

each in his West Wing office closet, the second-floor personal space of the Naval Observatory, and his personal residence in Delaware.¹⁷¹

There is some evidence that after the new safes were installed at the residences, Mr. Biden used them to store classified information, at least for a time. In December 2010, for example, Mr. Biden's personal aide e-mailed members of the Executive Secretary team saying that Mr. Biden had "just put" classified material in a safe in the Naval Observatory, including classified briefing books and one of Mr. Biden's handwritten notebooks. 172 And in November 2010, the personal aide sent another e-mail saying that "the system put in place by [Hogan] of using safes at his residence has been working." 173

But we also found that Mr. Biden continued frequently to leave classified documents unattended, outside of safes, at the Naval Observatory and his Delaware home. As to the Naval Observatory, only one of the eight naval enlisted aides we interviewed recalled a safe there ever being used to store classified material. 174 Several did not recall a second-floor safe at all. 175 And only one aide recalled a safe being in the library of the Delaware home, but the aide never opened it. 176

^{171 8/23/10} e-mail from Military Aide 14 to OVP Military Aides, NARAWH_00014447; 12/11/10 e-mail from Personal Aide 1 to Director of Programs, 1B001_03159080 (referring to safe in Mr. Biden's "room" in his residence at the Naval Observatory).

^{172 12/11/10} e-mail from Personal Aide 1 to Director of Programs and Executive Secretary, 1B001_03159095 (listing a "classified binder" with materials from "two books" on "Af/Pak"); Notebook 1B63.

 $^{^{173}}$ 11/8/10 e-mail from Personal Aide 1 to Director of Programs, et al., 1B001_03161902.

¹⁷⁴ NEA 5 Tr. at 35-36, 39, 40-41.

¹⁷⁵ NEA 1 Tr. at 17; NEA 4 Tr. 16; NEA 8 at 23-24.

 $^{^{176}}$ 5/2/13 e-mail from Director of Programs, 1B001_03097089; 10/18/10 Memorandum, NARAWH_00014906; NEA 5 Tr. at 80-83.

Despite Hogan's admonishments never to leave classified material unattended, several aides observed classified material left out on the second floor of the Naval Observatory¹⁷⁷ or in the Delaware home.¹⁷⁸ Some thought it was fine for documents to be left out in those spaces, and only recalled moving them if asked.¹⁷⁹ When interviewed, Mr. Biden recalled that at the Naval Observatory his practice was to "leave something on the desk that I was working out of in the office . . . and they'd come and clear it out . . . when I got finished."¹⁸⁰

E. Lack of counseling on the handling of classified material after 2010

Hogan left her position as Counsel to the Vice President in June 2013. 181 After her guidance in 2010 and 2011, it does not appear the Counsel's office provided Mr. Biden with any additional advice of significance about how to handle and store classified information until the very end of the administration, when an issue arose relating to his handwritten classified notecards. That matter is discussed in detail in Chapter Four.

¹⁷⁷ NEA 2 Tr. at 29-32; NEA 3 Tr. at 12, 40; NEA 4 Tr. at 11-13; NEA 5 Tr. at 53-55, 59; NEA 6 Tr. at 14-15; NEA 7 Tr. at 51-53.

 $^{^{178}}$ NEA 2 Tr. at 36; NEA 4 Tr. at 21, 24-25, 34, 35-38; NEA 5 Tr. at 53-54, 84-85; NEA 6 Tr. at 24.

¹⁷⁹ NEA 4 Tr. at 23-24, 47; NEA 5 Tr. at 84; NEA 7 Tr. at 51-53.

¹⁸⁰ Biden 10/8/23 Tr. at 30-31.

 $^{^{181}\,} Hogan$ 5/23/23 Tr. at 36; Lambros Tr. at 13; 6/21/13 e-mail from Hogan, 1B001_00180811.

CHAPTER FOUR

Mr. Biden's Classified Notecards and Notebooks

In addition to the marked classified documents Mr. Biden received through the President's Daily Brief, classified briefing books, and other avenues, he also regularly created classified documents in the form of his own handwritten notes. Throughout the eight years of the Obama administration, Mr. Biden took notes during classified meetings and about classified information in notebooks and on notecards. Although the substantive information in the notebooks and notecards was similar—and similarly classified—the notebooks and notecards were handled differently, both during the administration and after.

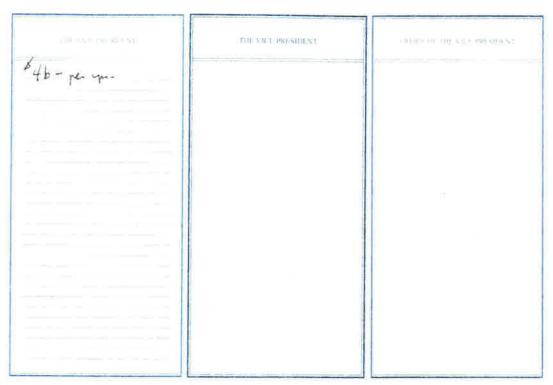
During the Obama administration, Mr. Biden's staff regularly collected and reviewed his notecards to determine if they contained classified information and so they could eventually be archived as presidential records. At the end of the administration, Mr. Biden's staff arranged for him to store most of his classified notecards, which contained notes on the President's Daily Brief and other classified information, in a SCIF at the National Archives. In contrast, Mr. Biden held his notebooks close, and his staff did not review them. After the administration, Mr. Biden brought his notebooks home with him and stored them in unsecured locations that were not authorized to store classified information—even though the notebooks, like the notecards, contained classified information.

Some information in the notebooks remains classified up to the Top Secret level and includes Sensitive Compartmented Information, including from compartments used to protect information concerning human intelligence sources. 182

I. MR. BIDEN'S NOTECARDS

A. As vice president, Mr. Biden carried and took notes on notecards every day

Mr. Biden regularly took notes on 4-inch by 7.5-inch notecards. Many of them had "The Vice President," or "Office of the Vice President" printed at the top. 183



Examples of vice presidential notecards 184

¹⁸² Office of the Director of National Intelligence, 12/31/13 Memorandum for Distribution from the Principal Deputy Director of National Intelligence (2013), https://sgp.fas.org/othergov/intel/hcs-update.pdf; FBI Serial 676.

 $^{^{183}}$ Staff Assistant 2 Tr. at 100; 12/20/10 e-mail from OVP staffer to Staff Assistant 2, 1B001_02888681; Staff Assistant 3 10/4/23 Tr. at 34-35.

 $^{^{184}}$ NARA_SCAN_00001317, NARA_SCAN_00001320, NARA_SCAN_00001305; FBI Serial 3.

Mr. Biden's staffers printed a copy of his schedule on a notecard for him to carry and refer to each day. 185 He also had staffers print other information on the notecards, such as the number of troops who had died during the war in Afghanistan and talking points for meetings and speeches. 186 Mr. Biden carried the notecards in his inner jacket pocket, and he referred to them throughout the day and jotted down notes on them. 187

Mr. Biden also carried blank notecards that he used to take notes. According to staffers, he used the notecards to take notes during and after meetings. 188



Mr. Biden with handwritten notecards (June 30, 2010) 189

¹⁸⁵ 9/1/16 West Wing Guide, SCOH-000434; Klain Tr. at 43; Personal Aide 1 4/26/23 Tr. at 26-27; Hogan 5/23/23 Tr. at 33; Executive Assistant 9/28/23 Tr. at 50-51.

¹⁸⁶ 9/1/16 West Wing Guide, SCOH-000434; Klain Tr. at 43; Personal Aide 1 4/26/23 Tr. at 29-30; McKeon Tr. at 82-83; Personal Aide 3 3/28/23 Tr. at 31-32.

¹⁸⁷ 9/1/16 West Wing Guide, SCOH-000434; Klain Tr. at 43-44; Personal Aide 1 4/26/23 Tr. at 26-27; Hogan 5/23/23 Tr. at 33; Staff Assistant 3 10/4/23 Tr. at 25-26.

¹⁸⁸ Personal Aide 1 4/26/23 Tr. at 28-29; Personal Aide 3 3/28/23 Tr. at 31-34; Staff Assistant 3 10/4/23 Tr. at 25-26.

^{189 1}B001_00506500.

In addition to taking notes in unclassified settings, Mr. Biden used notecards to take notes on a variety of classified meetings and briefings, including the President's Daily Brief, 190 Situation Room meetings, and other briefings from the intelligence community. 191

B. Mr. Biden's notecards were collected and organized by his staff

Mr. Biden's front office staff regularly collected his notecards. Generally, Mr. Biden handed them to his personal aide or staff assistants or left them in an outbox on the desk in his office, where his front office staff collected material at each day's end. 192 Staff then organized the notecards by date or topic so that Mr. Biden could reference them. 193 Front office staff stored the notecards in their work area outside of Mr. Biden's West Wing office. 194

When notecards contained notes related to foreign policy meetings or other potentially classified information, Mr. Biden's staff turned them over to the National Security Affairs team, who stored them in a secure location. ¹⁹⁵ At times, the National

¹⁹⁰ E.g., NARA-Bx1_1682, 2428, 2432-39, 2444-46, 2452, 2458, 2460; Staff Assistant 3 10/4/23 Tr. at 31-32; Personal Aide 1 4/26/23 Tr. at 26-29; Personal Aide 3 3/28/23 Tr. at 31; FBI Serial 281 1A300, 1A301.

¹⁹¹ E.g., NARA-Bx1_0123, 195-96, 274, 277, 422, 1074-75, 1100, 1197, 1692-93, 1702, 1737-38, 2140-41, 2159, 2218, 2372, 2403, 2442; NARA-Bx2_VP Notecards 2016_0090; Staff Assistant 3 10/4/23 Tr. at 31-32; FBI Serial 281 1A300, 1A301.

¹⁹² Staff Assistant 2 3/16/23 Tr. at 19-20, 27-28; Executive Assistant 9/28/23 Tr. at 43, 60-61; 9/1/16 West Wing Guide, SCOH-000434; Staff Assistant 3 10/4/23 Tr. at 15-17, 26-27.

¹⁹³ Staff Assistant 3 10/4/23 Tr. at 24-27; 9/1/16 West Wing Guide, SCOH-000434; Staff Assistant 2 3/16/23 Tr. at 31, 98-99; Executive Assistant 9/28/23 Tr. at 43, 45.

¹⁹⁴ Staff Assistant 2 3/16/23 Tr. at 31, 98; Staff Assistant 3 10/4/23 Tr. at 25-26, 33, 37; 9/1/16 West Wing Guide, SCOH-000434.

¹⁹⁵ Staff Assistant 4 Tr. at 37-39, 52-53, 101-102; Staff Assistant 2 3/16/23 Tr. at 20-21; Personal Aide 1 4/26/23 Tr. at 28-29, 52, 56; 2/5/11 e-mail from Deputy Counsel to WH Records Director et al. re "VP Notecards," 1B001_02886522; Staff Assistant 3 10/4/23 Tr. at 31-32; Executive Secretary Staffer 2 11/21/23 Tr. at 6-7; Bakotic 1/11/24 Tr. at 20-22.

Security Affairs team marked some of the notecards as classified. 196 Mr. Biden also marked some of his own notecards as classified. 197

C. Mr. Biden wanted to take copies of his notecards when he left office to help write his book

As explained in Chapter Five, in the final year of his vice presidency, Mr. Biden began writing a memoir about his time in office. When conceiving of and writing the book, Mr. Biden worked with a ghostwriter, Mark Zwonitzer. In 2016, Zwonitzer reached out to Mr. Biden's staff and requested help with locating Mr. Biden's journals and notes that would be helpful in writing the book. As he approached the end of his vice presidency, Mr. Biden sought to keep copies of his notecards and other records for use in the book-writing process. According to a staffer involved in the project, Mr. Biden wanted to take copies of the notecards so that he didn't have to go to [the National Archives] every day to help write this book." 199

In late September 2016, Zwonitzer e-mailed Mr. Biden's chief of staff to schedule an interview with Mr. Biden.²⁰⁰ Zwonitzer said he wanted to cover "very specific topics and time frames" and said he would "tell you exactly what ground/time period I want to cover in the session so the VP could have relevant notes/diaries etc, with him when we talk."²⁰¹

¹⁹⁶ Executive Secretary Staffer 2 11/21/23 Tr. at 6-11; Ratner Tr. at 42-43, 51.

¹⁹⁷ Staff Assistant 3 10/4/23 Tr. at 31-32; NARA-Bx1_2438, 2446; FBI Serial 281 1A300, 1A301.

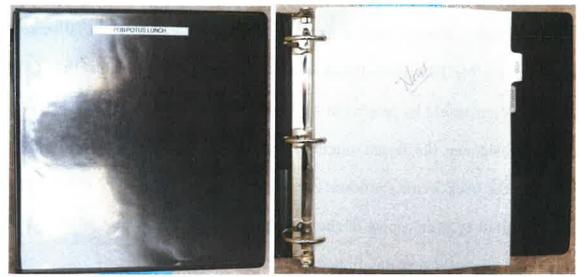
¹⁹⁸ 5/21/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007399.

¹⁹⁹ Associate Counsel 3/29/23 Tr. at 59.

²⁰⁰ 9/26/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007613.

²⁰¹ *Id*.

Around this same time, Mr. Biden's staff made copies of the notecards and organized them into binders so that he could take them after he left office.²⁰² The notes were organized by topic or date.²⁰³ For example, one binder contained copies of notes Mr. Biden took during President's Daily Briefs and his lunches with President Obama.²⁰⁴ The binder contained notes on classified meetings and information.



Copies of notecards regarding lunches with President Obama²⁰⁵

Other binders contained copies of Mr. Biden's notecards organized by year:²⁰⁶

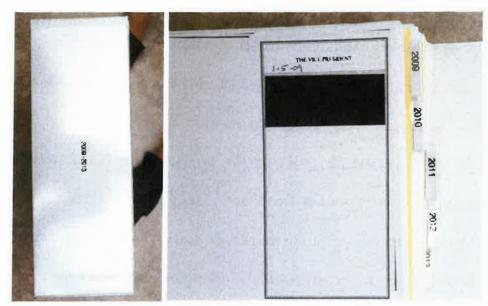
 $^{^{202}}$ Staff Assistant 3 10/4/23 Tr. at 25-31; Associate Counsel 3/29/23 Tr. at 54-55; Executive Secretary Staffer 2 7/7/23 Tr. at 71-74.

²⁰³ Staff Assistant 2 3/16/23 Tr. at 31, 98; Staff Assistant 3 10/4/23 Tr. at 36, 38-40; 9/1/16 West Wing Guide, SCOH-000434.

 $^{^{204}}$ Blended Boxes-0026, Blended Boxes-0028; Staff Assistant 3 10/4/23 Tr. at 36, 38-40; FBI Serial 392 1 A469.

²⁰⁵ BlendedBoxes-0026, BlendedBoxes-0028; FBI Serial 392 1A469.

 $^{^{206}}$ E.g., BlendedBoxes-0040 to BlendedBoxes-0044 (binder labeled "2009-2013" with tabs corresponding to those years); FBI Serial 392 1A469.



Copies of notecards organized by year²⁰⁷

In addition to note cards, some of the binders contained copies of Mr. Biden's schedules and other material. 208



Copies of notecards and Mr. Biden's schedules²⁰⁹

²⁰⁷ BlendedBoxes-0040, BlendedBoxes-0044.

 $^{^{208}}$ E.g., BlendedBoxes-0037; FBI Serial 392 1A469.

²⁰⁹ BlendedBoxes-0035, BlendedBoxes-0037; FBI Serial 392 1A469.

D. Near the end of the administration, staff determined that some of the notecards contained classified information

The counsel in the Office of the Vice President were involved in reviewing the copies of the notecards that Mr. Biden wanted to take with him after his vice presidency. While reviewing the notecards, an associate counsel noticed that some of them contained notes about the President's Daily Brief. Although the associate counsel did not see any classification markings, she understood the President's Daily Brief was classified and was concerned because a non-classified copier had been used to make the copies. 212

The associate counsel raised the issue with the Executive Secretary team, which, as explained in Chapter Three, was responsible for the delivery and handling of classified material in the Office of the Vice President.²¹³ E-mail correspondence from early October 2016 indicates the notecards were temporarily stored in the deputy national security advisor's office "until the lawyers determine the appropriate next steps."²¹⁴ In an interview, the deputy national security advisor recalled "reviewing materials" at the end of the administration "to understand what was classified or not."²¹⁵

²¹⁰ Associate Counsel 3/29/23 Tr. at 54-60; 10/6/16 e-mail from Associate Counsel to Executive Assistant, et al., NARAWH_00017698 (indicating Associate Counsel would deliver the "2009-2013" binder to the Executive Assistant when she was finished reviewing it).

²¹¹ Associate Counsel 3/29/23 Tr. at 54-55.

²¹² *Id.* at 55.

²¹³ Id.

²¹⁴ 10/7/16 e-mail between Associate Counsel, Deputy National Security Advisor Ely Ratner, and others, NARAWH_00017743.

²¹⁵ Ratner Tr. at 40.

Soon after, a military detailee working on the Executive Secretary team raised her own concerns about the handling of Mr. Biden's notecards. After learning that Mr. Biden wanted copies of the notecards for use in writing his book "after the administration has ended," the detailee raised concerns that the notes contained classified material commingled with Mr. Biden's personal notes. 216 According to the detailee, the executive secretary, Kristen Bakotic (who was also on detail from the military), disagreed and concluded that "the notes belong to the Vice President and should be made available to him without restriction." 217 Because Bakotic outranked the detailee, the detailee sent an e-mail to herself "for the record," in which she explained her belief that the notes were "being mishandled" and documented her request not to participate "in any project or meetings that involve these records." 218

For the Record

On October 18th, 2016 in the Office of the Vice President's National Security Affairs office, there began a discussion of the use and disposition of the Vice President's notes. These notes, which are currently being stored in the EEOB room 291 contain classified information that is comingled with personal notes of the Vice President. They cover a span of several years. None of the notes have classification markings or are otherwise indicated as containing classified information. The determination of classified content was made by the Deputy National Security Advisor, after reviewing the content.

Kristen Bakotic, the Vice Presidents Executive Secretary, insist that the notes belong to the Vice President and should be made available to him without restriction. She has indicated that she is aware that these notes will be used during this book-writing process, but she is confident that he (the Vice President) understands which information is classified and which information is not.

Kristen has stated that these notes should not be subjected to the regulations of the Presidential Records Act, because they fall under the category of personal notes. She has stated that the Vice President can keep these notes, including the classified portions (without redaction), after the administration has ended.

She has repeatedly stated that his position as the Vice President of the United States excludes him from the guidance that other members of the administration are required to adhere to.

I do not agree with Kristen Bakotic. I believe these records are being mishandled; however, Kristen is my superior officer and I am not in a position to challenge her authority. I have requested to not participant in any project or meetings that involve these records.

Detailee's e-mail "For the Record" (Oct. 18, 2016)²¹⁹

²¹⁶ 10/18/16 e-mail from Executive Secretary Staffer 2, NARAWH_00015190.

²¹⁷ *Id*.

 $^{^{218}}$ *Id*.

²¹⁹ *Id*.

When interviewed by our office, the detailee said she believed providing the notes to Mr. Biden after the administration "without restriction" would be "outside of the protocols and policies that . . . had been put in place for our office for safeguarding the material." The detailee did not recall the ultimate disposition of the notecards or whether the discussion percolated up to Mr. Biden. 221

As for Bakotic, during an interview with our office, she said that she did not recall ever taking the position that Mr. Biden could take classified notes home with him after his vice presidency.²²² According to Bakotic, she believed in the fall of 2016, when the detailee wrote her e-mail, that there was still time for Mr. Biden to review his notes and get the information he needed in a secure fashion before the administration ended.²²³ She also did not recall ever advising Mr. Biden that he could retain classified notes after his term in office, and said it was not her role to advise the vice president about classified record-handling.²²¹ Nor did she recall anyone else in the Obama administration taking the position that Mr. Biden could take classified material home with him in an unsecure environment after the vice presidency.²²⁵ Based on her own training, she knew that classified materials were supposed to be stored in a secure facility.²²⁶ A memorandum from the National Security Council sent to all Office of the Vice President staff in December 2016 and January 2017 confirmed

²²⁰ Executive Secretary Staffer 2 11/21/23 Tr. at 19.

²²¹ *Id.* at 32, 38.

²²² Bakotic 1/11/24 Tr. at 45-47, 50-52, 56.

²²³ *Id.* at 11, 43-45.

²²⁴ *Id.* at 56-57, 59, 62.

²²⁵ *Id.* at 62-63.

²²⁶ *Id.* at 50, 53-54.

this understanding, instructing that "[m]eeting notes . . . , and classified notes of any kind, are NOT personal notes" and that only unclassified personal records could be removed from the White House at the end of the administration, though there is no evidence this guidance was ever communicated to Mr. Biden.²²⁷

E. In October 2016, Mr. Biden's staff installed a new safe at the Naval Observatory for the storage of Mr. Biden's notecards

Shortly after the Executive Secretary detailed raised an objection to the handling of Mr. Biden's notecards in October 2016, Mr. Biden's staff installed a new safe at the Naval Observatory. E-mail traffic from that time suggests the safe was meant to store Mr. Biden's classified notecards.

On October 20, 2016—two days after the Executive Secretary detailee objected to the handling of the notecards—Mr. Biden's deputy national security advisor reached out to Mr. Biden's personal aide asking to "run something" by Mr. Biden.²²⁸ Later that night, the personal aide replied that he had talked to Executive Secretary Bakotic and "[s]ounds like we're good. Let me know if there's anything additional beyond the safe issue."²²⁹

That same day, the deputy national security advisor sent an e-mail with the subject line "New Safe at NavObs" to Mr. Biden's chief of staff, Counsel, national security advisor, and others.²³⁰ In the e-mail, the deputy national security advisor

²²⁷ 12/22/16 e-mail from Director of Programs to #ALL-OVP, NARAWH-CLASS_00015305; 1/3/17 e-mail from Director of Programs to #ALL-OVP, NARAWH-CLASS_00015634.

²²⁸ 10/20/16 e-mail from Ratner to Personal Aide, 1B001_02137508.

²²⁹ 10/20/16 e-mail from Personal Aide to Deputy National Security Advisor, 1B001 02137508.

²³⁰ 10/20/16 e-mail from Ratner to Ricchetti, McGrail, Kahl et al., 1B001_03798594.

said that "[t]he VP approved the placement of a new safe at NavObs and conveyed his desired location."²³¹ He explained that the safe would be installed the following day and would be "load[ed] up with the relevant materials."²³² Later that evening, a career employee on the Executive Secretary team e-mailed the detailee to let her know "for [her] awareness" that a safe was being installed.²³³

Although these e-mails suggest that Mr. Biden's staffers installed the new safe at the Naval Observatory to store the notecards, the staffers told investigators that they did not remember why the safe was installed or what was stored in it.²³⁴

F. At the same time Mr. Biden's staff was considering how to handle the notecards, he told his ghostwriter that "they didn't even know" he had notebooks containing similar classified notes

Mr. Biden appeared to reference the notecards issue during a recorded interview with his ghostwriter Zwonitzer on October 10, 2016—the same time period during which his staff were discussing and arranging the secure storage of his classified notecards. At the time, Mr. Biden was reading aloud from his "Foreign Policy" notebook, including reading notes from meetings in the Situation Room.²³⁵ As explained below, Mr. Biden's notebooks were separate from his notecards, though he often took similar—and similarly classified—notes in each. Referring to his "Foreign Policy" notebook, Mr. Biden added, "[t]hey didn't even know I have this."

 $^{^{231}}$ *Id*.

²³² 10/20/16 e-mail from Ratner to Ricchetti, McGrail, Kahl et al., 1B001 03798594.

 $^{^{233}}$ 10/20/16 e-mail from Director of Programs to Executive Secretary Staffer 2, SCOH-000268.

²³⁴ E.g., Executive Secretary Staffer 2 11/21/23 Tr. at 29-30; Bakotic 1/11/24 Tr. at 66-69; Ratner Tr. at 60-62.

²³⁵ Notebook entries 1B58-50-51, 56-60.

Mr. Biden: There was a lot of stuff going on at the same time in foreign

policy. You said—they said, you didn't wanna go into . . .

but I have extensive notes over this period of time.

Zwonitzer: Oh, you actually have those here?

Mr. Biden: Yeah, now there's a lot of other notes too. But, I mean, this

is my . . . They didn't even know I have this. Some of this stuff I'm not, you know, going . . . I have stuff all the way up to 5-19. May 19. And then it skips in my notes to . . .

6-16 is the next entry.²³⁶

In this exchange, Mr. Biden seemed to distinguish between his notecards, which his staff were in the process of implementing protocols to safeguard, and his notebooks, which, "[t]hey didn't even know I have." As explained below, although the notecards and notebooks both contained classified information, most of the notecards were handled differently than the notebooks after the vice presidency.

G. The investigation did not determine what, if anything, staff told Mr. Biden about the proper storage of classified information in his notecards

After staff raised concerns about the possibility that Mr. Biden's notecards may contain classified material, his staff discussed how to properly handle and store the notecards. There is some indication that Mr. Biden's staff may have advised him that his notecards contained classified information and needed to be held in a secured location. But the investigation did not determine what, if anything, Mr. Biden's staffers actually told him on this subject.

²³⁶ Zwonitzer recording Carved_000246 (emphasis added); Carved_000246 Tr. at 3-5; FBI Serials 315, 335; Notebook entries 1B58-50-51, 56-60.

As explained above, e-mails obtained during the investigation show that in October 2016, Mr. Biden's national security staff appear to have installed a new safe at the Naval Observatory in which to store Mr. Biden's notecards during the rest of his vice presidency. After an e-mail from Mr. Biden's deputy national security advisor asked Mr. Biden's personal aide to "run something" by Mr. Biden, a follow up e-mail from the personal aide referred to the "safe issue," suggesting that the personal aide had talked to Mr. Biden about the decision to install a new safe at the Naval Observatory to hold Mr. Biden's notecards.²³⁷ But when interviewed, neither the deputy national security advisor nor the personal aide recalled talking to Mr. Biden about the installation of the safe or the handling of his notecards.²³⁸

For her part, the associate counsel who initially raised concerns about potentially classified material in Mr. Biden's notecards believed the then-Counsel to the Vice President, John McGrail, was going to meet with Mr. Biden to address the issue. ²³⁹ According to the associate counsel, after she flagged the issue of classified information in Mr. Biden's notes, she thought "someone had a conversation" with the Vice President "about the binders [containing copies of the notecards] and probably about making sure classified documents are put in the safe. ²⁴⁰ The associate counsel believed McGrail had this conversation with Mr. Biden, but she was not part of it and did not know what, if anything, was discussed. ²⁴¹ As explained below, for his part,

 $^{^{237}}$ 10/20/16 e-mail from Ely Ratner to Personal Aide, 1B001_02137508; 10/20/16 e-mail from Personal Aide to Ratner, 1B001_02137508.

²³⁸ Ratner 11/21/23 Tr. at 55, 74.

²³⁹ Associate Counsel 3/29/23 Tr. at 61.

²⁴⁰ Id.

²⁴¹ *Id*. at 55.

McGrail did not recall any such conversation, and indeed, said he did not remember anything about the notecard project or about concerns that Mr. Biden's notecards could contain classified information.²⁴²

Mr. Biden's deputy chief of staff recalled discussions about a slightly different issue. As he described it, during the last year of the Obama administration, members of Mr. Biden's staff flagged that Mr. Biden had written personal notes by hand on the pages of classified documents.²⁴³ Mr. Biden's deputy chief of staff had discussions with McGrail and the associate counsel, as well as others, about the proper disposition of these notes.²⁴⁴ They determined that the Counsel's office would convey to Mr. Biden that he could not keep the notes after the end of the administration, because "classified documents belong with either the creator of the documents," or, "if they were native to our office," to the National Archives.²⁴⁵ The deputy chief of staff was not involved in any conversation between McGrail and Mr. Biden on this issue.²⁴⁶ Again, McGrail did not recall having any conversations with Mr. Biden about the proper disposition of classified documents, though McGrail did recall telling Mr. Biden that all his records (which McGrail understood to encompass notes) would be sent to the National Archives.²⁴⁷

E-mails obtained during the investigation suggest that McGrail and others in the Office of the Vice President conducted some research on the handling and

²⁴² McGrail 1/22/24 Tr. at 9, 15, 16-18, 42, 48, 78, 98-99, 127.

²⁴³ Amin Tr. at 29-33.

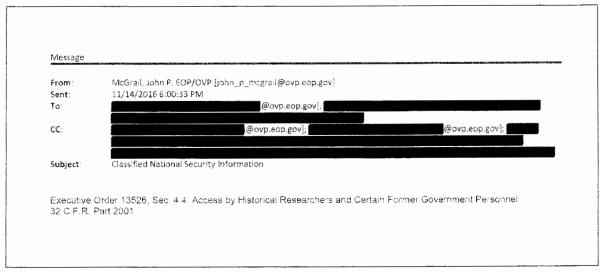
²⁴⁴ *Id*. at 35-37.

²⁴⁵ *Id.* at 29-33, 35-37.

²⁴⁶ *Id*. at 35-37.

²⁴⁷ McGrail 1/22/24 Tr. at 78-83, 86-87, 94, 98-99, 107, 113, 123-26.

accessing of classified materials after the vice presidency. In November 2016, for example, McGrail sent an e-mail containing a reference to the executive order governing classification, specifically citing the provision that would apply when a former vice president sought to gain access to classified information.²⁴⁸



McGrail Nov. 14, 2016 e-mail about Executive Order 13,526249

Six weeks later, in January 2017, the associate counsel sent McGrail an e-mail containing information about the same executive order and about one use of Ronald Reagan's diaries after he was president, 250 a topic that is discussed in more detail in Chapter Ten. The subject line of the e-mail was "per our discussions today." 251

²⁴⁸ 11/14/16 e-mail from McGrail, SCOH-000340.

²⁴⁹ Id.

²⁵⁰ 1/05/17 e-mail from Associate Counsel to McGrail, SCOH-000339.

 $^{^{251}}$ *Id*.

Message From: @ovp.eop.gov] Sent: McGrail, John [john_p_mcgrail@ovp.eop.gov]; McGrail, John ["/o=eop/ou=exchange administrative group To: /cn=recipients/cn=mcgrail, john p. mcgrail_jf85"] Subject: Per our discussions today President Reagan voluntarily allowed in camera review of his diaries re Iran Contra. The Court allowed in some relevant sections, 732 F. Supp. 135 nttp://www.nytimes.com/1990/01/31/us/reagan-is-ordered-to-provide-diaries-in-poindexter-case.html - This executive order is helpful when discussing the President's declassification authority. This is an Executive Order issued by President Obama. Part 3 explains the declassification process: https://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information I'm still doing research. But I think these are a good start.

Associate counsel Jan. 5, 2017 e-mail referencing Mr. Reagan's diaries²⁵²

During his interview, McGrail did not recall these e-mails or any discussions about the executive order or the Reagan diaries, except that he recalled having conversations about getting Mr. Biden's "security clearance" extended so Mr. Biden could access classified material after the vice presidency.²⁵³ According to McGrail, he could not recall having any discussions about Mr. Biden's notecards, notes, or diaries containing classified information.²⁵⁴

McGrail explained that he and an archivist at the National Archives had arranged for all of Mr. Biden's records from the vice presidency, including all his notes, to be sent to the National Archives when he left office.²⁵⁵ In this arrangement, McGrail made no distinctions between presidential vs. personal records, or classified

²⁵² Id.

²⁵³ McGrail 1/22/24 Tr. at 51-55, 59-62, 68-70, 73-74, 76-77, 92, 118-19.

²⁵⁴ Id. at 78-80, 98-99.

²⁵⁵ *Id.* at 80-83.

vs. unclassified records; they simply arranged to send all of Mr. Biden's records to the Archives.²⁵⁶ From there, McGrail said his understanding was that the Archives would undertake the time-consuming task of sorting through the records to determine what was personal and what was presidential.²⁵⁷

According to McGrail, near the end of the administration he told Mr. Biden they would send all his records to the Archives.²⁵⁸ McGrail's message was simple: "It was just, 'Your records are going to the Archives.' That was it."²⁵⁹ McGrail told Mr. Biden this more than once, and Mr. Biden understood the arrangement and accepted it.²⁶⁰ McGrail said he did not discuss with Mr. Biden the specific requirements of the Presidential Records Act or the treatment of personal vs. presidential records under the Act.²⁶¹ McGrail also said he did not discuss Mr. Biden's notecards, notebooks, or diaries with him.²⁶²

McGrail said he never spoke with Mr. Biden about withholding personal notes from the National Archives.²⁶³ Mr. Biden never told McGrail he had notes he wanted to take home instead of sending to the Archives, and McGrail saw no indication that Mr. Biden believed he could take classified notes home with him at the end of his vice presidency.²⁶⁴ If Mr. Biden had such a belief or plan, McGrail would have expected

²⁵⁶ *Id.* at 80-83, 126.

²⁵⁷ *Id.* at 83, 109.

²⁵⁸ *Id.* at 86-87, 94, 99, 107, 113, 123-26.

²⁵⁹ *Id.* at 107.

²⁶⁰ *Id.* at 86-87, 94, 99, 107, 113, 115, 123-26.

²⁶¹ *Id.* at 85-87, 94.

²⁶² *Id.* at 78-79, 83-85, 98-99, 117-19.

²⁶³ *Id.* at 83-84.

²⁶⁴ *Id.* at 83-84, 99, 117-18.

him to raise it during their conversations about sending all Mr. Biden's records to the Archives at the end of the administration.²⁶⁵ McGrail never advised Mr. Biden one way or the other about whether he could keep classified documents, including classified handwritten notes, outside a secure, authorized facility, after leaving office, and McGrail was unaware of such advice from anyone else.²⁶⁶

More generally, McGrail said he was unaware of any conversations among staff in the Office of the Vice President suggesting that Mr. Biden could take classified materials home after leaving office and keep them outside a SCIF, noting, "It was the opposite. It was how are we going to find him a SCIF in case he ever has a reason to go to a SCIF?"267 When asked during his interview about whether anyone told Mr. Biden that the Presidential Records Act authorizes a former vice president to keep certain materials at home, even if they are classified, McGrail said no, and added "[T]hat doesn't make logical sense to me [M]y understanding is that . . . if you copy or write down classified information on a piece of paper, it maintains its classified status."268

According to McGrail, Mr. Biden did not, and would not, come to him for legal advice about whether he could take classified information home after the vice presidency, because, in McGrail's words, "I think he knows." ²⁶⁹ In McGrail's view, the rule that you cannot take classified information out of a secure facility is "obvious." ²⁷⁰

²⁶⁵ *Id.* at 117-18.

²⁶⁶ Id. at 98-99, 107-08, 119, 126.

²⁶⁷ *Id.* at 126.

²⁶⁸ *Id.* at 107-08.

²⁶⁹ Id. at 100.

²⁷⁰ Id. at 102.

McGrail explained that Mr. Biden knew classified information "needs to be maintained in a secure facility. . . . [H]e was the chairman of the Foreign Relations Committee. . . . [H]e understands how it works."²⁷¹

Finally, McGrail said it would be "very surprising" if Mr. Biden intentionally took home classified information after the vice presidency.²⁷² In McGrail's words, Mr. Biden knew that "information is classified for a good reason, that its disclosure can harm sources and methods and the national security interests of the United States, and he has been committed to the national security interests of the United States as long as I've known him."²⁷³ According to McGrail, if Mr. Biden took home classified information after the vice presidency, "[i]t would be completely inconsistent with everything that we were killing ourselves to try to accomplish" at the end of the administration by sending all of Mr. Biden's records to the National Archives.²⁷⁴

H. After Mr. Biden left office, copies of many of his notecards were held in a SCIF at the National Archives

Ultimately, the associate counsel and McGrail arranged for Mr. Biden's classified notecards to be held in a SCIF at the National Archives under a deposit

²⁷¹ *Id.* at 100-01.

²⁷² Id. at 111, 112, 117-18.

²⁷³ *Id.* at 111.

²⁷⁴ *Id*. at 112.

agreement that allowed Mr. Biden to store personal material at a National Archives facility. 275

On January 12, 2017, Mr. Biden signed a deposit agreement allowing him to store "certain personal effects" in a "secure and protected area" at the National Archives.²⁷⁶ According to the agreement, the material consisted of "correspondence, memorabilia, personal notes, and other miscellaneous personal property."

When the associate counsel made arrangements to bring the deposit agreement to Mr. Biden's executive assistant for Mr. Biden's signature, she indicated that McGrail "has spoken with him [Mr. Biden] about the issues." ²⁷⁷ But in an interview, McGrail said that he thought the deposit agreement related to personal records from Mr. Biden's Senate tenure, and he did not recall binders of classified notecards going into Mr. Biden's personal storage at the Archives. ²⁷⁸

On January 16, 2017—four days before Mr. Biden left the vice presidency—the associate counsel asked a member of the Executive Secretary team to "pick up the Vice President's classified materials" at the Naval Observatory.²⁷⁹ Soon after, another member of the Executive Secretary team explained that the material consisted of four

²⁷⁵ Associate Counsel 8/29/23 Tr. at 9-10, 76; 1/5/17-1/6/17 e-mails between Associate Counsel, McGrail, and NARA Archivist 1, SCOH-000326, SCOH-000330, SCOH-000332, SCOH-000334.

²⁷⁶ 1/12/17 Deposit Agreement regarding the Administration of Personal Materials of Vice President Joseph R. Biden, NARA-H-700000012.

 $^{^{277}}$ 1/10/17 - 1/11/17 e-mails between Associate Counsel and Executive Assistant, 1B001_01915351.

²⁷⁸ McGrail 1/22/24 Tr. at 82, 120-21.

²⁷⁹ 1/16/17 e-mail from Associate Counsel to Executive Secretary Staffer 2, SCOH-000246.

to five binders and that "[o]nce you return [you] will need to place in 1-2 pra [Presidential Records Act] boxes along with the originals." 280

The following day was the associate counsel's last day in the Office of the Vice President. She sent McGrail and others an outstanding to-do list.²⁸¹ Among other things, she reminded McGrail to approve the deposit agreement to allow Mr. Biden to store his personal materials at the Archives. She also wrote, "[w]e need to send his personal diaries to storage at the Archives. [A National Archives employee] has offered to come and pick them up. I think this is the best option."²⁸² When interviewed, the associate counsel clarified that she was "referring to the binders that we copied," meaning the binders of Mr. Biden's notecards containing classified information, discussed above.²⁸³ The associate counsel said, "I believe we were using diaries as shorthand because they were personal notes, thoughts."²⁸⁴ She explained that "it was the safest decision to have [the notecards] be in a SCIF since there w[ere] likely classified documents."²⁸⁵

On January 18, 2017, a National Archives employee visited the White House, picked up the copies of the notecards in Mr. Biden's West Wing office from McGrail, and brought them to the National Archives.²⁸⁶ McGrail said in his interview with our

 $^{^{280}}$ 1/16/17 e-mail from Director of Programs to Executive Secretary Staffer 2, SCOH-000246.

²⁸¹ 1/17/17 e-mail from Associate Counsel to McGrail, SCOH-000141 ("I wanted to send along the list of items that still needs to be taken care of after I leave.").

 $^{^{282}} Id.$

²⁸³ Associate Counsel 8/29/23 Tr. at 65.

²⁸⁴ Id

²⁸⁵ *Id.* at 9-10, 76.

²⁸⁶ 1/18/17 e-mail from NARA Archivist 1 to McGrail, NARA-H-700000010.

office that he had no memory of giving the Archives employee the binders of notecards, or that they contained classified information, but the Archives employee recalled McGrail telling him that the materials contained classified information.²⁸⁷ Accordingly, the Archives stored the materials inside a SCIF.²⁸⁸

I. After he left the vice presidency, Mr. Biden twice visited the National Archives to review copies of his notecards in a SCIF

Soon after he left office in 2017 and while researching his book, Mr. Biden visited the National Archives twice to consult the copies of his notecards that were being held in a SCIF.²⁸⁹

During a recorded interview on April 24, 2017, Mr. Biden told his ghostwriter, Zwonitzer, that he took separate notes regarding his private lunches with President Obama.²⁹⁰ Mr. Biden said that before each lunch, he and his chief of staff prepared and wrote an agenda on "one of those little cards of mine"—an apparent reference to the long narrow notecards that Biden carried in his jacket pocket.²⁹¹ After each lunch, Mr. Biden dictated notes about the lunch to his executive assistant.²⁹² Mr. Biden explained that he previously "had all those [notes] at the house in a safe" but that "I don't know what they made me do with them."²⁹³

Zwonitzer: Can we spend some time on that lunch?

²⁸⁷ McGrail 1/22/24 Tr. at 121-22; NARA Archivist 1 Tr. at 56, 62.

²⁸⁸ NARA Archivist 1 Tr. at 56, 62.

 $^{^{289}}$ 5/11/17 and 7/11/17, National Archives Visitor Logs, NARA-H-700002505; NARA Archivist 2 6/1/23 Tr. at 14; McGrail 5/2/23 Tr. at 169-80.

²⁹⁰ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80.

²⁹¹ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80.

²⁹² Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80; Executive Assistant 9/28/23 Tr. at 47.

²⁹³ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80.

Mr. Biden: I had all those presidential notes.

Zwonitzer: I know you gave me this much from the diaries.

Mr. Biden: But I actually, I wonder where those . . .

Zwonitzer: Do you have separate notebooks of the presidential

[lunches]?

Mr. Biden: Yeah. What I would do is after every lunch I would dictate

to, um, I would call in [the Executive Assistant] and I would dictate to her what the lunch was about. I had all those at the house in a safe. I don't know what they made me do with them. But what I would do is I would make up a card, one of those little cards of mine. Before I'd have lunch, I'd meet with Steve [Ricchetti] and anything anybody thought I should be bringing up [I'd put] on our agenda. And when I came back, I'd dictate notes to [the Executive Assistant] as to what actually transpired at the

 $lunch.^{294}$

Two days later, in another recorded interview, Mr. Biden said he had learned that his notecards had been "turned in" to the National Archives and that Mr. Biden would have to go through his former counsel, McGrail, to get them.²⁹⁵ Mr. Biden also told Zwonitzer that he had not wanted to turn the notecards in:

Mr. Biden: I'm told by [a personal aide], I guess he checked with you,

in order for me to get my, uh, get all those presidential notes I had for lunch, the luncheon meetings, I have to go

to McGrail?

Assistant: Yes, McGrail has them. We were supposed to turn it in and

that is the last person who had them.

 $^{^{294}\,}Zwonitzer$ recording 170424_0091 (emphasis added); 170424_0091 Tr. at 28-30; Evidence item 1B80.

²⁹⁵ Zwonitzer recording Carved_000599; Carved_000599 Tr. at 3-4; FBI Serials 315, 335.

Mr. Biden: OK. Uh. See if you can get me McGrail on the line while I

have you now. OK? And stay on okay?

Assistant: Got it sir. Hold on.

Zwonitzer: This is probably something that goes to the

presidential papers.

Mr. Biden: I don't think so. It was in between. I didn't want to

turn them in.

Zwonitzer: Right, so, it's the gray area.²⁹⁶

The next day, Zwonitzer sent an e-mail to the assistant and personal aide, explaining that Mr. Biden "may try to review some of his notes from lunches with the President and asked [Zwonitzer] to give him a list of the dates of the lunches that would be important." Zwonitzer included a list of the dates of several such lunches in his e-mail. Zwonitzer forwarded the list to Mr. Biden's personal e-mail account on May 11, 2017.298

On that day and again two months later, Mr. Biden visited the National Archives to review copies of his notecards, which were held in a SCIF.²⁹⁹ McGrail accompanied him.³⁰⁰ During both visits, Archives staff made clear to Mr. Biden that, by viewing the notecards in the Archives SCIF, he was accessing classified

²⁹⁶ Zwonitzer recording Carved_000599 (emphasis added); Carved_000599 Tr. at 3-4; FBI Serials 315, 335.

²⁹⁷ 4/27/17 e-mail from Zwonitzer to Executive Assistant and Personal Aide 3, Zwonitzer-00001464.

 $^{^{298}}$ *Id*.

²⁹⁹ 5/11/17 and 7/11/17 National Archives Visitor Logs, NARA-H-700002505; NARA Archivist 2 6/1/23 Tr. at 14; McGrail 5/2/23 Tr. at 169-80.

³⁰⁰ McGrail recalled only the first visit to the Archives, but visitor logs show he accompanied Mr. Biden on both visits. 5/11/17 and 7/11/17 National Archives Visitor Logs, NARA-H-700002505; NARA Archivist 2 6/1/23 Tr. at 14; McGrail 5/2/23 Tr. at 169-80.

information.³⁰¹ Nonetheless, in his interview with our office, McGrail said he believed the material was in a SCIF at the Archives simply to keep it secure, not necessarily because it was classified.³⁰²

During the first visit on May 11, Archives staff followed a detailed checklist to ensure they properly safeguarded the classified information in the notecards.³⁰³ The staff ensured that Mr. Biden did not bring his phone or other electronic device into the SCIF.³⁰⁴ They announced that the visit involved access to classified information.³⁰⁵ They remained in the SCIF and monitored Mr. Biden while he reviewed the notecards.³⁰⁶ They also reminded him of his continuing responsibility to protect all classified information after his visit.³⁰⁷

On July 11, 2017, two months after their first visit to the Archives, Mr. Biden and McGrail returned.³⁰⁸ Before the second visit, Zwonitzer e-mailed Mr. Biden another list of lunches and events for which his notes would be helpful.³⁰⁹ During the second visit, Archives staff followed the same general procedures to safeguard classified information.³¹⁰ Mr. Biden also signed a form entitled "Notice to Users of NARA Classified Research Rooms."³¹¹ The first sentence of the form read, "You will

³⁰¹ 5/11/17 and 7/11/17 National Archives Checklist for Classified Visits and Meetings, NARA-H-700002505.

³⁰² McGrail 1/22/24 Tr. at 69-70, 113-14, 129-30.

³⁰³ 5/11/17 National Archives Visitor Logs, NARA-H-700002505.

 $^{^{304}}$ *Id*.

 $^{^{305}}$ *Id*.

³⁰⁶ Id.; NARA Archivist 1 Tr. at 70-71; NARA Archivist 2 Tr. at 18-19.

³⁰⁷ 7/11/17 National Archives Visitor Logs, NARA-H-700002505.

 $^{^{308}}$ Id.

^{309 7/9/17} e-mail from Zwonitzer to Mr. Biden, Zwonitzer-00000631, Zwonitzer-00000632.

³¹⁰ 7/11/17 National Archives Visitor Logs, NARA-H-700002505.

 $^{^{311}}$ *Id*.

be viewing materials containing classified national security information," and the remainder of the form explained the various procedures and rules necessary to safeguard such classified information.³¹²

Not all of Mr. Biden's notecards made their way to the SCIF at the Archives. When the FBI searched Mr. Biden's Delaware home on January 20, 2023, they discovered a stack of Mr. Biden's notecards in his office.³¹³ While many of these notecards were from after his term as vice president, some of them dated from his vice presidency and included handwritten notes about intelligence products and matters of national security.³¹⁴ One notecard included a handwritten classification marking.³¹⁵ Some of the notecards found in the Delaware home remain classified up to the Top Secret level.³¹⁶

II. Mr. Biden's Notebooks

A. Mr. Biden used notebooks during his vice presidency to record both official and personal events

As with his notecards, Mr. Biden also frequently took notes about classified information in notebooks. Most of the classified notecards were stored differently from the classified notebooks after the vice presidency. As explained above, most of

 $^{^{312}}$ *Id*.

³¹³ FBI Serial 77.

³¹⁴ FBI Serials 77, 691, 530, 664; Handwritten material 1B23.

³¹⁵ FBI Serials 691, 530, 664; Handwritten material 1B23.

³¹⁶ FBI Serial 619; Handwritten material 1B23.

the classified notecards went to an Archives SCIF, but Mr. Biden took his classified notebooks home with him and stored them in unsecured and unauthorized locations.

Mr. Biden regularly took notes in notebooks throughout his vice presidency.³¹⁷ Most of these notebooks were bound with black covers.³¹⁸ Some had labels identifying the date range or general subject matter of their contents.³¹⁹ Photos of some of these notebooks are below:



Notebooks seized from file cabinet under television in Delaware home office 320

 $^{^{317}}$ Personal Aide 3 3/28/23 Tr. at 31-32, 35; McKeon Tr. at 120-21; Personal Aide 1 4/26/23 Tr. at 30-31, 129-30; Staff Assistant 2 Tr. at 101-02; OVP NSA Staffer 2 Tr. at 80-81; Klain Tr. at 44, 129; Staff Assistant 3 10/4/23 Tr. at 47-48; Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-63, 1B65-67.

³¹⁸ Klain Tr. at 129; Personal Aide 1 4/26/23 Tr. at 30-31, 103; Personal Aide 3 3/28/23 Tr. at 32; Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-63, 1B65-67.

³¹⁹ Personal Aide 1 9/18/23 Tr. at 110-11; Staff Assistant 3 10/4/23 Tr. at 48-49; Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-63, 1B65-67.

³²⁰ 20230120_FBI_0156. FBI Serial 77 1A 86.



Notebooks seized from file cabinet under printers in Delaware home office³²¹



Notebooks seized from bookcase in Delaware home's second-level office 322

³²¹ 20230120_FBI_0132. FBI Serial 77 1A86.

^{322 20230120}_FBI_0218. FBI Serial 77 1A86.

The content of Mr. Biden's notebooks took several forms.³²³

- (1) Work notes. Mr. Biden wrote these notes during or soon after meetings he attended as vice president. These notes memorialize, often in bullet-point format, things such as the issues presented, comments of meeting participants, and decisions made. For example, Mr. Biden often took notes during meetings of the National Security Council and the President's Daily Brief.³²⁴ Most of the notes in Mr. Biden's collection of notebooks recovered by FBI agents from his Wilmington residence are work notes of this type.
- (2) <u>Work reflections</u>. These were Mr. Biden's impressions, reflections, opinions, and commentary about people and issues he encountered as vice president. For example, during the 2009 review of U.S. military strategy and foreign policy in Afghanistan, discussed in Chapter Six, Mr. Biden recorded his deep concerns that President Obama's eventual decision about Afghanistan would be a terrible mistake.³²⁵
- (3) <u>Political notes and reflections</u>. These were Mr. Biden's summaries of and commentary about political or electoral issues—for example, his notes about his decision whether to run for president in 2016.
- (4) <u>Personal reflections</u>. These were entries about purely personal subjects, such as the illness and death of his son, Beau.
- (5) <u>To-do lists</u>. These were reminders about issues ranging from policy deliberations, to political concerns, to personal matters.

While Mr. Biden often organized his notebooks roughly based on subject matter, many notebooks contained entries on a variety of topics. He typically added entries sequentially by date, so that a given notebook could contain, for example, real-time notes of White House meetings, purely personal entries about Mr. Biden's family, and entries about an upcoming election. Most of the notebooks contained

 $^{^{323}}$ See generally Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-68.

³²⁴ Klain Tr. at 44, 51; Personal Aide 1 4/26/23 Tr. at 130-31; see generally Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-68.

 $^{^{325}}$ Personal Aide 1 4/26/23 Tr. at 30-31, 130-32; Executive Assistant 9/28/23 Tr. at 75; Chapter Six.

predominantly "work notes"—summaries or minutes of work meetings—but a few writings were more diary-like and personal in nature. 326

B. The notebooks contained classified information

Though none of the notebooks have classification markings, some of the notebooks contain information that remains classified up to the Top Secret/Sensitive Compartmented Information level.³²⁷

As with his notecards, Mr. Biden routinely took notes in his notebooks about classified subjects and during meetings where classified information was discussed.³²⁸ For example, he regularly took notes related to the President's Daily Brief, which typically contains classified information.³²⁹ He also regularly took notes during meetings in the White House Situation Room, and numerous photographs document this practice.³³⁰

 $^{^{326}}$ See generally Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-68.

³²⁷ FBI Serial 676.

³²⁸ Notebooks 1B15, 1B20, 1B22, 1B30, 1B51-52, 1B57-58, 1B63-64, 1B66-67.

³²⁹ E.g., Notebook entries 1B30-0065, 0093-94; 1B67-0076.

 $^{^{330}}$ E.g., Notebook entries 1B15-0012; 1B20-0034; 1B51-0073-74, 0080-81; 1B58-0029-31; 1B63-0016, 0026-29; 1B66-0082-84; 1B67-0019-20.



Mr. Biden using a notebook at a Principals Committee meeting (Sept. 29, 2009)³³¹



Mr. Biden writing in a notebook at a meeting with the Joint Chiefs of Staff (Oct. 30, 2009) 332

³³¹ SCOH-000756.

 $^{^{332}}$ SCOH-000757.

Often, Mr. Biden's notes contained real-time minutes of National Security Council meetings, during which the President deliberated with his senior military, intelligence, and foreign policy advisers.³³³ These meetings regularly involved discussions of classified information.³³⁴ For this reason, they took place in the Situation Room, which is itself a SCIF, and signs conspicuously designated National Security Council meetings as "Top Secret."³³⁵

Some of the handwritten notes Mr. Biden took in his notebooks during these meetings included classified information.³³⁶ The notebooks contained such information about the following subjects:

- U.S. intelligence sources, methods, and capabilities.³³⁷
- U.S. intelligence activities.³³⁸
- The activities of foreign intelligence services. 339
- U.S. military programs and capabilities. 340
- Foreign military programs and capabilities.³⁴¹
- Plans and capabilities of foreign terrorist organizations.³⁴²

 $^{^{333}}$ E.g., Notebook entries 1B15-0012; 1B20-0034; 1B51-0073-74, 0080-81; 1B58-0029-31; 1B63-0016, 0026-29; 1B66-0082-84; 1B67-0019-20.

³³⁴ E.g., Notebook entries 1B15-0012-13; 1B51-0073-74; 1B63-0016, 0026-29.

³³⁵ See photographs above; SCOH-000756; SCOH-000757.

³³⁶ FBI Serial 676.

 $^{^{337}}$ E.g., Notebook entries 1B22-0026; 1B52-0091; 1B57-0014; 1B63-0012;80-0028; 1B66-0082.

³³⁸ E.g., Notebook entries 1B51-0080-81; 1B66-0082.

³³⁹ E.g., Notebook entries 1B51-0074; 1B66-0082.

³⁴⁰ E.g., Notebook entries 1B58-0029-30; 1B63-0028.

 $^{^{341}}$ E.g., Notebook entries 1B15-0012; 1B51-0080; 1B58-0033; 1B64-0056; 1B67-0019-20.

³⁴² E.g., Notebook entries 1B20-0034; 1B58-0094.

The FBI and the Special Counsel's Office selected thirty-seven excerpts totaling 109 pages from Mr. Biden's handwritten materials—including mostly notebook entries and a few notecards seized from his Delaware home—to submit to classification authorities in the intelligence community and the Department of Defense to determine the appropriate classification level for each. Investigators selected a sampling of excerpts across Mr. Biden's notebooks that both appeared to be classified and that they expected a jury could find are national defense information under 18 U.S.C. § 793.

Subject to the limitations discussed in Chapter Two, classification authorities identified each excerpt as containing presently classified information.³⁴³ Of the thirty-seven excerpts:

- Eight are Top Secret with Sensitive Compartmented Information, seven of which include information concerning human intelligence sources,
- Six are Top Secret,
- Twenty-one are Secret, and
- Two are Confidential.³⁴⁴

A more detailed description of the results of the classification review is in Appendix B.

Mr. Biden also sometimes placed marked classified documents inside his notebooks.³⁴⁵ Photos in the Situation Room show documents tucked inside his

³⁴³ FBI Serial 676.

 $^{^{344}}$ *Id*.

³⁴⁵ SCOH-000758, SCOH-000759; Recovered documents C1, C2, C3, C4, D20, D21.

notebooks, and the FBI recovered marked classified documents from inside three notebooks found in Mr. Biden's Delaware home.³⁴⁶



Notebook with inserted documents, at a meeting with the Joint Chiefs of Staff (Oct. 30, 2009)347



Notebook with additional inserted documents at the end of the same meeting (Oct. 30, 2009)348

³⁴⁶ SCOH-000758, SCOH-000759; Recovered documents C1, C2, C3, C4, D20, D21.

³⁴⁷ SCOH-000758.

³⁴⁸ SCOH-000759.

C. At times during his vice presidency, Mr. Biden stored his notebooks in a White House safe

During his vice presidency and afterward, Mr. Biden kept his notebooks close, and even his most trusted advisers did not read them. Ron Klain, Mr. Biden's Chief of Staff as both vice president and president, explained that Mr. Biden considered his notes to be his personal reflections and [he] didn't want people looking at them. Robert As shown below in a photograph from 2009, and as witnesses explained, Mr. Biden carried the notebooks himself in his own briefcase. Unlike his notecards, which, as explained above, he often handed to staff to collect and organize, he did not give the notebooks to his staff.



Vice President Biden with notebook (Aug. 7, 2009)353

³⁴⁹ Personal Aide 1 9/18/23 Tr. at 112; Klain Tr. at 51, 63.

³⁵⁰ Klain Tr. at 63.

 $^{^{351}}$ Personal Aide 3 3/28/23 Tr. at 35; Staff Assistant 3 10/4/23 Tr. at 49, 51; Executive Assistant 9/28/23 Tr. at 73-74.

³⁵² Executive Assistant 9/28/23 Tr. at 74; Staff Assistant 3 10/4/23 Tr. at 49.

^{353 1}B001_00674466.

Early in the Obama administration, the first Counsel to the Vice President, Cynthia Hogan, personally advised him about the proper handling of classified information and Mr. Biden agreed to follow her advice. As explained in Chapter Three, the advice was codified in a 2010 memo from Hogan, which instructed Mr. Biden that "[c]lassified materials may never be left unattended," but must be kept in the custody of Mr. Biden or an authorized staff member, or secured in a safe. According to Hogan's notes, among her concerns were Mr. Biden's "notes on codeword info" which were kept in his "AFPAK – notebooks," that is, his notebooks concerning various policy reviews relating to Afghanistan and Pakistan, which are discussed further in Chapter Six. Hogan's notes say that Mr. Biden's personal aide "will collect" those notebooks. But in interviews with the Special Counsel's Office in 2023, Hogan did not remember Mr. Biden's notebooks, or whether she ever advised Mr. Biden about how he should store notes he took during classified meetings. 358

In 2011, Hogan provided Mr. Biden further written guidance about the proper handling of classified notes.³⁵⁹ In a memo to Mr. Biden about protocols for hiring a historian to work in the Office of the Vice President, Hogan explained that:

³⁵⁴ Hogan 5/23/23 Tr. at 27, 53.

³⁵⁵ 8/17/10 Hogan memo to VP, NARAWH_00000050; see also 8/23/10 e-mail from Military Aide to VP MILAIDEs, NARAWH_00014447 ("The VP understands that classified material needs to be kept in one of two places[:] a. Personal Custody, or b. a safe."); Hogan 5/23/23 Tr. at 27, 53, 91-92; Hogan 9/19/23 Tr. at 68-69, 79-80, 83, 106.

³⁵⁶ 8/17/10 Hogan memo to VP, NARAWH_00000050; Evidence items 1B63, 1B66. In her interview with the Special Counsel's Office over a decade later, Hogan did not remember her note on this topic, or any of her concerns or advice about Mr. Biden's notebooks. Hogan 5/23/23 Tr. 39, 90-93; Hogan 9/19/23 Tr. at 86.

³⁵⁷ 8/17/10 Hogan memo to VP, NARAWH_00000050.

³⁵⁸ Hogan 5/23/23 Tr. at 39, 90-93; Hogan 9/19/23 Tr. at 69, 82-83, 86, 120-21.

³⁵⁹ 4/27/11 memo from Hogan et. al. to the Vice President, 1B001_02881350.

any discussions with you that cover classified topics will need to take place in accordance with Executive Order 13526 on Classified National Security Information. This means that such discussions must occur in a secure facility like your West Wing office, and that any notes or other materials that contain classified information must be maintained in secure safes, produced on a classified computer, and stored in a secure facility[.]³⁶⁰

For a time—at least during the early part of his vice presidency—Mr. Biden stored his notebooks relating to national security, along with other classified documents, in a safe in his West Wing office.³⁶¹ As Mr. Biden's first personal aide explained, Mr. Biden stored these notebooks—including the Af/Pak notebook—in the safe because "[t]hat safe was for classified information. It was the purpose of the safe."³⁶² Periodically, Mr. Biden removed certain classified items from his safe and asked his personal aide to return them to members of his national security staff, but Mr. Biden never let anyone else possess his notebooks.³⁶³

³⁶⁰ *Id.* (emphasis added).

³⁶¹ Personal Aide 1 4/26/23 Tr. at 30-31, 103-04, 125-27, 129-130, 134-35; Personal Aide 1 9/18/23 Tr. at 122; Klain Tr. 38-40.

said he could not say that the reason Mr. Biden stored the notebooks in a safe was because they were classified, explaining that the personal aide did not read the notebooks, was not an expert in classification, and that Mr. Biden could have stored the notebooks in the safe simply because they were private. Personal Aide 1 9/18/23 Tr. at 123. In contrast, in his first interview, the personal aide said Mr. Biden only stored materials in the safe if they were related to national security and explained, "it's not like he ever felt like, oh my God, if I leave this on my desk, somebody's going to come steal this thing out of my West Wing office . . . at the White House." Personal Aide 1 4/26/23 Tr. at 129 In both interviews, the personal aide explained his belief that because Mr. Biden was taking notes about classified subjects in classified meetings, the notebooks contained classified information. Personal Aide 4/26/23 Tr. at 104, 129; Personal Aide 9/18/23 Tr. at 121. Other witnesses confirmed generally that the purpose of the safe was to store classified information and that classified information was stored in it. See, e.g., Director of Programs Tr. at 26-28, 59, 79, 111-14; Staff Assistant 1 Tr. at 46-50.

³⁶³ Personal Aide 1 4/26/23 Tr. at 128, 132-33.

At some point during his vice presidency, Mr. Biden appears to have stopped storing his notebooks in the West Wing safe.³⁶⁴ Mr. Biden's first personal aide, who regularly retrieved the notebooks from the safe for Mr. Biden, left the administration in 2014.³⁶⁵ After that, there is no evidence Mr. Biden or his staff stored his notebooks in the West Wing safe.³⁶⁶

Mr. Biden also appears to have kept his notebooks and other classified information in a safe when he was at the Naval Observatory, again, at least for a time near the beginning of the administration. For example, a 2010 e-mail from Mr. Biden's personal aide to members of his staff notes that Mr. Biden had "just put" classified material into the Naval Observatory safe, including several sets of marked classified documents and Mr. Biden's notebook documenting the 2010 Afghanistan/Pakistan policy review. 368

D. After his vice presidency, Mr. Biden stored the notebooks in unlocked and unauthorized containers in his home

After Mr. Biden left the White House in 2017, while most of his classified notecards went to a SCIF at the National Archives, his notebooks went to his private homes, where they were not secured in a safe, and were in a setting that was not authorized for the storage of classified information.³⁶⁹ The notebooks first went to Mr.

³⁶⁴ Personal Aide 3 3/28/23 Tr. at 48-49, 52-54.

³⁶⁵ Personal Aide 1 4/26/23 Tr. at 63.

³⁶⁶ Personal Aide 2 Tr. at 47; Personal Aide 3 3/28/23 Tr. at 48-49, 52-54; Executive Assistant 1/4/23 Tr. at 32; Executive Assistant 9/28/23 Tr. at 32.

³⁶⁷ 12/11/10 e-mail from Personal Aide 1 to Executive Secretary 3 and Director of Programs, 1B001_03159095; Notebook 1B63.

³⁶⁸ 12/11/10 e-mail from Personal Aide 1 to Executive Secretary 3 and Director of Programs, 1B001_03159095; Notebook 1B63.

³⁶⁹ Biden 10/9/23 Tr. at 30, 41; FBI Serial 77 1A86; 20230120_FBI_0127, 0151.

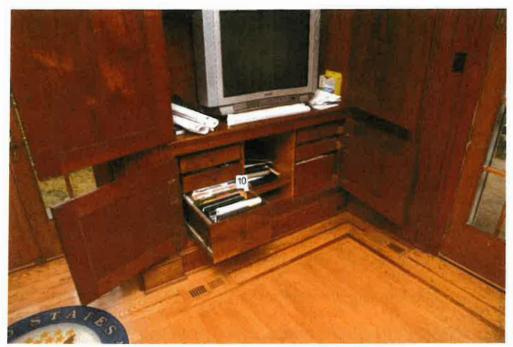
Biden's rental home in Virginia, where he kept them in a room he used for meetings.³⁷⁰ As explained in the next chapter, in the months after he left the White House, Mr. Biden gathered the notebooks and referred to several of them while writing his book, *Promise Me, Dad*. During their conversations while writing the book, Mr. Biden told his ghostwriter, Zwonitzer, that the notebooks might contain classified information.³⁷¹

When Mr. Biden moved out of the Virginia home, his notebooks were eventually moved to his home in Delaware.³⁷² In January 2023, during a search of the Delaware home, FBI agents found the notebooks in unlocked and unauthorized locations, primarily in Mr. Biden's main-floor office and basement den.

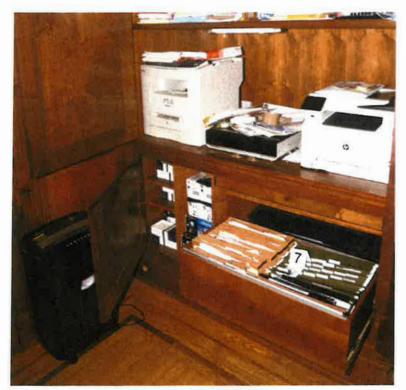
³⁷⁰ Biden 10/9/23 Tr. at 26-28, 30, 41.

³⁷¹ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Evidence item 1B80.

³⁷² FBI Serial 77 1A86; 20230120_FBI_0127, 0151.



File cabinet under television in Delaware home's main-floor office, containing the "Af/Pak 1" and "DAILY/MEMO" notebooks (Jan. 20, 2023)³⁷³



File cabinet under printers in Delaware home's main-floor office, containing three seized notebooks (Jan. 20, 2023)³⁷⁴

^{373 20230120}_FBI_0151.

^{374 20230120}_FBI_0127.

In Mr. Biden's interview with our office, he explained that he took his notebooks with him after his vice presidency because "[t]hey are mine," and explained that "every President before me has done the same exact thing." The also specifically referenced President Reagan, who, after leaving office, kept handwritten diaries containing classified information at his private home, as discussed in Chapter Ten. Ten. In later written answers, Mr. Biden wrote that, "[1]ike presidents and vice presidents before me, I understand these notes to be my personal property. The declined to answer several questions about whether he believed his notes contained classified information; whether he believed he was authorized to possess classified information after his vice presidency; and whether he took steps to avoid writing classified information in his notebooks.

³⁷⁵ Biden 10/9/23 Tr. at 42-43.

³⁷⁶ Biden 10/8/23 Tr. at 111-12.

³⁷⁷ Biden 12/1/23 written responses at 1.

³⁷⁸ *Id.* at 1-2.

CHAPTER FIVE

MR. BIDEN'S SECOND BOOK, *PROMISE ME, DAD*, AND THE DISCOVERY OF CLASSIFIED AFGHANISTAN DOCUMENTS

Like many presidents, Mr. Biden has long viewed himself as a historic figure. Elected to the Senate at age twenty-nine, he considered running for president as early as 1980 and did so in 1988, 2008, and 2020. During his thirty-six years in the Senate, Mr. Biden believed he had built a record in both domestic and foreign affairs that made him worthy of the presidency.

In addition to the notebooks and notecards on which he took notes throughout his vice presidency, Mr. Biden collected papers and artifacts related to noteworthy issues and events in his public life. He used these materials to write memoirs published in 2007 and 2017, to document his legacy, and to cite as evidence that he was a man of presidential timber.

For example, as a young senator in the 1970s, Mr. Biden led several congressional delegations to Europe and the Soviet Union. The example in Chapter Eight, he viewed these trips as historic and believed they prepared him to be president. Mr. Biden wrote about these trips in his 2007 memoir, *Promises to Keep*. In 2023, FBI agents recovered official documents, including marked classified documents, related to these trips in Mr. Biden's Delaware garage. The example of the example of

In 2009, while serving as vice president, Mr. Biden strongly opposed the military's plan to send tens of thousands of additional troops to Afghanistan.³⁸¹ Mr.

³⁷⁹ See Chapter Eight.

³⁸⁰ Evidence items 1B17, 1B18.

³⁸¹ See Chapter Six.

Biden endured sharp criticism both during the debate and after President Obama rejected his advice and decided to send additional troops to Afghanistan. But Mr. Biden always believed he was right and that he would be vindicated by history. He kept documents related to the debated troop surge, including a classified handwritten memo he sent President Obama in 2009 opposing the surge and marked classified documents supporting his position. In December 2022 and January 2023, FBI agents recovered these materials from Mr. Biden's Delaware garage and office.³⁸²

Finally, as explained in Chapter Four, during his eight years as vice president, Mr. Biden regularly wrote notes by hand in notebooks. One such notebook entry makes clear that Mr. Biden had long contemplated writing a book about his vice presidency. In July 2010, he documented a meeting to discuss a possible book about "my V.P. years." In Mr. Biden's view, "there were three plausible reasons for having one written or writing one.

- 1. Defense others will write and I want a record
- 2. Future who knows about 2016
- 3. Profit retirement[.]"384

One function of Mr. Biden's notebooks was to provide raw material for his eventual second memoir. After leaving office, Mr. Biden kept his notebooks at his homes in Virginia and Delaware and used them to write that book, *Promise Me, Dad*.

³⁸² Evidence items 1B04, 1B17, and 1B18.

³⁸³ Notebook entry 1B30-0012.

 $^{^{384}}$ *Id*.

In January 2023, FBI agents recovered these notebooks, primarily in Mr. Biden's home office and den.³⁸⁵

I. Mr. Biden's 2017 Memoir: Promise Me, DAD

After his vice presidency, Mr. Biden wrote and published a memoir in 2017 titled *Promise Me, Dad*. Evidence suggests that, while researching and writing the book, Mr. Biden found marked classified documents in the basement of his rental home in Virginia and told his ghostwriter about it during an audio-recorded conversation. And while the published book is not known to contain classified information, while writing the book in unsecure locations, Mr. Biden used notebooks containing notes he took during his vice presidency about classified meetings and information.

A. Promise Me, Dad

Unlike Mr. Biden's earlier idea for a book that would chronicle all eight years of his vice presidency, *Promise Me*, *Dad* has a narrower focus. ³⁸⁶ The book recounts a 14-month period of Mr. Biden's vice presidency from Thanksgiving 2014 to January 2016, during which he dealt with the illness and eventual death of his elder son, Beau, who died in May 2015. ³⁸⁷ The book discusses the toll that loss took on Mr. Biden, the foreign policy issues in Ukraine, Central America, and Iraq he addressed during that time, and the role his son's death played in Mr. Biden's decision not to run for

³⁸⁵ Evidence items 1B17 and 1B18.

³⁸⁶ See generally Joe Biden, PROMISE ME, DAD: A YEAR OF HOPE, HARDSHIP, AND PURPOSE (Flatiron Books 2017); Notebook entry 1B30-0012.

³⁸⁷ See generally Biden, PROMISE ME, DAD.

president in 2016.³⁸⁸ Published in November 2017, *Promise Me, Dad* quickly became a #1 New York Times bestseller.³⁸⁹

1. Mark Zwonitzer

Mr. Biden worked with a ghostwriter, Mark Zwonitzer, to write *Promise Me*, $Dad.^{390}$ Zwonitzer is an author and documentary filmmaker specializing in American history and politics.³⁹¹ He had previously ghostwritten Mr. Biden's 2007 memoir, $Promises\ to\ Keep.^{392}$

Zwonitzer has never held a security clearance or become familiar with the restrictions on the handling of classified material.³⁹³ Mr. Biden knew this.³⁹⁴ In 2011, he proposed hiring Zwonitzer as an official historian for the Office of the Vice President.³⁹⁵ At Mr. Biden's request, Counsel to the Vice President Hogan prepared a memorandum assessing the proposal and any issues that could arise.³⁹⁶ The memorandum noted that if hired, Zwonitzer "will likely need a security clearance" and that any discussions that cover classified topics would have to "occur in a secure facility like your West Wing office."³⁹⁷ The memo explained that "any notes or other

³⁸⁸ See generally Biden, PROMISE ME, DAD.

³⁸⁹ The New York Times Best Sellers, N.Y. TIMES, https://www.nytimes.com/books/best-sellers/2017/12/03/ (last visited January 30, 2024); Promise Me, Dad, Pan MacMillan, https://www.panmacmillan.com/authors/joebiden/promise-me-dad/9781509890088 (last visited Jan. 30, 2024).

³⁹⁰ Zwonitzer 7/31/23 Tr. at 56.

³⁹¹ *Id.* at 12.

³⁹² *Id.* at 31-32.

³⁹³ *Id.* at 98-100.

 $^{^{394}}$ Id. at 102; Zwonitzer recording 170424_0091; 4/27/11 Memo, Cynthia Hogan to Mr. Biden, 1B001_02881350.

³⁹⁵ 4/27/11 Memo from Cynthia Hogan to Mr. Biden, 1B001_02881350.

 $^{^{396}}$ *Id*.

³⁹⁷ *Id.* at 5.

material that contained classified information must be maintained in secure safes, produced on a classified computer, and stored in a secure facility."³⁹⁸ Mr. Biden did not go through with the proposal.³⁹⁹

2. Book planning and research

In late 2015, shortly after his son's death, Mr. Biden began planning to write a memoir that drew upon his time as vice president. He met with Zwonitzer and other aides to discuss book ideas and logistics. He met with Zwonitzer and editors and publishers. During these early meetings in late 2015 and early 2016, Mr. Biden and Zwonitzer decided to focus the book on a "small window in time" during which Mr. Biden balanced his responsibilities as vice president with his family responsibilities during and in the wake of his son's illness and death.

From approximately April 2016 through February 2017, Mr. Biden worked with Zwonitzer to outline the book and draft a proposal to submit to publishers. 404 Zwonitzer compiled a chronology of Mr. Biden's day-to-day activities in late 2015 and early 2016 using Mr. Biden's daily schedules and calendars from his time as vice president. 405 Mr. Biden's staffers gathered the schedules for Zwonitzer. 406

 $^{^{398}}$ *Id*.

³⁹⁹ Zwonitzer 7/31/23 Tr. 53-54.

⁴⁰⁰ *Id.* at 56.

 $^{^{401}}$ Id. at 59; 2/10/16 e-mail from Executive Assistant re "Thursday, 2/11, mtg/dinner, 6:30 pm," Zwonitzer-00000447; 4/6/16 e-mail from Executive Assistant re "Meeting/dinner, Monday, April 11 6:30 - 8:30 pm," Zwonitzer-00008802.

⁴⁰² Zwonitzer 7/31/23 Tr. at 59.

⁴⁰³ 5/21/16 Document named "JRB-Book-Idea.doc" circulated on May 21, 2016, Zwonitzer-00007400; Zwonitzer 7/31/23 Tr. at 56-59; Draft Book Proposal circulated on June 22, 2016, Zwonitzer-00003463.

⁴⁰⁴ Zwonitzer 7/31/23 Tr. at 59.

⁴⁰⁵ *Id.* at 62-64.

⁴⁰⁶ Id. at 63-65; 9/29/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007613.

3. The writing process

Zwonitzer interviewed Mr. Biden more than a dozen times while researching and writing *Promise Me*, *Dad*.⁴⁰⁷ During the interviews, Mr. Biden recounted the events of 2015, including the challenges of dealing with profound personal tragedy while fulfilling his duties as vice president. Zwonitzer also interviewed Mr. Biden's family members and former staffers.⁴⁰⁸ Zwonitzer audio-recorded the interviews, then transcribed the recordings for use in writing *Promise Me*, *Dad*.⁴⁰⁹

The interviews began in the spring of 2016 and continued through the summer of 2017. Zwonitzer interviewed Mr. Biden several times at the Naval Observatory in 2016 while Mr. Biden was still serving as vice president. After Mr. Biden left office, he met with Zwonitzer at his rental home in Virginia. 410 During the summer of 2017, Zwonitzer and Mr. Biden worked together to finalize the manuscript at Mr. Biden's beach home in Rehoboth Beach. Delaware. 411

B. Mr. Biden used his notebooks in writing *Promise Me*, *Dad*

In writing *Promise Me*, *Dad*, Mr. Biden relied extensively on the notebooks containing notes he took during his vice presidency. Mr. Biden referred to and read from his notebooks during his interviews with Zwonitzer.⁴¹² According to Zwonitzer,

⁴⁰⁷ FBI Serials 315, 335.

⁴⁰⁸ Zwonitzer 7/31/23 Tr. at 144-45.

⁴⁰⁹ Id. at 95-96.

⁴¹⁰ FBI Serial 315, 335.

⁴¹¹ Zwonitzer 7/31/23 Tr. at 130.

⁴¹² *Id*. at 96.

the notebooks "made the book possible" by providing the "emotional arc of the . . . story." 413

One of the primary sources of material for *Promise Me*, *Dad* was Mr. Biden's "Daily" notebook for "August 2014-September 2016."⁴¹⁴ This notebook contained notes of meetings Mr. Biden attended as well as entries about his other activities during this period. Many of the meetings related to foreign policy and classified information, including the President's Daily Brief, National Security Council meetings, and other briefings. Some of these entries remain classified up to the Secret level. ⁴¹⁵

The notebook also contained notes on matters other than foreign policy, including Mr. Biden's private lunches with President Obama and meetings with advisors to discuss whether to run for president in 2016. Some of the entries were highly personal—most notably, entries reflecting on his son's illness and death.

While this notebook provided much of the framework for *Promise Me, Dad*, Mr. Biden also used other notebooks in writing the book. Mr. Biden used and referred to a notebook labeled "Foreign Policy 11/2013-2014." This notebook also contained his notes on the President's Daily Brief, National Security Council and other Situation Room meetings, and other foreign policy briefings. As explained below, at one point

⁴¹³ *Id.* at 63, 65.

⁴¹⁴ Notebook 1B57.

⁴¹⁵ FBI Serial 676.

⁴¹⁶ Notebook 1B67.

Mr. Biden told Zwonitzer that some of the information in the notebook may be classified. Some of these entries remain classified up to the Top Secret level.⁴¹⁷

Mr. Biden also referred to a notebook labeled "Foreign Policy," which contained similar notes on classified briefings. Some of these entries remain classified up to the Secret level. Finally, Mr. Biden also used a notebook labeled "Obama/Biden 7-15-13 \rightarrow 10-10-16. It contained mainly notes on meetings with political advisors and upon preliminary inspection it does not appear to contain classified information.

C. Mr. Biden referred to and read from his notebooks during his interviews with Zwonitzer

During many of the interviews with his ghostwriter, Mr. Biden read from his notebooks nearly verbatim, sometimes for an hour or more at a time. Zwonitzer later transcribed the recordings of the interviews. Zwonitzer described this process of listening to and transcribing Mr. Biden's reading from his notebooks as "incredibly painstaking." 422

At times during these interviews, Mr. Biden took steps to ensure that Zwonitzer did not read or have access to the classified portions of the notebooks. With one exception of which we are aware, discussed below, Mr. Biden did not let Zwonitzer read or handle the notebooks. On multiple occasions, Zwonitzer suggested it would

⁴¹⁷ FBI Serial 676.

⁴¹⁸ Notebook 1B58.

⁴¹⁹ FBI Serial 676.

⁴²⁰ Notebook 1B68.

⁴²¹ FBI Serial 676.

⁴²² Zwonitzer 7/31/23 Tr. at 74, 121.

be easier if Mr. Biden photocopied the relevant notebook entries and allowed Zwonitzer to use the copies, but Mr. Biden declined.⁴²³ According to Zwonitzer, Mr. Biden "really never let the journals out of his hand" and did not let others access them.⁴²⁴

D. Mr. Biden disclosed classified information in his notebooks to Zwonitzer

Based on our review of the notebooks and recorded interviews, when Mr. Biden came to potentially classified material in his notebook entries, he appears to have sometimes stopped at or skipped over the potentially classified material. 425 Zwonitzer also recalled Mr. Biden mentioning the need to be careful "because he was worried that there was a possibility that . . . some of this stuff [handwritten entries in the notebooks] could be classified." 426 According to Zwonitzer, "there were things he couldn't tell me, lines he couldn't cross." 427

At other times, however, Mr. Biden read his notes from classified meetings to Zwonitzer nearly word-for-word. 428

Notes of Situation Room meeting during summer of 2015. On February 16, 2017, for example—when Mr. Biden was no longer vice president—he met with

⁴²³ *Id.* at 75, 121-22.

⁴²⁴ *Id.* at 71-72, 113.

⁴²⁵ *Id.* at 102; Evidence items 1B57, 1B58, 1B67, 1B79, 1B81.

⁴²⁶ Zwonitzer 7/31/23 Tr. at 83.

 $^{^{427}}$ Id.

⁴²⁸ Zwonitzer recording Carved_000571; Notebook entry 1B57-0062-65; Zwonitzer recording 170424_0091; 170424_0091 Tr. at 4-22; Notebook entry 1B67-0063-65; Evidence items 1B79 and 1B81; FBI Serials 315, 335.

Zwonitzer at the rental house in Virginia.⁴²⁹ During this meeting, Mr. Biden read from notes he took during a meeting in the Situation Room in the summer of 2015, which was attended by senior military officials, the CIA Director, and others.⁴³⁰ Mr. Biden appeared to tell Zwonitzer this notebook entry related to "a long meeting on the Security Council on – it probably was classified."⁴³¹ Mr. Biden's meeting notes summarized the actions and views of U.S. military leaders and the CIA Director relating to a foreign country and a foreign terrorist organization.⁴³² Mr. Biden had skipped over this same notebook entry during a previous conversation with Zwonitzer in October 2016, when Mr. Biden was still vice president.⁴³³

But on February 16, 2017, after he was no longer vice president, Mr. Biden read portions of the same notebook entry aloud and nearly verbatim to Zwonitzer, including portions containing information that remains classified up to the Secret level. 434 Though Mr. Biden read these portions of the notebook entry, he also skipped over other portions of the entry.

Two months later, on April 10, 2017, during another recorded conversation with Zwonitzer, Mr. Biden returned to the same notebook entry detailing the same

⁴²⁹ Recording Carved_000556; Carved_000556 Tr. at 5-6; 2/15/17 e-mail re "VP's Schedule – Thu, Feb 16, 2017," USSS-0000523776; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴³⁰ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴³¹ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence items 1B79, 1B81. Mr. Biden's precise words are difficult to discern. This quotation is our best attempt to do so.

⁴³² Notebook entry 1B57_0062-65.

⁴³³ Zwonitzer recording Carved_000241; FBI Serials 315, 335.

⁴³⁴ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335, 676.

Situation Room meeting from the summer of 2015. 435 Immediately before discussing the notebook entry, Mr. Biden discussed extremely personal notebook entries touching on the illness and death of his son Beau, its effect on his family, and the wrenching decision about whether to run for president in 2016. 436 After discussing these highly emotional topics, Mr. Biden turned immediately to the notebook entry from the summer 2015 Situation Room meeting, which began on the very next page of the notebook, and read additional portions of the entry nearly verbatim, including the portions of the entry he read to Zwonitzer during the February 16, 2017 meeting. 437 The passages Mr. Biden read to Zwonitzer on April 10, 2017 contain information that remains classified up to the Secret level. 438

Notes of National Security Council meeting in November 2014. In a later recorded conversation with Zwonitzer on April 24, 2017, Mr. Biden read from a different notebook entry, this time from notes he took during a National Security Council meeting in the Situation Room in November 2014. Mr. Biden read aloud from notes summarizing a range of issues relating to a foreign terrorist organization, including specific activities of the U.S. military and views expressed by the

⁴³⁵ Zwonitzer recording Carved_000571; Carved_000571 Tr. at 2-6; FBI Serials 315, 335; Notebook entry 1B57-0062-65; Evidence items 1B79, 1B81.

⁴³⁶ Zwonitzer recording Carved 000571; Carved 000571 Tr. at 1-2.

⁴³⁷ Zwonitzer recording Carved_000571; Carved_000571 Tr. at 2-6; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴³⁸ FBI Serial 676.

 $^{^{439}}$ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 4-22; Notebook entry 1B67-0063-65; Evidence items 1B79, 1B81.

intelligence community, including the Director of National Intelligence and the CIA Director.⁴⁴⁰

While reading these notes, Mr. Biden struggled to read his handwriting, and he showed part of the handwritten passage to Zwonitzer. The two then had the following exchange:

Mr. Biden: Do you have any idea what the hell I'm saying there? Less

on the number of what? Isn't that awful?

Zwonitzer: Something. Number, something – quality. I can't.

Mr. Biden: Some of this may be classified, so be careful.

Zwonitzer: Okay.

Mr. Biden: I'm not sure. It isn't marked classified, but.441

Mr. Biden then continued to read nearly verbatim from portions of his notes on the 2014 Situation Room meeting. Some of the portions that Mr. Biden read to Zwonitzer remains classified at the Secret level.

More generally, during his dozens of hours of interviews with Zwonitzer, Mr. Biden read from notebook entries related to many classified meetings, including National Security Council meetings, CIA briefings, Department of Defense briefings, and other meetings and briefings with foreign policy officials.⁴⁴⁴

⁴⁴⁰ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 4-22; Notebook entry 1B67-0063-65; Evidence items 1B79, 1B81.

 $^{^{441}}$ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Notebook entry 1B67-0065.

 $^{^{442}}$ Zwonitzer recording 170424_0091 (emphasis added); 170424_0091 Tr. at 14-22; Notebook entry 1B67-0063-65.

⁴⁴³ FBI Serial 676.

⁴⁴⁴ E.g., Notebook entries 1B57-0039, 1B57-0062-63, 1B67-0059-61, 1B67-0063-65.

E. Mr. Biden also used his notecards in writing his book

In addition to his notebooks, Mr. Biden used other notes he wrote on notecards while vice president. 445 These included notes that he took during his private lunches with President Obama, several of which featured prominently in the book. 446

In the book, Mr. Biden described his weekly lunches with President Obama as "the one setting where we could talk frankly, without fear of being overheard." They were an opportunity to "discuss the most important issues facing the administration, the country, and the world at that moment; and we could talk through any personal issues we were having." If something one of us had done angered or disappointed the other, the weekly lunch was the time to clear the air." The lunches were often personal in nature, as Mr. Biden described in the book:

The conversation at our lunches was just as often personal. We talked about our wives. We talked about the close friendship between his daughters and my granddaughter, and what was going on in their lives. We talked about golf.⁴⁵⁰

Many of Mr. Biden's notes on his lunches with President Obama were taken on the long, narrow notecards that he used regularly as vice president.⁴⁵¹

⁴⁴⁵ See Chapter Four.

 $^{^{446}}$ See, e.g., Biden, Promise Me, Dad 21, 57-59, 66-79, 88-89, 156-59, 203-04, 206-07, 232-33.

⁴⁴⁷ *Id.* at 67.

 $^{^{448}}$ Id.

⁴⁴⁹ *Id*. at 66.

⁴⁵⁰ *Id.* at 68.

⁴⁵¹ See Chapter Four; Staff Assistant 2 3/16/23 Tr. at 100; 12/20/10 e-mail from OVP staffer to Staff Assistant 2, 1B001_02888681; Staff Assistant 3 10/4/23 Tr. at 34-35; FBI Serial 3; NARA_SCAN_00001317.

F. Mr. Biden's staff made copies of his notecards for use in writing *Promise Me, Dad*

As explained in Chapter Four, Mr. Biden's staff made copies of his notecards for him to take after he left the vice presidency and use in writing *Promise Me*, *Dad*. After his staffers raised concerns that some of the notecards contained classified information, it appears that Mr. Biden's staff arranged for his copies of the notecards to be stored in a safe at the Naval Observatory, and then to be held in personal storage in a SCIF at the National Archives. ⁴⁵² Mr. Biden visited the National Archives twice after he left office in 2017 to review the notecards as part of the book-writing process. ⁴⁵³ Both trips were occasioned by Zwonitzer's requests for notes related to specific events during Mr. Biden's vice presidency, including several of Mr. Biden's lunches with President Obama that were later featured in *Promise Me*, *Dad*, ⁴⁵⁴

II. FEBRUARY 16, 2017: "I JUST FOUND ALL THE CLASSIFIED STUFF DOWNSTAIRS"

During a recorded interview on February 16, 2017, at Mr. Biden's rental home in Virginia after the end of his vice presidency, Mr. Biden told Zwonitzer he had just found classified material downstairs. 455

From context, Mr. Biden appears to have been referring to classified documents relating to American military and foreign policy in Afghanistan. When he

⁴⁵² See Chapter Four; 1/12/17 Deposit Agreement regarding the Administration of Personal Materials of Vice President Joseph R. Biden, NARA-H 700000012.

⁴⁵³ See Chapter Four.

⁴⁵⁴ See Chapter Four; 5/21/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007399.

 $^{^{455}}$ Recording Carved_000556; Carved_000556 Tr. at 5-6; 2/15/17 e-mail re "VP's Schedule – Thu, Feb 16, 2017," USSS-0000523776; FBI Serials 315, 335; Evidence items 1B79, 1B81.

made his statement to Zwonitzer, Mr. Biden was discussing a handwritten memo he had sent to President Obama opposing the deployment of more troops to Afghanistan in 2009.456

Before meeting with Mr. Biden on February 16, 2017, Zwonitzer e-mailed a Biden staffer explaining that he "wanted to concentrate on the personal diaries from June 2015 through Thanksgiving 2015" and asking if Mr. Biden "could have those on hand." When they met on February 16, 2017, Mr. Biden and Zwonitzer talked for several hours. Mr. Biden's sister, Valerie Biden Owens, was also present. 458 Zwonitzer recorded the conversation and later transcribed it. 459 They sat on the main floor of the Virginia house in the library/den, which is shown below: 460



Main floor library/den of Virginia home (July 10, 2019)461

⁴⁵⁶ Recording Carved_000556; FBI Serial 315, 335; Evidence items 1B66, 1B79, 1B81.

⁴⁵⁷ 2/14/17 e-mail from Zwonitzer to Oval Office Operations Director, Zwonitzer-00006071.

⁴⁵⁸ Zwonitzer 7/31/23 Tr. at 109; Carved_000556; Carved_000556 Tr. at 2, 4; 2/15/17 e-mail re "VP's Schedule – Thu, Feb 16, 2017," USSS-0000523776.

⁴⁵⁹ Zwonitzer 7/31/23 Tr. at 109-10.

⁴⁶⁰ Id. at 84, 97; Biden 10/9/23 Tr. at 28.

⁴⁶¹ FBI Serial 624 1A719; SCOH-000760

Mr. Biden began the interview with a long discussion about the murder of nine worshippers at the Emanuel African Methodist Church in Charleston, South Carolina, and a discussion of his son Beau. During this portion of the recording, Mr. Biden did not sound like he was reading from notes.

He then turned to his "Daily" notebook for "August 2014-September 2016." Mr. Biden read from an entry containing notes on a July 7, 2015 National Security Council meeting about Iraq. 465

While reading from his notebook, Mr. Biden listed four points he made about the Iraq situation during the July 7, 2015 meeting. Mr. Biden explained to Zwonitzer that he had made similar arguments years earlier, during the 2009 debate about the troop surge in Afghanistan. He had sent President Obama a 40-page, handwritten memo arguing against the deployment of additional troops in Afghanistan "on the grounds that it wouldn't matter. He had "just found all the classified stuff downstairs."

So this was – I, early on, in '09—I just found all the classified stuff downstairs—I wrote the President a handwritten 40-page

 $^{^{462}}$ Zwonitzer recording Carved_000556; ZWONITZER-TR_0064-78; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶³ Zwonitzer recording Carved_000556; ZWONITZER-TR_0064-78; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁴ Zwonitzer recording Carved_000556: ZWONITZER-TR_0079; FBI Serials 315, 335; Notebook 1B57; Evidence items 1B79, 1B81.

⁴⁶⁵ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; ZWONITZER-TR_0079; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁶ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 5-6; ZWONITZER-TR_0079; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁷ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 5-6; ZWONITZER-TR_0079; FBI Serials 315, 335; Evidence items 1B79, 1B81.

memorandum arguing against deploying additional troops to Iraq—I mean, to Afghanistan—on the grounds that it wouldn't matter, that the day we left would be like the day before we arrived. And I made the same argument . . . I wrote that piece 11 or 12 years ago. 468

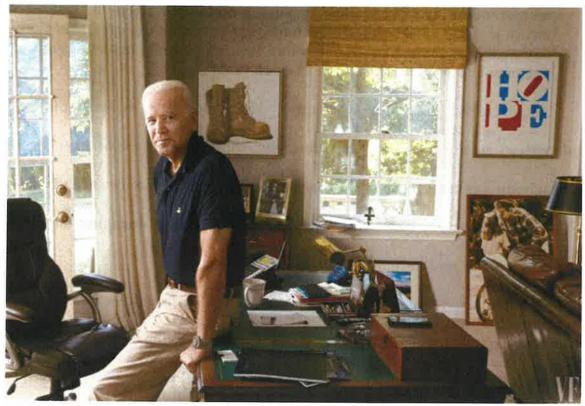
As discussed in the next chapter, Mr. Biden was referring to a long, handwritten memo he faxed to President Obama from Nantucket over the Thanksgiving weekend in 2009. In the memo—which Bob Woodward later detailed in his book, *Obama's Wars*—Mr. Biden argued against engaging in full-scale counterinsurgency and nation-building in Afghanistan.⁴⁶⁹

As noted above, this February 2017 meeting with Zwonitzer was on the main floor of the Virginia home. "Downstairs" from where Mr. Biden and Zwonitzer sat was Mr. Biden's basement office, where he kept his personal papers. ⁴⁷⁰ The photo below shows the basement office in October 2017, several months after the February 2017 meeting with Zwonitzer:

⁴⁶⁸ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 5-6; ZWONITZER-TR_0079 (emphasis added); FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁹ Bob Woodward, OBAMA'S WARS 309 (Simon & Schuster 2010).

⁴⁷⁰ Biden 10/9/23 Tr. at 36-37; SCOH-000322.



Former rice president upo Biden at his home in McLean, Yiligang 1818 (1907) 23-211-33, wild resident and

Mr. Biden's basement office in the Virginia home (Oct. 2017)471

During Mr. Biden's interview with the special counsel, he said that at the time of the February 2017 meeting, which was about a month after he moved into the Virginia house, he was likely still going through boxes of materials. 472 He said his belongings were "taking up a lot of room" in the house, and he was trying to figure out "what'd they [his staff] pack up, what's here?" "where in the hell is all this stuff going?" and "what do I clear out . . . what do I get out of the way?"473 Among the

⁴⁷¹ David Kamp, Why Joe Biden Didn't Run . . . And Why He's Not Ruling Out 2020, VANITY FAIR (Oct. 25, 2017), https://www.vanityfair.com/news/2017/10/why-joe-biden-didnt-run-for-president-and-why-hes-not-ruling-out-2020 (last visited Jan. 30, 2024).

⁴⁷² Biden 10/9/23 Tr. at 32-34,

⁴⁷⁸ Biden 10/9/23 Tr. at 33.

things he probably searched for in boxes were his notebooks, which he believed he gathered and kept on the main floor of the Virginia house.⁴⁷⁴

All three participants in the February 16, 2017 meeting—Mr. Biden, Zwonitzer, and Mr. Biden's sister, Ms. Biden Owens—said they did not remember Mr. Biden's statement that he had "just found all the classified stuff downstairs." 475 For his part, Mr. Biden said he did not remember anything at all about this incident, including whether he actually found classified documents in his basement office. 476

During his interview with our office, Mr. Biden said he did not remember finding marked classified documents at any time after the end of the Obama administration and before he was elected President, but that if he had found such classified material, he would have given it to his personal aide at the time, or to another trusted staff member such as his former chief of staff. 477 We have interviewed the personal aide, former chief of staff, and several other staffers with whom Mr. Biden interacted at the Virginia house in and around February 2017. Except for a separate incident involving different classified material given to the personal aide in January 2017, some weeks before the Zwonitzer conversation, no one recalled Mr. Biden turning in classified documents after the end of his vice presidency. 478

⁴⁷⁴ Id. at 41.

⁴⁷⁵ *Id.* at 32; Zwonitzer 7/31/23 Tr. at 82-84; Biden Owens Tr. at 28-30, 71-73; 2/15/17 e-mail re "VP's Schedule – Thu, Feb 16, 2017," USSS-0000523776.

⁴⁷⁶ Biden 10/9/23 Tr. at 32-33.

⁴⁷⁷ Id. at 32, 39-40.

⁴⁷⁸ E.g., Ricchetti Tr. at 187; Executive Assistant 9/28/23 Tr. at 165; Personal Aide 3 3/28/23 Tr. at 197-212. As explained in Chapter Seven, Mr. Biden's personal aide recalled that during the first week after the end of the administration—several weeks before Mr. Biden told Zwonitzer he "just found all the classified stuff downstairs"—Mr. Biden returned

The Special Counsel's Office worked with the National Archives to identify whether Mr. Biden returned any classified documents after the end of the Obama administration. The National Archives has no awareness or records indicating that Mr. Biden returned classified records to the White House (to then be turned over to the Archives) in the weeks following the end of the administration. Area is the case with every presidential transition, the National Archives continued to receive Obama administration presidential records from the White House after the end of the administration. There would therefore have been nothing unusual or notable for the National Archives about also receiving vice presidential records after the end of the administration.

Several years after Mr. Biden's February 2017 meeting with Zwonitzer, in December 2022, FBI agents recovered marked classified documents from a cardboard box in the garage of Mr. Biden's Delaware home. These marked classified documents related to Afghanistan and the U.S. troop surge in 2009—the very same subject that Mr. Biden addressed with Zwonitzer in 2017 when he said that he had "just found all the classified stuff downstairs." In one of the folders containing these marked classified documents, agents also found drafts of Mr. Biden's 2009

a slim binder of classified material he had found at the Virginia home, which the personal aide believed was related to foreign leader calls Mr. Biden made in the last days of the administration. Personal Aide 3 3/28/23 Tr. at 197-212.

 $^{^{479}}$ 1/30/24 e-mail from NARA General Counsel to Special Counsel's Office, SCOH-000761.

⁴⁸⁰ *Id*.

⁴⁸¹ *Id*.

⁴⁸² See Chapter Six.

handwritten Thanksgiving memo to President Obama. Agents later found the final Thanksgiving memo in the office of Mr. Biden's Delaware home. 483

⁴⁸³ See Chapter Six.

CHAPTER SIX

THE CLASSIFIED AFGHANISTAN DOCUMENTS

To fully appreciate Mr. Biden's references to Afghanistan in his conversation with Zwonitzer on February 16, 2017, it is helpful to understand Mr. Biden's place in the fraught debate about American policy in Afghanistan in the early days of the Obama administration.

In that debate, Mr. Biden played a conspicuous role. He strongly opposed the military's effort to send large numbers of U.S. troops to Afghanistan, and this opposition culminated in the lengthy handwritten memo Mr. Biden sent President Obama over the Thanksgiving holiday in 2009. By 2017, Mr. Biden believed his judgment as reflected in the memo had been vindicated by history. Years later, in December 2022 and January 2023, FBI agents found the handwritten Thanksgiving memo and marked classified documents containing his advice to President Obama in Mr. Biden's Delaware home.

I. Mr. Biden's Role in the 2009 Afghanistan Policy Reviews

At the beginning of 2009, one of the incoming administration's first and most significant foreign policy challenges was the war in Afghanistan, which was then in its eighth year. Early in the administration, Mr. Biden opposed President Obama's decision to deploy additional American troops to Afghanistan, and in the administration's internal debates, Mr. Biden was the lone dissenter. Privately, he worried the nation was drifting into another Vietnam.

⁴⁸⁴ Barack Obama, A PROMISED LAND 317-19 (Crown 2020).

⁴⁸⁵ Notebook entry 1B64-0012-13.

Soon after the announcement of additional troops in March 2009, General Stanley McChrystal assumed command of forces in Afghanistan and conducted his own review of the war effort. McChrystal's written assessment concluded that America must send yet more troops and adopt a counterinsurgency strategy to protect the Afghan population. McChrystal soon followed this assessment with a request for another 40,000 U.S. troops. 488

Around the time McChrystal submitted his assessment, "the Obama foreign policy team was splintering" and the divisions between two opposing sides "began to harden." On one side, Defense Secretary Robert Gates, Secretary of State Hillary Clinton, Chairman of the Joint Chiefs of Staff Michael Mullen, and General David Petraeus supported McChrystal's call for a counterinsurgency campaign and for significantly more American troops in Afghanistan. On the other side, Mr. Biden and a number of National Security Council and other White House advisers were deeply skeptical of these proposals.

⁴⁸⁶ Obama, A PROMISED LAND 323.

⁴⁸⁷ Stanley McChrystal, COMISAF's INITIAL ASSESSMENT (unclassified version) 1-1, 1-4 (Aug. 30, 2009), https://nsarchive.gwu.edu/document/24560-headquarters-international-security-assistance-force-kabul-afghanistan-gen-stanley (last visited Feb. 2, 2024).

⁴⁸⁸ Kevin Whitelaw, Can Obama Say No To His Generals On Afghanistan?, NATIONAL PUBLIC RADIO (Sept. 30, 2009), https://www.npr.org/2009/09/30/113339833/can-obama-say-no-to-his-generals-on-afghanistan (last visited Feb. 2, 2024).

⁴⁸⁹ Robert Gates, DUTY: MEMOIRS OF A SECRETARY AT WAR 323 (Knopf 2014); Obama, A PROMISED LAND 432-33; Klain Class. Tr. at 19-21; Klain Tr. at 25-26, 56-57.

 $^{^{490}}$ Gates, DUTY 323; Obama, A PROMISED LAND 432-33; Klain Class. Tr. at 19-21, 34; Klain Tr. at 25-26, 56-57.

⁴⁹¹ Obama, A Promised Land 432-33; Klain Tr. at 25-26, 56-57.

Mr. Biden left no doubt where he stood. The military's public lobbying for more troops was, he said at the time, "fucking outrageous." Privately, Mr. Biden continued to fret that President Obama was poised to repeat the disastrous mistakes of Vietnam. 493

A. Fall 2009 review

Against this backdrop, from September to November 2009, President Obama convened nine meetings of the National Security Council to debate McChrystal's troop request and the strategy in Afghanistan.⁴⁹⁴ One such meeting is shown below.



A National Security Council meeting to debate Afghanistan strategy (Oct. 9, 2009)495

⁴⁹² Obama, A PROMISED LAND 434-35; Notebook entry 1B66-0050.

⁴⁹³ Notebook entry 1B64-0012-13.

⁴⁹⁴ Obama, A PROMISED LAND 437.

⁴⁹⁵ SCOH-000762.

Photos of other meetings during the course of this policy review show Mr. Biden taking notes in his "Af/Pak" notebook and reviewing marked classified documents, including two marked classified documents that were later recovered from his Delaware garage. 496



National Security Council (Nov. 11, 2009) with marked classified document later found in Delaware garage (B37)⁴⁹⁷

During the fall 2009 review, Mr. Biden's voice was one of the strongest. 498 As Mr. Biden put it during an interview with the special counsel:

The President thought that I knew a lot more about Afghanistan than he did and other members of the administration. . . . [H]e didn't have overwhelming foreign policy experience, and how could he take on the most premier members of the foreign policy establishment in his

⁴⁹⁶ E.g., SCOH-000763, SCOH-000764, SCOH-000765, SCOH-000766; Recovered documents B32, B37; Notebook entries 1B66-0092, 102.

⁴⁹⁷ SCOH-000764: Recovered document B37.

⁴⁹⁸ Obama, A PROMISED LAND 319; Klain Tr. at 56-57.

administration [] So he was looking for me to make the strongest case I could . . . which I was prepared to do because I knew as much about it as they ${\rm did.}^{499}$

Playing the role of leading in-house skeptic, Mr. Biden consistently and forcefully opposed McChrystal's call for a fully resourced counterinsurgency strategy in Afghanistan and the request for 40,000 more troops to implement this strategy.⁵⁰⁰ As an alternative, Mr. Biden advocated a narrower strategy involving a reduced U.S. military footprint.⁵⁰¹

Mr. Biden's notebook entry after the first meeting of the fall 2009 review reveals the depth of his opposition to McChrystal's proposed counterinsurgency strategy (often abbreviated "COIN").⁵⁰² Mr. Biden wrote that in his presentation during the meeting, he was "able to punch a hole in the logic of" those advocating COIN and noted that another official in attendance praised Mr. Biden's critique as "devastating." Summing up, Mr. Biden's notebook entry explained:

If I succeed in slowing down or stopping this misguided (policy) buildup it will make taking this job worthwhile.

This decision will define our Admin[istration] in history – hanging out there alone is worth it. I don't want history to associate me with the adoption of a $\rm COIN.^{504}$

⁴⁹⁹ Biden 10/9/23 Tr. at 17-18.

⁵⁰⁰ Notebook entries 1B66-0067-69, 1B66_0098-99; Blinken Class. Tr. at 40-41; Klain Tr. at 46-47; Sullivan Class. Tr. at 53-54; FBI Serials 683 1A772, 512 1A614; Recovered documents B18, B24, B25, B28, B29.

⁵⁰¹ Blinken Class. Tr. at 41; Klain Class. Tr. at 41-42; FBI Serials 683 1A772, 512 1A614; Recovered document B24.

⁵⁰² Gates, DUTY 339; FBI Serial 77 1A86; Notebook entry 1B66_0068-69.

⁵⁰³ Notebook entry 1B66-0069.

⁵⁰⁴ *Id*.

Deep into the fall 2009 review, when, in President Obama's words, "everyone was sick of Afghanistan, sick of meetings, and sick of one another," Secretary Gates offered a compromise. This modified version of McChrystal's proposal called for an "extended surge" of approximately 30,000 troops, with a plan to begin drawing this number down within 18 to 24 months. The troop number was far larger than what Mr. Biden wanted but the drawdown was meant to avoid what Mr. Biden feared most: an open-ended American commitment. The last National Security Council meeting to discuss the president's options was held near the end of November, with President Obama promising a final decision soon after.

B. Mr. Biden's Thanksgiving memo to President Obama

With the Thanksgiving holiday looming, Mr. Biden made one final push to change President Obama's mind about the way forward.⁵⁰⁹ The day before Thanksgiving, Mr. Biden sent a typewritten memo to the president emphasizing Mr. Biden's concerns that adding more troops was a potential "strategic blunder."⁵¹⁰

As was his longstanding tradition, Mr. Biden spent Thanksgiving with his family in Nantucket.⁵¹¹ For much of the holiday weekend, Mr. Biden and his staff

⁵⁰⁵ Obama, A PROMISED LAND 438, 442-43; FBI Serials 683 1A772, 512 1A614; Recovered documents B26, B30, B37.

⁵⁰⁶ Obama, A PROMISED LAND 442-43; FBI Serials 683 1A772, 512 1A614; Recovered documents B26, B30, B37.

⁵⁰⁷ FBI Serials 77 1A86, 683 1A772, 512 1A614, 682; Recovered documents B18-1, B24, B25, B25-1, B28, B29; Handwritten material 1B66-0004-28; Biden 10/9/23 Tr. at 14-19; Blinken Tr. at 85-86.

 $^{^{508}}$ Obama, A Promised Land 442-43; Gates, Duty 352-53; Bob Woodward, Obama's Wars 289.

⁵⁰⁹ Biden 10/9/23 Tr. at 14-15.

⁵¹⁰ FBI Serials 683 1A772, 512 1A614; Recovered document B25.

⁵¹¹ Biden, PROMISE ME, DAD 5-7; Notebook entry 1B66-0099; 11/29/09 VP Schedule 1B001_00010833; 11/27/09 e-mail from Blinken to Klain, SCOH-000228; FBI Serial 77 1A86;

worked on yet another memo to the president on Afghanistan.⁵¹² That Saturday, two days after Thanksgiving, Mr. Biden sent President Obama a lengthy handwritten memo offering Mr. Biden's final thoughts—the same memo he recalled in his 2017 discussion with Zwonitzer.⁵¹³ The memo strongly criticized the premises underpinning the military's counterinsurgency strategy.⁵¹⁴ Mr. Biden also vented his frustration with senior military officials, noting that he was "tired and angry at the way they have tried to box you [in] through leaks and less than straightforward analysis of the alternative offered."⁵¹⁵ Mr. Biden's notes from that day reflect that the memo was sent by secure fax and "placed in Pres. Hands."⁵¹⁶ The handwritten Thanksgiving memo, later found in Mr. Biden's home office in 2023, contains information that remains classified up to the Secret level.⁵¹⁷

As Mr. Biden explained to the special counsel, he sent the handwritten Thanksgiving memo "because I was trying to change the President's mind, and I wanted to let him know I was ready to speak out . . . and to really, quite frankly, save his ass[.]"⁵¹⁸ Mr. Biden said he "spent a lot of time" writing the memo, and he "stayed up Thanksgiving writing it."⁵¹⁹ It was, he said, the "first and only time" he ever wrote

 $^{^{512}}$ Notebook entry 1B66-0096; Recovered documents B25-1, B25; 11/27/09 e-mail from Blinken to Klain and Carney, SCOH-000230; Biden 10/9/23 Tr. at 14-15.

 $^{^{513}}$ Handwritten material 1B66-0003-0022; Evidence items 1B79, 1B81; Military Aide 9 Tr. at 47-57; Chapter 5.

⁵¹⁴ Handwritten material 1B66-0003-0022; FBI Serial 682.

⁵¹⁵ Handwritten material 1B66-0006; FBI Serial 682.

⁵¹⁶ Notebook entry 1B66-0098; FBI Serial 682.

⁵¹⁷ FBI Serials 77 1A86, 676, 682; Handwritten material 1B66-0003-0022.

⁵¹⁸ Biden 10/9/23 Tr. at 14-15.

⁵¹⁹ *Id.* at 14-15.

the President a memo such as this by hand, and without distributing it to anyone else in the government.⁵²⁰

The same day Mr. Biden sent the memo, he wrote in his Af/Pak notebook that, based on his deep disagreement with what he anticipated would be President Obama's decision, he considered resigning as Vice President.

Tomorrow the President is going to make a fateful decision regarding Afghanistan – as I sat looking out the window at the sea – thinking I should resign in protest over what will bring his administration down.

. . .

Although I obviously wasn't there[,] I feel like this is what it must have felt like for Kennedy then Johnson in the early days of VTN [Vietnam].

. .

I feel guilty and boxed in myself. Guilty for not having been more successful w/ the President – and staying.

Boxed in by knowing or at least feeling that my resignation would only harden his position and leave him with one less voice.⁵²¹

C. President Obama's final decision

The next day, Mr. Biden left his family in Nantucket to be by the President's side for the final decision.⁵²² Before a scheduled Oval Office meeting, Mr. Biden tried to schedule a last-minute conversation with the President but his request was rebuffed.⁵²³ Undaunted, Mr. Biden showed up to the White House early and waited for the President to come down from the residence.⁵²⁴ Mr. Biden used the short walk to the Oval Office to urge the President not to bend any further to the wishes of his

⁵²⁰ *Id.* at 18; see also Military Aide 9 Tr. at 47-49, 62-63.

⁵²¹ FBI Serial 77 1A86; Notebook entry 1B66-0098-99.

 $^{^{522}}$ Notebook entry 1B66-0099; 11/29/09 VP schedule, 1B001_00010833; 11/28/09 email discussing meeting with POTUS on 11/29/09, SCOH-000228.

⁵²³ Klain Tr. at 59; Klain Class. Tr. at 39-40, 44-45.

 $^{524 \} Id.$

generals.⁵²⁵ After the day's meetings ended on November 29, Mr. Biden recorded this final reflection:

I think -I hope -I did all I could have done to move us as far away from [Petraeus and McChrystal] as possible.

On the short walk over from the WH to Oval, I emphasized [President Obama's] need to be strong. He said that is why I brought them in "face to face." I said good he was Pres[ident] and not me – I would have gone to war with them – he smiled and said – "I know – I would have enjoyed seeing that." 526

Two days later, in a speech at West Point, President Obama announced the Afghanistan troop surge: an additional 30,000 American troops, who would begin to draw down after 18 months.⁵²⁷

As Ron Klain—one of Mr. Biden's longest-serving and most-trusted aides—explained, although Mr. Biden publicly supported the President, privately, he "deep[ly] disagree[d]" with the decision, which he considered to be a "historic mistake."⁵²⁸ Among other things, he feared "a second Vietnam," with the United States "sending tens of thousands of Americans over to a pointless war."⁵²⁹ Mr. Biden's personal aide at the time likewise explained that the 2009 Afghanistan decision was a "huge" issue for Mr. Biden that was "very, very important" to him. ⁵³⁰

⁵²⁵ Notebook entry 1B66-0101-105.

⁵²⁶ Notebook entry 1B66-0105.

⁵²⁷ Remarks by the President in Address to the Nation on the Way Forward in Afghanistan and Pakistan, The White House (Dec. 1, 2009), https://obamawhitehouse.archives.gov/the-press-office/remarks-president-address-nation-way-forward-afghanistan-and-pakistan (last visited Feb. 1, 2024).

⁵²⁸ Klain Class. Tr. at 43.

 $^{^{529}}$ Id.

⁵³⁰ Personal Aide 1 9/18/23 Tr. at 137.

In the years since the 2009 surge, including when Mr. Biden, as president, decided to withdraw all U.S. troops from Afghanistan in 2021, he has invoked his Thanksgiving memo and claimed that history has confirmed his good judgment.⁵³¹

II. IN DECEMBER 2022, THE FBI FOUND IN MR. BIDEN'S DELAWARE GARAGE MARKED CLASSIFIED DOCUMENTS FROM THE FALL 2009 AFGHANISTAN REVIEW

As explained in Chapter Two, in November 2022, marked classified documents were found in Mr. Biden's files at the Penn Biden Center in Washington, D.C. After this discovery, Mr. Biden's personal counsel then searched his Delaware home for additional classified documents.⁵³² Their first search occurred on December 20, 2022, when counsel searched his garage, found additional marked classified documents there, and alerted the Department of Justice.⁵³³ The next day, December 21, 2022, with Mr. Biden's written consent, FBI agents searched the garage.⁵³⁴

A. The garage box

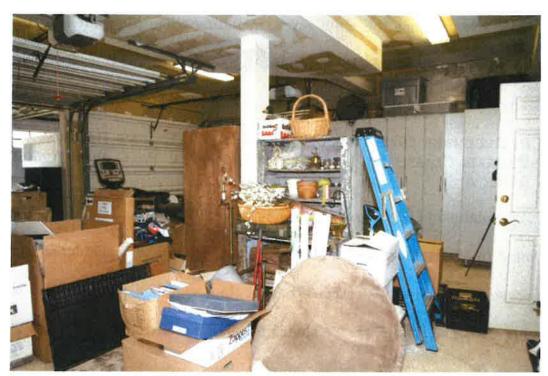
The garage contained a significant volume of boxes, storage, and clutter, as shown in the photographs the agents took upon arrival:

⁵³¹ Klain Class. Tr. at 41-42.

⁵³² FBI Serials 33, 34.

 $^{^{533}}$ *Id*.

⁵³⁴ FBI Serial 35.



Mr. Biden's Delaware garage (Dec. 21, 2022)535



Mr. Biden's Delaware garage (Dec. 21, 2022)536

⁵³⁵ 20221221_ERT_0013.

^{536 20221221}_ERT_0022.

Among the places Mr. Biden's lawyers found classified documents in the garage was a damaged, opened box containing numerous hanging folders, file folders, and binders. The box, which was labeled "Cabinet" and "Desk file," was in a mangled state with ripped corners and two top flaps torn off. Photos of the box, as the FBI encountered it, are below.



Garage box (Dec. 21, 2022)539

Because the box was damaged and not able to properly package classified material, the agents transferred its contents to a new box for transport.⁵⁴⁰ The

⁵⁸⁷ FBI Serials 33, 35 1A42.

⁵³⁸ FBI Serials 35 1A42, 680 1A770; 20221221_ERT_0024; 20221221_ERT_0025; 20221221_ERT_0026; 1/22/24 photograph, GarageBox-001.

⁵³⁹ 20221221_ERT_0024.

⁵⁴⁰ FBI Serial 35.

photographs below show the contents of the garage box in the original box and in the new box:



Garage box (Dec. 21, 2022)541

⁵⁴¹ FBI Serial 35 1A42 20221221_ERT_0025.



Garage box in original condition (Dec. 21, 2022)542



Garage box after repackaging (Jan. 3, 2023)543

 ^{542 20221221}_ERT_0026; FBI Serial 35 1A42.
 543 20230103_DSC_0003; FBI Serials 35, 195 1A212.

Inside the box, the FBI located two folders containing marked classified documents related to the fall 2009 policy review on Afghanistan.⁵⁴⁴

1. "Facts First" folder

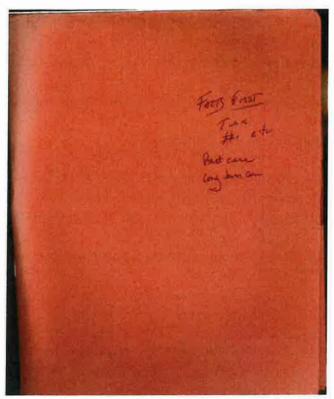
One of the folders containing marked classified documents about Afghanistan was an unlabeled red file folder with handwriting on the front, which included the phrase "Facts First." ⁵⁴⁵ In his interview with the special counsel, Mr. Biden identified the handwriting as his, but said he recalled nothing about how this folder or its contents got into his garage. ⁵⁴⁶

When FBI agents repackaged the contents of the ripped garage box into a new box on December 21, 2022, it appears the order of a few of the materials changed slightly. This chapter discusses in detail below two folders that contained marked classified documents about Afghanistan: the manila "Afganastan" folder and the red "Facts First" folder. It appears the "Afganastan" folder was near the "Facts First" folder in the garage box when agents recovered the box, but the precise original location of the "Afganastan" folder at that time is unknown.

⁵⁴⁴ FBI Serial 512 1A614; Evidence items 1B04, 1B44.

⁵⁴⁵ FBI Serial 512 1A614; Evidence item 1B44.

⁵⁴⁶ Biden 10/9/23 Tr. at 43-45. In general, when our report identifies handwriting as Mr. Biden's, it is based on the following factors, which often occur in combination: (1) Mr. Biden identified it as his handwriting or likely his handwriting; (2) others familiar with Mr. Biden's handwriting identified it as his or likely his; (3) Mr. Biden confirmed that he wrote an entire class of documents, such as his notebooks and notecards; (4) the handwriting appears to match known instances of Mr. Biden's handwriting; (5) the document was found at Mr. Biden's home or office and is surrounded by materials attributable to Mr. Biden; and (6) the content and context of the handwriting suggest that it is Mr. Biden's.



"Facts First" folder 547



 ${\it Garage box in original condition showing "Facts First" folder \it ^{548}}$

 ⁵⁴⁷ 1B004-FACTS_FIRST-000001.
 ⁵⁴⁸ 20221221_ERT_0026; FBI Serial 35 1A42.

The "Facts First" folder contained over 200 pages of documents related to the fall 2009 Afghanistan policy review, with a date range from approximately August through October 2009.⁵⁴⁹ Among the marked classified documents were the following, which are summarized further in Appendix A:

- McChrystal's assessment, marked "CONFIDENTIAL REL NATO/ISAF" and dated August 30, 2009, in which McChrystal announced the urgent need for additional troops and a comprehensive counterinsurgency campaign in Afghanistan.⁵⁵⁰ Mr. Biden marked up this document with extensive handwritten notes, which were highly critical of McChrystal's reasoning and conclusions.⁵⁵¹
- An August 31, 2009 memorandum from the National Security Adviser to President Obama marked "TOP SECRET/SCI." 552 According to subject-matter experts in the intelligence community, this document contains national defense information in the form of highly sensitive information about the military programs of the United States and a foreign government. The unauthorized disclosure of this information, both today and in 2017 when Mr. Biden was no longer vice president, reasonably could be expected to cause exceptionally grave damage to the national security.
- A September 10, 2009 draft memorandum from Mr. Biden to President Obama. This memo, marked "TOP SECRET," was likely sent from Mr. Biden to President Obama in advance of the first National Security Council meeting of the fall review, held on September 13, 2009. During the meeting, Mr. Biden made lengthy comments that closely tracked the memo. As explained above, after this meeting, Mr. Biden wrote in his journal that his presentation had "punch[ed] a hole" in the logic of his opponents, that the Afghanistan decision would define the administration in history, and that he did not want history to associate him with counterinsurgency strategy.

⁵⁴⁹ Recovered documents B6-B24.

⁵⁵⁰ Recovered document B23.

⁵⁵¹ Id

⁵⁵² Recovered document B20.

⁵⁵³ Recovered document B24.

 $^{^{554}}$ $Id.;\ 12/3/09$ e-mail chain between Carney, Blinken, and Klain titled "Proposed Additions to Timeline," SCOH-000234; Evidence item 1B44.

⁵⁵⁵ Notebook entry 1B66-0068-69; 12/3/09 e-mail chain between Carney, Blinken, and Klain titled "Proposed Additions to Timeline," SCOH-000234; FBI Serial 525 1A632.

⁵⁵⁶ Notebook entry 1B66-0068-69.

- An undated memorandum marked "TOP SECRET//HSC⁵⁵⁷//NOFORN" entitled "Some Facts and Considerations." This memo supported Mr. Biden's views in the Afghanistan debate and offered commentary on the intelligence community's analysis about Afghanistan. According to subject-matter experts in the intelligence community, the memo contains national defense information, including highly sensitive information about intelligence activities, sources, and methods. Unauthorized disclosure of this information in 2017 when Mr. Biden was no longer vice president reasonably could be expected to cause exceptionally grave damage to the national security.
- A September 29, 2009 memorandum with attachments, from the National Security Adviser to the President, marked "TOP SECRET WITH TOP SECRET/NOFORN/CODEWORD ATTACHMENTS."560 underlined and marked several passages that relate to the classified attachments to the memo. 561 The memo's attachments include several intelligence products from the Office of the Director of National Intelligence.⁵⁶² One such attachment. marked "TOP SECRET//HUMINT/COMINT//ORCON/NOFORN//FISA," contain Mr. Biden's handwriting and underlining.⁵⁶³ According to subjectmatter experts in the intelligence community, portions of this document contain national defense information about sensitive intelligence sources and methods. Unauthorized disclosure of this information, in 2017 when Mr. Biden was no longer vice president, and still today, reasonably could be expected to cause serious damage to the national security.
- A draft handwritten note from Mr. Biden to President Obama, dated October 18, 2009, offering Mr. Biden's advice about Afghanistan, including Mr. Biden's explanation of why he believed the military's proposed counterinsurgency strategy would fail.⁵⁶⁴ This note does not appear to have been completed.

⁵⁵⁷ This is a typographical error. The correct marking is HCS, which stands for HUMINT Control System, and signifies information human intelligence sources.

⁵⁵⁸ Recovered document B15.

⁵⁵⁹ Id

⁵⁶⁰ Recovered documents B6-B13.

⁵⁶¹ Recovered document B6.

⁵⁶² Recovered documents B7, B9, B10, B11.

⁵⁶³ Recovered document B7.

⁵⁶⁴ Recovered document B18-1; Klain Class Tr. at 3-4.

2. "Afganastan" folder

The second folder in the box that contained marked classified documents relating to Afghanistan was a manila folder labeled "Afganastan 2009." 565



"AFGANASTAN 2009" manila folder 566

In his interview with the special counsel, Mr. Biden said the handwritten label on this folder looks like his handwriting,⁵⁶⁷ and the distinctive misspelling of "Afganastan" confirms this. Mr. Biden repeatedly used this or a similar misspelling

⁵⁶⁵ Evidence item 1B04.

⁵⁶⁶ 1B004-AFGANASTAN_2009-000001; Evidence item 1B04.

⁵⁶⁷ Biden 10/9/23 Tr. at 51-52.

in handwritten notes as vice president, and before that in notes he took as a senator dating back to $1980.^{568}$

The "Afganastan" folder contained almost 100 pages of documents from October and November 2009, including numerous materials Mr. Biden used as reference material when writing the Thanksgiving memo to President Obama. 569 Among the documents were the following, which are summarized further in Appendix A:

- A November 25, 2009 typewritten memorandum from Mr. Biden to President Obama about Afghanistan, marked "TOP SECRET."⁵⁷⁰ Mr. Biden made handwritten edits to this memo, some of which were incorporated into the handwritten Thanksgiving memo dated three days later.⁵⁷¹ Entire pages of the handwritten Thanksgiving memo are repeated nearly verbatim from the November 25 memo, making the November 25 memo the original source document.⁵⁷²
- Multiple drafts of the handwritten Thanksgiving memo.⁵⁷³ These include documents with edits, comments, and additions from Mr. Biden's staff, which were delivered to Mr. Biden when he was in Nantucket writing the Thanksgiving memo.⁵⁷⁴ Mr. Biden repeated numerous passages from these documents nearly verbatim in the final memo.⁵⁷⁵
- A copy of Mr. Biden's talking points for a National Security Council meeting held on November 11, 2009, and Mr. Biden's follow-up memorandum to the National Security Advisor a few days later, on November 15, 2009, both

 $^{^{568}}$ 6/11/80 Handwritten Notes from June 11, 1980 Meeting with West German Chancellor Helmut Schmidt, 1B017-BIDEN MEETING WITH CHANCELLOR SCHMIDT-000015; Notebook entries 1B67-0011, 0013; 1B68-0033; 1B65-0016; 1B22-0016.

 $^{^{569}}$ Recovered documents B25-B38; Evidence item 1B04; FBI Serials 35, 512 1A614, 682, 683 1A772.

⁵⁷⁰ Evidence item 1B04; Recovered document B25.

⁵⁷¹ Recovered document B25; Handwritten materials 1B66-0003-28; Biden 10/9/23 Tr. at 52-53; Klain Class. Tr. at 8; Evidence item 1B04.

⁵⁷² Recovered document B25; Handwritten materials 1B66-0003-28; 11/27/09 e-mail from Blinken, SCOH-000230; Evidence item 1B04.

⁵⁷³ Recovered document B25-1.

⁵⁷⁴ Id.

⁵⁷⁵ *Id.*; Evidence item 1B04.

marked "Top Secret." ⁵⁷⁶ The talking points and memo contain numerous points that were later incorporated into the handwritten Thanksgiving memo, including Mr. Biden's "dee[p] concer[n] that adding significantly more resources into Afghanistan is, potentially, a gigantic strategic blunder that plays into Al Qaeda's hands." ⁵⁷⁷

In addition to the manila "Afganastan" file folder, the box also contained a blue hanging folder bearing the same misspelling on the handwritten label.⁵⁷⁸ The blue hanging "Afganastan" folder contained only a red file folder holding a one-page memo from 2012 unrelated to Afghanistan.⁵⁷⁹



Blue hanging folder labeled "AFGANASTAN"580

⁵⁷⁶ Recovered documents B28, B29; Evidence item 1B04.

 $^{^{577}}$ Id

⁵⁷⁸ 20230103_ DSC_0136; Evidence item 1B04.

⁵⁷⁹ Evidence item 1B04. The garage box also contained a folder labeled "Foreign Policy: Second Term CLASSIFIED MARCH 2013." This folder contained two marked classified documents—one marked "SECRET/NOFORN," the other marked "TOP SECRET//NOFORN//Pre-decisional"—which outlined, in broad terms, foreign policy goals for the Obama administration's second term. FBI Serials 512 1A614, 683 1A772; Evidence items 1B04, B4, B5. The folder also contained an unmarked memorandum from Mr. Biden to President Obama providing advice about managing the U.S. relationship with a foreign nation (not Afghanistan) in the second term. B4-1.

⁵⁸⁰ 20230103_DSC_0034; FBI Serials 35, 195 1A212.

B. Other materials in the garage box

In addition to the two folders with marked classified documents about Afghanistan, the garage box contained folders with unclassified material that was of great personal interest to Mr. Biden and that he appears to have personally used and accessed.⁵⁸¹

Several folders in the garage box contained materials that Mr. Biden appears to have accessed both shortly before and shortly after February 16, 2017, the day Mr. Biden told Zwonitzer he had "just" found classified documents downstairs. For example, in January 2017, less than a month before he told Zwonitzer he had just found the classified documents downstairs, Mr. Biden appears to have accessed documents later found in the box. On January 23, 2017, Mr. Biden wrote a notebook entry about a call scheduled for later that day to finalize a deal with Creative Artists Agency (CAA), a talent agency that went on to represent him in negotiating his book deal for *Promise Me*, *Dad*. The same entry also referenced Mr. Biden's work with his sister on his "S Corp." 584

The box found in Mr. Biden's garage contained a corresponding file folder, labeled "Signed Contracts Penn, CAA," which contained the signature page of a final

⁵⁸¹ FBI Serial 512 1A614.

⁵⁸² FBI Serials 315, 355 1A400, 512 1A614; Evidence item 1B80; Chapter 5.

⁵⁸³ Notebook entry 1B59-0025; ASSOCIATED PRESS, Joe and Jill Biden get multi-book deal, WHYY (Apr. 5, 2017), https://whyy.org/articles/joe-and-jill-biden-get-multi-book-deal/; FBI Serial 77 1A86; FBI Serial 682.

⁵⁸⁴ Notebook entry 1B59-0025.

agreement between Mr. Biden and Creative Artists Agency.⁵⁸⁵ Mr. Biden signed the agreement, which was dated a few days after the notebook entry, on January 26, 2017.⁵⁸⁶ The folder also contained the final agreement between Mr. Biden and the Penn Biden Center—Mr. Biden's primary employer after his vice presidency—which Mr. Biden signed, also on January 26, 2017.⁵⁸⁷ And the folder contained a W-9 tax form for Mr. Biden's S corporation, CelticCapri, which Mr. Biden used to receive income from book deals and speeches, among other purposes.⁵⁸⁸ The W-9 form listed Mr. Biden as the president of the S corporation and was signed by Mr. Biden and dated January 30, 2017—less than three weeks before Mr. Biden told Zwonitzer he had just found classified documents downstairs.⁵⁸⁹

The folder of signed contracts from late January 2017 was found in the box a few folders away from the "Facts First" folder that contained marked classified documents about Afghanistan, as shown in the image below.⁵⁹⁰

⁵⁸⁵ 1B004-SIGNED CONTRACTS PENN_CAA-000001 - 1B004-SIGNED CONTRACTS PENN_CAA-000008. Evidence item 1B04.

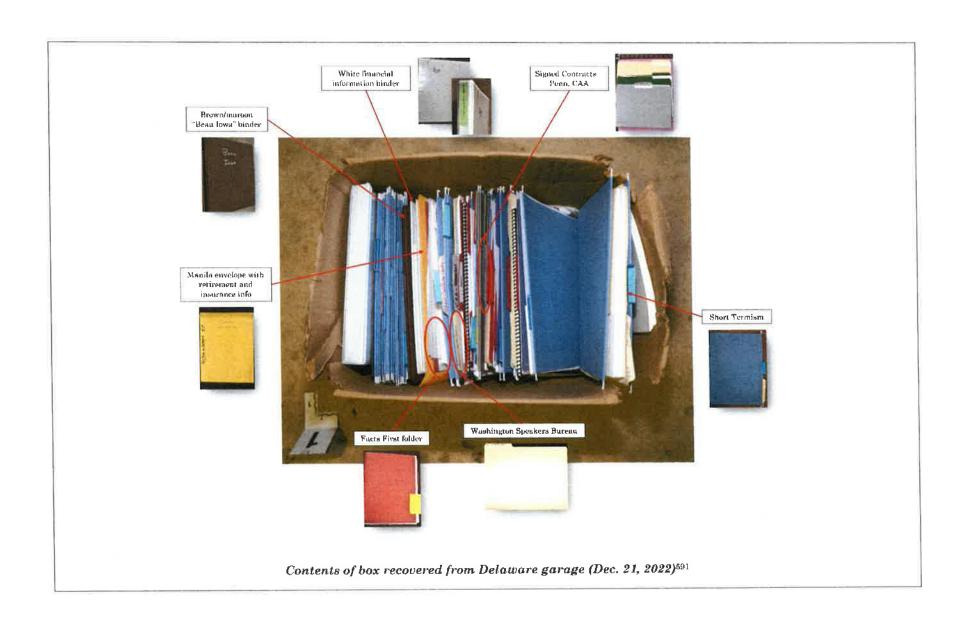
⁵⁸⁶ 1B004-SIGNED CONTRACTS PENN_CAA-000008.

⁵⁸⁷ 1B004-SIGNED CONTRACTS PENN_CAA-000004 - 1B004-SIGNED CONTRACTS PENN_CAA-000007; FBI Serial 512 1A614; Evidence item 1B04.

⁵⁸⁸ 1B004-SIGNED CONTRACTS PENN_CAA-000002; FBI Serial 512 1A614; Evidence item 1B04; Darla Mercado, *Joe Biden used this strategy to trim his tax bill. You can, too*, CNBC (Aug. 6, 2019), https://www.cnbc.com/2019/08/06/joe-biden-used-this-strategy-to-trim-his-tax-bill-you-can-too.html.

⁵⁸⁹ FBI Serial 512 1A614; 1B004-SIGNED CONTRACTS PENN_CAA-000002.

⁵⁹⁰ FBI Serial 512 1A614.



⁵⁹¹ Evidence item 1B04.

Mr. Biden also appears to have created a folder with the handwritten label "Short Termism" and the handwritten date February 3, 2017—less than two weeks before he told Zwonitzer he had just found classified documents downstairs.⁵⁹² This folder, later recovered by the FBI in the same box as the classified Afghanistan documents, appears to be labeled in Mr. Biden's handwriting and contains material about a public policy issue of longstanding interest to Mr. Biden.⁵⁹³ After creating this folder in or around February 2017, Mr. Biden spoke on a panel addressing "short-termism" at the University of Delaware a few months later in May 2017.⁵⁹⁴

The box also contained a folder labeled "mark Z" and dated 2/16/17.⁵⁹⁵ "Mark Z" is a reference to Mr. Biden's ghostwriter, Mark Zwonitzer, and the folder is dated the same day Mr. Biden met with Zwonitzer at the Virginia home and told Zwonitzer he had just found classified documents downstairs.⁵⁹⁶

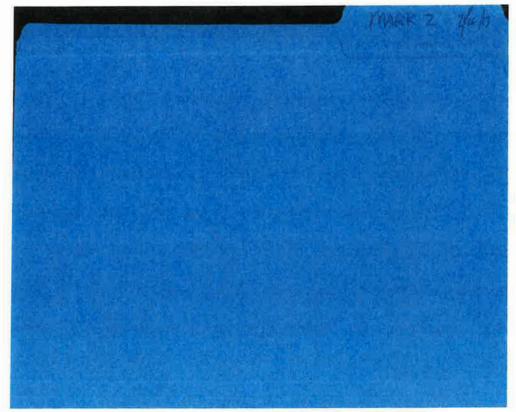
⁵⁹² Zwonitzer 7/31/23 Tr. at 82-83; FBI Serial 512 1A614. As explained below, the folder appears to be labeled in Mr. Biden's handwriting, based on comparisons with other known instances of that handwriting.

⁵⁹³ FBI Serials 35, 512; see also, e.g., Joe Biden, How Short-Termism Saps the Economy, WALL St. J., Sept. 27, 2016; Notebook entries 1B20-0027, 0025, 0041.

⁵⁹⁴ Larissa Kubitz, *Biden Institute takes first step with dynamic business panel*, THE REVIEW (May 2, 2017), https://udreview.com/biden-institute-takes-first-step-with-dynamic-business-panel/ (last visited Feb. 1, 2024).

⁵⁹⁵ 1B004-MARK Z 2-16-17-000001; FBI Serial 512, 1A614.

 $^{^{596}}$ 1B004-MARK Z 2-16-17-000001; Biden 10/8/23 Tr. at 132; Zwonitzer 7/31/23 Tr. at 82-83; Evidence item 1B04.



"MARK Z 2/16/17" blue file folder 597

Inside the Mark Z folder was the final book proposal for *Promise Me*, Dad. 598 Mr. Biden used this proposal to shop his book to potential publishers, and this bidding process resulted in a book contract netting Mr. Biden an advance of \$8 million. 599 Mr. Biden's assistant identified the handwriting on this folder as Mr. Biden's. 600 The date on the folder indicates that Mr. Biden created it at or around the same time he met with Zwonitzer on February 16, 2017, and said he had just found classified documents. The folder was at some point placed in the same box as the marked classified documents about Afghanistan.

⁵⁹⁷ 1B004-MARK Z 2-16-17-000001; FBI Serial 512.

⁵⁹⁸ 1B004-MARK Z 2-16-17-000001 through 000005.

⁵⁹⁹ Zwonitzer-00001334; Zwonitzer 7/31/23 Tr. at 32-33, 59-66, 78-79, 82, 85-89.

⁶⁰⁰ Executive Assistant 9/28/23 Tr. at 84.

Mr. Biden also continued to access materials in the box after he told Zwonitzer on February 16, 2017 that he had found the classified documents. For example, on March 5, 2017, less than three weeks later, Mr. Biden wrote in one of his notebooks that he wanted to get a copy of the contract offered by Washington Speakers Bureau—a group that had made Mr. Biden a lucrative offer to arrange paid speeches—"for my records."⁶⁰¹ The garage box contained a folder with the handwritten label "Washington Speakers Bureau," which contained a copy of that offer.⁶⁰² The handwriting is Mr. Biden's.⁶⁰³ The Washington Speakers Bureau folder was found a few folders away from the "Facts First" folder containing marked classified documents about Afghanistan.

The materials described above, which Mr. Biden appears to have accessed in the weeks before, during, and after he told Zwonitzer about "just" finding classified documents, were all located in folders in front of the "Facts First" folder in the box (to the right of the folder in the image of the box above).

Immediately behind (to the left of) the "Facts First" folder were three more items that contained information of significant personal interest to Mr. Biden:

• A manila envelope containing documents from February and March 2017 relating to Mr. Biden's retirement payments and then-current health-insurance information, along with a copy of the Senate Ethics Manual bearing Mr. Biden's handwriting. Mr. Biden also wrote on the envelope, including the date "4-17," an apparent reference to April 2017.604 These months—February, March, and April 2017—coincide with and closely

⁶⁰¹ Notebook entry 1B59-0027; FBI Serial 77.

^{602 1}B004-WASHINGTON – SPEAKERS BUREAU 000001-000007; FBI Serial 512.

⁶⁰³ Biden 10/9/23 Tr. at 57; Personal Aide 4 Tr. at 119.

 $^{^{604}}$ 1B004-ENVELOPE ADDRESSED TO JOE BIDEN-000001-000028; FBI Serial 512.

follow the date when Mr. Biden told Zwonitzer he found classified documents, February 16, 2017.

- A white binder labeled "2016" containing detailed financial information about Mr. Biden's income and expenses, including expenses relating to the Virginia home. 605 Mr. Biden described this type of financial binder as the sort of material that he knowingly kept in his files. 606 When interviewed, his sister, Ms. Biden Owens, identified materials in the binder as ones she printed for Mr. Biden at his request. 607
- A brown/maroon binder labeled "Beau Iowa," which appears to have been compiled in roughly 2014, and which contains, among other things, photographs of Beau Biden campaigning in Iowa.⁶⁰⁸

The box also contained other materials of personal interest to Mr. Biden, some of which go back decades, and some of which extend for years after Mr. Biden told Zwonitzer he had found classified documents.⁶⁰⁹ These included:

- The Biden Archives, which compiled ancestry information about the Biden family, and which was addressed to Mr. Biden's parents at their home in Delaware.⁶¹⁰
- Photos and biographical information of Mr. Biden and other members of his graduating law school class, from 1967.611
- A folder labeled "V.P. Image Press" containing a 2015 newspaper article from the Delaware News Journal. The article's opening sentence reads: "While Vice President Joe Biden has assured himself a place in U.S. history books, his political legacy in tiny Delaware is epic." 612

⁶⁰⁵ FBI Serial 512 1A614.

⁶⁰⁶ Biden 10/8/23 Tr. at 99-101; FBI Serial 554 1A662.

⁶⁰⁷ Biden Owens Tr. at 62-66.

⁶⁰⁸ FBI Serial 512 1A614.

⁶⁰⁹ FBI Serial 512 1A612.

^{610 1}B004-ARCHIVES BIDEN_THE BIDEN ARCHIVES-000001; FBI Serial 512 1A612.

^{611 1}B004 MANILA FOLDER WITH DOCUMENTS-000002; FBI Serial 512 1A612.

^{612 1}B004_ARCHIVES BIDEN_VP IMAGE – PRES-000006; FBI Serial 512 1A612.

- Polling data related to the 2016 presidential election showing Mr. Biden outperforming Mr. Trump in several swing states that Hillary Clinton lost.⁶¹³
- Documents from the end of the Obama administration. For example, information about Mr. Biden's move out of the Naval Observatory, from November 2016;⁶¹⁴ a folder about the Penn Biden Center with materials from November 2016;⁶¹⁵ moving company information for Mr. Biden and Dr. Jill Biden from December 2016;⁶¹⁶ and a folder relating to the Biden Institute at the University of Delaware, dated January 3, 2017.⁶¹⁷
- Documents from the first few months after the Obama administration, when Mr. Biden was a private citizen.
- An IRS Form 1099 for tax year 2017 documenting Mr. Biden's lump-sum payment to Zwonitzer for his work ghostwriting *Promise Me, Dad*, and other tax documents dated 2018.⁶¹⁸
- A binder of briefing materials from the 2020 presidential campaign, dated from 2019 and 2020. Inside the binder are personal photos of Mr. Biden and his family, including his grandchildren.⁶¹⁹
- Notecards with presidential campaign remarks from 2020.620

In sum, the materials surrounding the marked classified documents about Afghanistan were of personal importance to Mr. Biden and were materials he appears to have accessed around the time he told Zwonitzer, while they were in Mr. Biden's Virginia home, that he had "just found all the classified stuff downstairs."

⁶¹³ FBI Serial 512 1A612; 1B004 POLLING HRC 2016 JRB-000002-000005.

⁶¹⁴ FBI Serial 512 1A612; 1B004_VICE PRESIDENT OF THE US_FURNITURE-000001; 1B004 VICE PRESIDENT OF THE UNITED STATES-000001.

⁶¹⁵ FBI Serial 512 1A612; 1B004_PENN DC-000001.

⁶¹⁶ FBI Serial 512 1A612: 1B004 TRANSITION-000001.

⁶¹⁷ FBI Serial 512 1A612; 1B004_UDEL 1-03-17-000001.

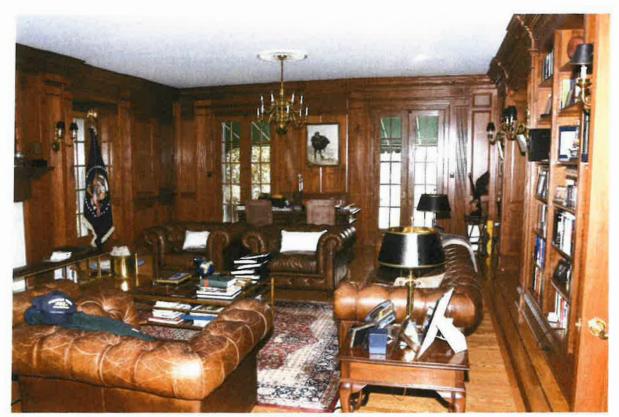
⁶¹⁸ FBI Serial 512 1A612; 1B004-GREEN FOLDER WITH DOCUMENTS-000003.

⁶¹⁹ FBI Serial 512 1A612; 1B004-BOOK 2-000001.

⁶²⁰ FBI Serial 512 1A612; 1B004-CARDS-REMARKS AND NOTES-000001.

III. IN JANUARY 2023, THE FBI FOUND THE CLASSIFIED 2009 THANKSGIVING MEMO IN MR. BIDEN'S DELAWARE HOME OFFICE

On January 20, 2023, about a month after FBI agents searched Mr. Biden's Delaware garage and found the box with classified Afghanistan documents, agents returned to search the living areas of Mr. Biden's Delaware home.⁶²¹ In Mr. Biden's main office, agents found the notebook he used to chronicle the fall 2009 Afghanistan policy review.⁶²² The notebook, which was labeled "Af/Pak 1," was found in a drawer along with many of Mr. Biden's other notebooks from the Obama administration.⁶²³



Mr. Biden's Delaware home office containing his notebooks (Jan. 20, 2023)624

⁶²¹ FBI Serials 35, 77.

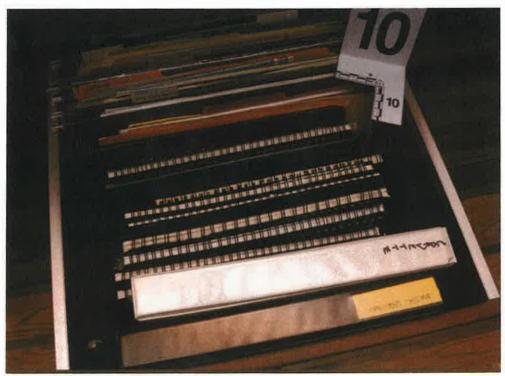
⁶²² FBI Serial 77; Notebook 1B66.

⁶²³ FBI Serial 77 1A86.

⁶²⁴ FBI Serial 77 1A86 20230120_JLH_0173.



Office file cabinet under television containing eight seized notebooks (Jan. 20, 2023)625



Contents of office file cabinet under television containing eight seized notebooks (Jan. 20, 2023)⁶²⁶

 $^{^{625}}$ 20230120_FBI_0151; FBI Serial 77 1A87.

^{626 20230120}_FBI_0152; FBI Serial 77 1A87.



Notebook labeled "Af/Pak 12627

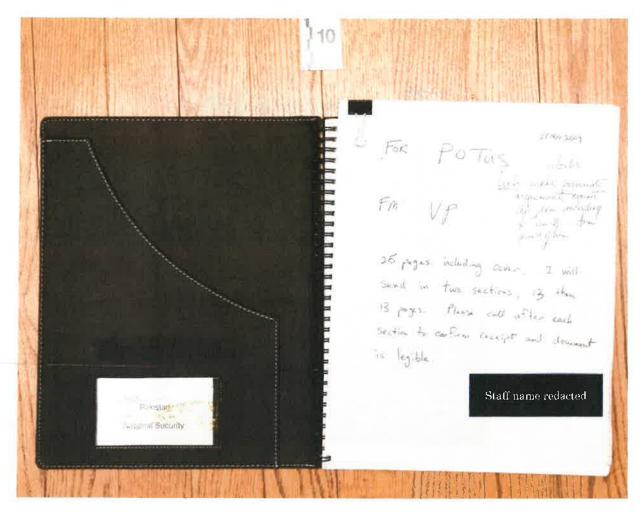
Inside the front cover of the Af/Pak notebook, held together with a binder clip, was Mr. Biden's handwritten 2009 Thanksgiving memo to President Obama, dated November 28, 2009.⁶²⁸ The handwritten memo contains information that remains classified up to the Secret level. Attached to the memo was a November 2009 State Department cable about Afghanistan that was marked classified as Confidential.⁶²⁹ The cable shows a declassification date in November 2019, though the State Department has been unable to confirm whether it has been formally declassified.⁶³⁰

^{627 20230120}_FBI_0158; FBI Serial 77 1A86.

⁶²⁸ Handwritten material 1B66_0001-28; FBI Serial 77 1A86; 682.

⁶²⁹ FBI Serial 676.

 $^{^{630}}$ Id.



Interior of "Af/Pak 1" notebook with cover page of Thanksgiving memo[63]

^{631 20230120}_FBI_0161; FBI Serial 77 1A86.

⁶³² Biden 10/9/23 Tr. at 14-21.

⁶³³ *Id.* at 21.

* * *

In December 2022 and January 2023, in Mr. Biden's Delaware garage and home office, FBI agents found classified documents relating to one of the seminal moments of his vice presidency: his opposition to the 2009 troop surge in Afghanistan. The classified documents were physically surrounded by Mr. Biden's private, personal material, including material he accessed around the same time he told his ghostwriter in February 2017, while in his Virginia home, that he "just found all the classified stuff downstairs."

CHAPTER SEVEN

TRACING THE AFGHANISTAN DOCUMENTS

We were unable to determine how the marked classified Afghanistan documents got from the White House, where Mr. Biden possessed them as vice president in 2009, to his Delaware home, where they were found in 2022. Mr. Biden had at least some of the Afghanistan documents with him in Nantucket during Thanksgiving 2009, when, as described in Chapter Six, he used some or all those documents as reference material in writing his handwritten memo to President Obama. From Nantucket, we have been unable to determine whether the documents next went to Mr. Biden's office in the White House, or to his official residence at the Naval Observatory, or to his personal home in Delaware.

In an attempt to trace the path of the Afghanistan documents and other marked classified documents found in the Delaware home, we reviewed extensive evidence of the movement of Mr. Biden's belongings from the end of the Obama administration. We interviewed numerous people who were in Mr. Biden's Delaware and Virginia homes at relevant times, and reviewed photographs and videos of the spaces as well as records from moving companies, furniture companies, and other sources. Ultimately, we could not determine precisely when the box containing the Afghanistan documents got into the garage, or who put the documents there.

As explained in Chapter Eleven, the strongest case for criminal charges against Mr. Biden relating to the Afghanistan documents would rest on his retention of the documents at the Virginia home in 2017. The February 16, 2017, recorded conversation when Mr. Biden told Zwonitzer he "just found all the classified stuff"

downstairs" in the Virginia home is evidence that the Afghanistan documents were there. Other evidence provides some additional clues suggesting that these documents may have been stored in the Virginia home and then moved to the Delaware home, where they were ultimately placed in the box in the garage. As discussed further in Chapter Eleven, we find this evidence to be insufficient to meet the government's burden in a criminal prosecution.

I. MR. BIDEN'S MOVES FROM THE NAVAL OBSERVATORY TO VIRGINIA AND THEN TO DELAWARE

As explained below, when Mr. Biden left the vice presidency in January 2017, he moved into a rental home in Virginia. From 2017 to 2019, Mr. Biden split time between the Virginia home and his permanent home in Delaware, which he owned before, during, and after the vice presidency, and still owns today.⁶³⁴ In July 2019, some of Mr. Biden's belongings in the Virginia home were moved to his home in Delaware.⁶³⁵

A. 2017 move out of the Naval Observatory

On January 7, 2017, the Bidens moved furniture and personal belongings out of the Naval Observatory and into the Virginia home using a private moving

⁶³⁴ Biden 10/8/23 Tr. at 40-47 (describing building the Delaware home while a Senator). See also Sections I.A and I.B below.

⁶³⁵ See Section I.D below.

company.⁶³⁶ The Bidens paid for the move themselves and packed their own belongings, with the help of staff members and naval enlisted aides.⁶³⁷

Mr. Biden was personally involved in the move: He selected which pieces of government-owned furniture from the Naval Observatory he bought and moved to Virginia, directed some of the packing, and was personally present for the entirety of the move. 638 One military aide recalled seeing him "packing by himself" and "just him moving his stuff one at a time into the . . . truck" at the Naval Observatory on moving day, and Secret Service agents saw Mr. Biden "moving boxes" at the Virginia house during the weekend of his move into that house. 639

Mr. Biden stored papers in several places at the Naval Observatory, including desks, safes, and briefcases. As explained above in Chapter Three, Mr. Biden stored classified materials at the Naval Observatory while vice president. We were unable

⁶³⁶ 12/21/16 Invoice from private moving company, Georgetown Moving and Storage, SCOH-000279; 1/7/17 e-mails from Secret Service agents describing status of movers packing up the Naval Observatory, USSS-0000528890 and USSS-0000529043.

^{637 12/21/16} Invoice from private moving company, Georgetown Moving and Storage, SCOH-000279 (indicating "customer to pack all," "carrier to pack none"); Residence Manager Tr. at 37; NEA 5 Tr. at109-114; Ricchetti Tr. at 122, 124; NEA 1 Tr. at 48, 50-51, 55-56; NEA 3 Tr. at 28-30, 34; Personal Aide 3 3/28/23 Tr. at 111-112; Personal Aide 3 10/4/23 Tr. at 14-15, 31; Dr. Biden Personal Aide Tr. at 58-61; Staff Assistant 2 Tr. at 86-87, 91-92.

^{638 10/6/16} Memo from Residence Manager to the Vice President and Dr. Biden, 1B004-Vice President of the US_Furniture at 000002 ("Per our conversation yesterday"); handwritten notes describing phone call with Residence Manager on 12-19-16, FBI Serial 278, Notebook 1B59; entry in Notebook DAILY 2016 (1B59) describing 12/19/16 call with Residence Manager ("12-19-16, 9:55pm The Lake: Also spent time on phone w/ [Residence Manager] re: furniture + movement of furniture"); NEA 3 Tr. at 28-34; NEA 5 Tr. at 114; NEA 1 Tr. at 48, 50-51, 55-56; Military Aide 7 Tr. at 50; 1/7/17 e-mail from Secret Service agents describing Mr. Biden as present at the Naval Observatory with the movers, USSS-0000528890; 1/7/17 e-mail from Secret Service agents describing Mr. Biden going to Virginia Residence, USSS-0000524214; Personal Aide 3 10/4/23 Tr. at 3-6, 16-18, 20; Residence Manager Tr. at 60; Ricchetti Tr. at 122, 125

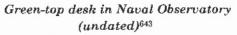
⁶³⁹ Military Aide 7 Tr. at 50, 53-55; 1/13/17 Secret Service e-mail, USSS-0000406162.

to determine whether any classified documents were inadvertently moved to the Virginia home when Mr. Biden moved out of the Naval Observatory.

During his vice presidency, Mr. Biden used a desk with green leather inserts in the turret of the Naval Observatory's primary bedroom. 640 Private movers moved the green-top desk to the large basement room in the Virginia home that Mr. Biden used as an office.⁶⁴¹ No staffers recalled removing or packing material from the desk before movers removed it from the Naval Observatory. 642

Antique desk with green leather insets Purchased by the OVP 2011







Green-top desk in Naval Observatory Green-top desk in Virginia basement office (Sept. 21, 2017)644

^{640 10/5/16} e-mail from Residence Manager to then-OVP Associate Director for Finance, SCOH-000225; 10/6/16 Memo from Residence Manager to the Vice President and Dr. Biden, Evidence Item 1B004-Vice President of the US_Furniture at 000002; 12/30/16 email from Executive Assistant to Mr. Biden, forwarding correspondence from OVP Counsel, SCOH-000236; Personal Aide 3 10/4/23 Tr. at 9-11.

⁶⁴¹ Personal Aide 3 10/4/23 Tr. at 9.

⁶⁴² See, e.g., Residence Manager Tr. at 37; Personal Aide 3 10/4/23 Tr. at 9-11; Executive Assistant 9/28/23 Tr. at 115; NEA 1 Tr. at 56.

⁶⁴³ Evidence Item 1B004-Vice President of the US_Furniture at 000007.

^{644 9/21/17} photograph taken at the Virginia Residence, SCOH-000323.

Mr. Biden and his staff kept classified documents in safes at the Naval Observatory, but staff cleared out their contents after the January 7, 2017 move.⁶⁴⁵ Mr. Biden was also known to keep documents in his briefcases, which he carried with him when traveling.⁶⁴⁶ Mr. Biden's staff did not go into his desk at the Naval Observatory, and it appears staff retrieved documents from his briefcase only rarely, if ever, so we were unable to determine if those locations contained any documents at the end of the administration.⁶⁴⁷

We were also unable to determine whether any of Mr. Biden's papers—classified or not—were in the boxes moved out of the Naval Observatory and to Virginia. No one involved recalled packing or moving papers or files belonging to Mr. Biden. Biden also stated that he did not "ever remember packing up written material to go anywhere. He explained that, "[i]t doesn't mean it didn't happen, but I just don't remember any of that." 650

During the investigation, we obtained photographs of the Virginia home from several sources in an attempt to identify photographs showing the classified

⁶⁴⁵ 1/15/17 e-mail from military aide to Executive Secretary, SCOH-000255; Military Aide 8 Tr. at 17, 33-34; 1/16/17 e-mail correspondence between OVP National Security Affairs and OVP Counsel staff, SCOH-000246; 1/16/17 e-mail correspondence between OVP National Security Affairs and OVP Counsel staff, SCOH-000218; 1/16/17 e-mail, SCOH-000259; Executive Secretary Staffer 2 7/7/23 Tr. at 57; 1/17/17 e-mail, SCOH-000256; Associate Counsel 3/29/23 Tr. at 16, 74; Bakotic 7/19/23 Tr. at 90-92.

⁶⁴⁶ Staff Assistant 3 Tr. at 49; Executive Assistant 9/28/23 Tr. at 73-74; Personal Aide 1 4/26/23 Tr. at 58; Personal Aide 2 Tr. at 35; Personal Aide 3 3/28/23 Tr. at 34-35, 56-57; Personal Aide 3 10/4/23 Tr. at 52-53.

 $^{^{647}}$ Personal Aide 3 3/28/23 Tr. at 85; Personal Aide 3 10/4/23 Tr. at 10; NEA 5 Tr. at 67; Staff Assistant 3 10/4/23 Tr. at 67-68; Military Aide 10 Tr. at 22.

⁶⁴⁸ See, e.g., NEA 1 Tr. at 56; NEA 3 Tr. at 30-31.

⁶⁴⁹ Biden 10/8/23 Tr. at 67.

⁶⁵⁰ *Id.* at 67.

Afghanistan documents or the box in which they were found. We found none. We did identify photographs taken in January 2017, while Mr. Biden was moving into the Virginia home from the Naval Observatory. But the photographs showed only the exterior of moving boxes, not their contents, and we were not able to identify the box in which the Afghanistan documents were found in any of the photos.

B. Security at the Virginia home

The Virginia home was not authorized to store classified information in February 2017, when Mr. Biden told Zwonitzer he had "just found all the classified stuff downstairs."

The Virginia home was not set up for secure handling or storage of classified documents. No one we interviewed recalled any safes or other approved facilities for the storage of classified material in the home.⁶⁵¹ The Virginia home had an alarm system.⁶⁵² It was also generally locked, although a staff member entered the house through an unlocked door to facilitate the move-out in July 2019.⁶⁵³

Although the White House Situation Room delivered a classified book to Mr. Biden at the Virginia home on one occasion near the end of the Obama administration in early January 2017,654 his National Security Affairs staff later determined that he

 $^{^{651}}$ See, e.g., Secret Service Special Agent 2 Tr. at 80; Virginia house manager Tr. at 45.

⁶⁵² Virginia House Manager Tr. at 14-15; 1/30/17 e-mail from U.S. Secret Service agent to Dr. Biden's personal aide, USSS-0000527876; Secret Service Special Agent 1 Tr. at 37-39. *But see* NEA 1 Tr. at 86 ("If there was [an alarm] we didn't use it or it didn't work.").

⁶⁵³ NEA 1 Tr. at 87; Secret Service Special Agent 1 Tr. at 39; Dr. Biden Staffer 1 Tr. at 63-64.

^{654 1/15/17} e-mail from Military Aide 8 to OVP staff and White House Situation Room, SCOH-000318; 1/14/17 Secret Service e-mail, USSS-0000524184; 1/15/17 e-mails between military aide, OVP staff, and the White House Situation Room, SCOH-000314. That evening,

should not receive classified material there.⁶⁵⁵ E-mail correspondence among his staff, military aide, and briefer reflect that Mr. Biden learned of this change in process, as he "requested the [President's Daily Brief] for the drive into the White House"⁶⁵⁶ when he started spending the night at the Virginia home,⁶⁵⁷ as opposed to his staff's alternative plan of delivering it to the West Wing for him to review after he arrived there.⁶⁵⁸

After the vice presidency, the Virginia home had an intermittent Secret Service presence for six months, ending in July 2017.⁶⁵⁹ During those six months, agents were present only when a protected person was there (such as Mr. Biden or Dr. Jill Biden),

the Bidens returned to the Naval Observatory. 1/15/17 Secret Service e-mail, USSS-0000524182.

^{655 1/17/17} e-mail from National Security staffer to Kahl, SCOH-000304; 1/17/17 e-mail from Kahl to National Security Staff, SCOH-000301.

^{656 1/18/17} e-mail from Military Aide 3 to OVP National Security Affairs staff and PDB briefer, SCOH-000271.

⁶⁵⁷ Between January 7, 2017, when he moved into the Virginia home, and January 18, 2017, when he began spending the night there, Mr. Biden traveled extensively and continued to stay overnight at the Naval Observatory on the few occasions he was in Washington, D.C. See, e.g., 1/8/17 e-mails between Military Aide 7, OVP staff, and the White House Situation Room, SCOH-000248; 1/7/17 Secret Service e-mail, 1B001_01916050 (indicating Mr. Biden returned to the Naval Observatory at 23:17 on January 7, 2017); 1/8/17 e-mails between military aide and OVP staff, 1B001_01915912 (indicating that briefing books for January 9, 2017 will be delivered to the Vice President in the morning in Los Angeles); 1/10/17 e-mails between military aide, OVP staff, and the White House Situation Room, SCOH-000244, SCOH-000252, SCOH-000265; 1/11/17 e-mail from OVP National Security Affairs staff, SCOH-000261; Secret Service schedule for January 11, 2017, USSS-0000004488; Secret Service schedule for January 12, 2017, USSS-0000004494; 1/11/17 e-mails amongst OVP staff with Mr. Biden's schedule for January 12, 2017, 1B001_01984097; 1/13/17 White House Press Release, SCOH-000222; 1/14/17 Secret Service e-mail, USSS-0000001109 (indicating Mr. Biden arrived at the "Lake House" the evening of January 13, 2017).

^{658 1/18/17} e-mail from Military Aide 3 to OVP National Security Affairs staff and PDB briefer, SCOH-000271; 1/18/17 e-mail from Military Aide 3 to Executive Assistant, OVP National Security Affairs staff, SCOH-000302; 1/18/17 e-mail from OVP National Security Affairs staffer to National Security Affairs staff, SCOH-000272; 1/19/17 e-mails amongst OVP National Security Affairs staff, SCOH-000263.

⁶⁵⁹ 7/7/17 Secret Service e-mail, USSS-0000523706; Secret Service Supervisor Tr. at 32; Secret Service Special Agent 1 8/24/23 Tr. at 36.

and agents generally had a staffer or protected person give them access to the home.⁶⁶⁰ Mr. Biden split his time between the Virginia home, the Delaware home, and his recently purchased beach home in Rehoboth Beach, Delaware.⁶⁶¹ Dr. Biden stayed overnight at the Virginia home when she was teaching.⁶⁶²

The Virginia home was frequented by family members, staff, and guests, not all of whom had a security clearance. A Secret Service agent lived intermittently in a basement bedroom from about the summer of 2017 until the summer of 2018, though he was not working on Mr. Biden's security detail at the time. A former naval enlisted aide stayed there from about January 2019 until July 2019. Family members and guests also visited occasionally.

C. In January 2017, after the end of his vice presidency, Mr. Biden found classified documents at his Virginia home and returned them

Soon after leaving the vice presidency, Mr. Biden apparently recognized that the Virginia home was not a secure location for the storage of classified material. When interviewed, Mr. Biden's personal aide recalled that during the first week after the end of the administration—several weeks before Mr. Biden told Zwonitzer he "just found all the classified stuff downstairs"—Mr. Biden discovered classified material at

⁶⁶⁰ 1/15/17 e-mail from Secret Service agent to personal aide, SCOH-000223; Secret Service Special Agent 2 Tr. at 79; Virginia house manager Tr. at 15-18; NEA 1 Tr. at 86-87; Dr. Biden Staffer 1 Tr. at 32.

 ⁶⁶¹ See, e.g., NEA 1 Tr. at 92; Secret Service Special Agent 1 8/24/23 Tr. at 26, 34, 36;
 Zwonitzer 7/31/23 Tr. at 146-47; Ricchetti Tr. at 140; Personal Aide 3 3/28/23 Tr. at 144, 174.
 6/8/17 Schedule, NARA_SCAN_00000300 ("Close on the Beach House"); FBI Serial 3.

⁶⁶² NEA 1 Tr. at 66.

⁶⁶³ Secret Service Special Agent 1 8/24/23 Tr. at 31-32.

⁶⁶⁴ NEA 1 Tr. at 65-66.

⁶⁶⁵ Id. at 66-68; Dr. Biden Personal Aide Tr. at 78-79; Zwonitzer 7/31/23 Tr. at 144-46.

the Virginia home and directed the aide to return it to the White House. According to the aide, he was standing outside the Virginia home when Mr. Biden approached him and handed him a "slim binder[]" with a classified coversheet. Mr. Biden said something like, "I just found this. Can you make sure it gets back to the White House?" The aide surmised that the binder contained materials relating to "foreign leader calls" because Mr. Biden participated in many such calls in the last days of the administration.

The aide believed he notified the director of programs for the Office of the Vice President's National Security Affairs team, who had stayed on into the next administration.⁶⁷⁰ The aide believed he then gave the classified binder to a Secret Service agent at the Virginia home, who brought it to the Naval Observatory, where a military aide delivered it to Vice President Pence's national security staff at the White House.⁶⁷¹ We reviewed available phone records and interviewed several people serving at the time in the White House, the Secret Service, and the Naval

 $^{^{666}}$ Personal Aide 3 3/28/23 Tr. at 197-212; Personal Aide 3 10/4/23 Tr. at 58 (describing timing of incident as "a week or roughly a week after the Inauguration.")

⁶⁶⁷ Personal Aide 3 3/28/23 Tr. at 197-99. The aide did not believe it was one of the "typical" classified coversheets with red, orange, or yellow classification markings; rather, he believed it had the "vice presidential seal" and "some type of classified marking on it." *Id.* at 198-99.

⁶⁶⁸ Id. at 199-200; see also id. at 197.

⁶⁶⁹ *Id.* at 204, 211-12. The aide did not believe the binder was one of the Vice President's "traditional briefing book[s]" from his National Security Affairs team. *Id.* at 199.

 $^{^{670}}$ Id. at 201-04. Initially, the aide stated it was possible that he notified a military aide instead. Id. at 201. When re-interviewed, however, the aide stated that he believed he contacted the Director of Programs for National Security Affairs, and not a military aide. Personal Aide 3 10/4/23 Tr. at 58-59.

⁶⁷¹ Personal Aide 3 3/28/23 Tr. at 203-04, 208-10.

Observatory, and none of them recalled this event.⁶⁷² Mr. Biden did not remember it either, although he stated in written responses to questions submitted by the special counsel: "If I had seen any marked classified documents in my home or office between the time when I was serving as Vice President and President, I would have immediately returned them to the U.S. government."⁶⁷³ During his interview, he also stated that if he found classified documents, "I would have gotten rid of them. I would have gotten them back to their source. . . . I had no purpose for them, and I think it would be inappropriate for me to keep clearly classified documents."⁶⁷⁴

D. Move out of Virginia home to Delaware in 2019

On July 18, 2019, private movers packed and moved the Bidens' belongings from the Virginia home to the Delaware home, under a staffer's supervision.⁶⁷⁵ Mr. Biden was not present for the packing or move, as he was traveling for his presidential campaign.⁶⁷⁶

⁶⁷² Director of Programs Tr. at 156-57, 180 (stating that the incident did "not sound familiar"); Secret Service Supervisor Tr. at 29-30 (stating he was unaware of Secret Service agents being given classified information found at the Virginia Residence); Military Aide 1 Tr. at 32-37; Military Aide 2 Tr. at 13-14; Military Aide 3 Tr. at 82-83; Military Aide 8 Tr. at 55-56.

⁶⁷³ Biden 10/9/23 Tr. at 7-8, 39-40; President Joseph R. Biden, Jr.'s Responses to Written Questions Submitted by the Special Counsel, Dec. 1, 2023, at 1. Mr. Biden caveated his response in his interview by adding that "notes in my book, they're my notes and they're my property, but that document is not my property." Biden 10/9/23 Tr. at 42.

⁶⁷⁴ Biden 10/9/23 Tr. at 41.

 $^{^{675}}$ Moving company invoice, SCOH-000274 (indicating a pack date of 7/16/19, a load date of 7/17/19, and move date of 7/18/19 from Virginia home to Delaware home); Dr. Biden Staffer 1 Tr. at 61-64.

⁶⁷⁶ CITY NEWS SERVICE, Joe Biden visits Crenshaw-district soul food restaurant, hits Trump on 'go back' rhetoric, LOS ANGELES DAILY NEWS (July 19, 2019), https://www.dailynews.com/2019/07/19/joe-biden-visits-crenshaw-district-soul-food-restaurant-hits-trump-on-go-back-rhetoric/ (last visited Jan. 31, 2024) (Biden returned Thursday [Friday, July 19, 2019)] to Southern California to raise money for his Democratic

Our investigation focused on a wooden, two-drawer file cabinet that moved from the Virginia home to the Delaware home, because marked classified documents were later found inside the file cabinet in the Delaware home, and because of the possibility that the classified Afghanistan documents later found in the Delaware garage were at one time stored in the file cabinet.⁶⁷⁷

In the Virginia home, the file cabinet held files and was located near Mr. Biden's green-top desk in his basement office.⁶⁷⁸ In July 2019, the file cabinet moved from the Virginia home to the Delaware home.⁶⁷⁹ Mr. Biden said in his interview he believed he bought the cabinet for the Virginia home, but was unsure.⁶⁸⁰ We were otherwise unable to determine where the cabinet originated, although photographs and records suggest it did not come from the Naval Observatory, and it likely came from the Delaware home or was bought for the Virginia home.⁶⁸¹ Regardless, Mr.

presidential bid[.]"); Heidi Przybyla, Biden's plan for rural America is the latest Democratic outreachTrump country, NBC NEWS (July 2019), https://www.nbcnews.com/politics/2020-election/biden-s-plan-rural-america-latestdemocratic-outreach-trump-country-n1031441 (last visited Jan. 31, 2024); Alexandra Jaffe, Biden plan seeks to boost rural America through investments, AP NEWS ONLINE, (July 16, https://apnews.com/united-states-presidential-election-2019). 54b68d199fbd46158735b87f8a1518a1 (last visited Jan. 30, 2024) ("We have to ensure we bring along everyone,' the former vice president said in Manning, an Iowa town of about 1,500 residents.").

⁶⁷⁷ FBI Serials 43, 44.

⁶⁷⁸ Biden 10/8/23 Tr. at 78-79; Personal Aide 3 10/4/23 Tr. at 43-44.

⁶⁷⁹ Personal Aide 3 10/4/23 Tr. at 43-44 ("green hanging files"). The desk did not move to Delaware. *See, e.g.*, SCOH-000274; August 2019 Photographs of Virginia home, SCOH-000741; SCOH-000742; SCOH-000743; SCOH-000744; SCOH-000745; SCOH-000746.

⁶⁸⁰ Biden 10/8/23 Tr. at 43, 72.

⁶⁸¹ We identified several other sources of furniture and deliveries of items to the Virginia home between January and April 2017. However, none of those deliveries appear to have included the file cabinet. 2/14/17 e-mail from Mr. Biden's Personal Aide to Secret Service, USSS-0000523734; 1/12/17 e-mail from Secret Service agent to Dr. Biden's personal aide, SCOH-000220; 1/13/17 e-mail between Secret Service agents, USSS-0000527855;

Biden told us the file cabinet contained his own files and no one else's, and his personal aide recalled filing papers for Mr. Biden in both that cabinet and his greentop desk when those items of furniture were in the Virginia home.⁶⁸²

The staffer present for the move out of the Virginia home recalled that furniture such as the cabinet was plastic-wrapped and moved with contents inside, rather than being emptied before moving.⁶⁸³ No one we interviewed recalled emptying the cabinet and packing its contents for the move to Delaware.⁶⁸⁴

In January 2023, FBI agents recovered two marked classified documents from a notebook found in the same file cabinet in the basement den of Mr. Biden's Delaware home.⁶⁸⁵ Both documents were dated from 2013, and one related to American troop levels in Afghanistan, while the other related to Iraq.⁶⁸⁶

February 2017 Secret Service Final Survey Report, USSS-0000523800; March 2017 Secret Service e-mails, USSS-0000313361, USSS-0000310321.

 $^{^{682}}$ Biden 10/8/23 Tr. at 79 ("[T]hey were all my files, I believe, or at least under my control [I]t wasn't like somebody filed their papers in my file cabinet."); Personal Aide 3 10/4/23 Tr. at 11-14, 43-44.

⁶⁸³ Dr. Biden Staffer 1 Tr. at 62, 66-67, 70-72.

⁶⁸⁴ *Id.*; 7/15/09 text messages between Dr. Biden Staffer 1 and Personal Aide 3, SCOH-000380; Personal Aide 3 10/4/23 Tr. at 54-56.

⁶⁸⁵ FBI Serials 44 1A56, 682.

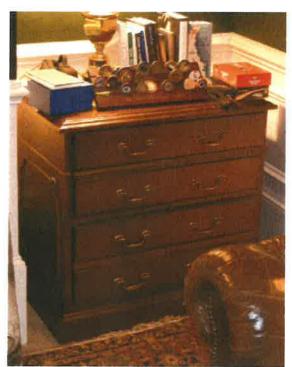
⁶⁸⁶ FBI Serial 683 1A772 C1, C2, C3, C4.



File cabinet in Virginia home's basement office (Sept. 21, 2017)⁶⁸⁷



File cabinet in Virginia home's basement office (March 8, 2018)⁶⁸⁸



File cabinet in Delaware home's basement den (Jan. 12, 2023)689

⁶⁸⁷ FBI Serial 89 1A92; 9/21/17 photograph taken in Virginia home, SCOH-000321.

⁶⁸⁸ SCOH-000767; FBI Serial 696 1A786.

 $^{^{689}}$ 1/12/23 photograph taken in Delaware home, FBI Serial 44 1A56 202301112_DSC_0005.

II. EVIDENCE THAT MR. BIDEN POSSESSED THE CLASSIFIED AFGHANISTAN DOCUMENTS IN THE VIRGINIA HOME

Some evidence suggests the Afghanistan documents were stored in the basement of the Virginia home from 2017 to 2019, moved in July 2019 to the Delaware home, and, at some point either before or after the move, transferred to the garage box, where they were finally found in the Delaware garage in December 2022. But we cannot rule out other explanations, including the possibility that the classified Afghanistan documents were left somewhere in Mr. Biden's Delaware home while he was vice president and forgotten there, until someone put them in the garage box after the 2019 move from the Virginia home to the Delaware home without realizing the documents contained classified information.

A. The dates of documents in the garage box suggest they were in the Virginia home

There are clues in the files themselves that suggest the contents of the garage box were moved from Virginia to Delaware. The garage box containing the Afghanistan documents also contained other documents with dates that correspond to dates when Mr. Biden's schedule shows him present at the Virginia home in and around February 2017 and afterward. The coinciding dates suggest that those documents were at the Virginia home with him during that period.⁶⁹⁰

⁶⁹⁰ FBI Serials 304 1A340, 179, FBI-00001343 (Schedules); 1B004-SHORT TERMISM 2-3-17-000001; 1B004-PLAN FOR YOUR FUTURE VANGUARD-000001; 1B004-MARK Z 2-16-17-000001. The garage box also included Biden's speeches, speaking engagement offers, and financial documents dated between March 2017 and March 2019. 1B004-2016 CAMPAIGN SPEECHES_LABOR-000017; 1B004-CAA - SPEECHES-000003; 1B004-INCOME AND EXPENSES 2016-000005-21; 1B004-GREEN FOLDER WITH DOCUMENTS-000002-28.

B. The garage box containing marked classified Afghanistan documents came from the move out of the Virginia home

Based on photographs we obtained, it is likely the garage box that was later found to contain the Afghanistan documents came to the Delaware home during the July 2019 move from Virginia to Delaware.

About a month after the move from Virginia to Delaware, in late August 2019, a photo shows what appears to be the same box as the garage box containing the Afghanistan documents, inside the Delaware home in Mr. Biden's main-floor office, immediately next to his desk.⁶⁹¹ The box is not seen in photographs of that space next to his desk from June 2019 (one month before the move).⁶⁹² Two months after the August 2019 photo of the box, in October 2019, another photo shows what appears to be the same box in the same place in Mr. Biden's office.⁶⁹³ Based on its size and markings, the box next to Mr. Biden's desk in the August and October 2019 photos appears to be of the same type as the boxes that moved from the Virginia home to the Delaware home in late July 2019.⁶⁹⁴

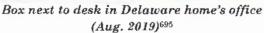
⁶⁹¹ 8/26/19 photograph, SCOH-000576; FBI Serial 625 1A720.

^{692 7/3/19} photos, SCOH-000774 and SCOH-000775

⁶⁹³ SCOH-000768. Our conclusion is based on close inspection of the box's distinctive markings and packing tape.

^{694 7/20/2019} photo, SCOH-000769; FBI Serial 679 1A768.







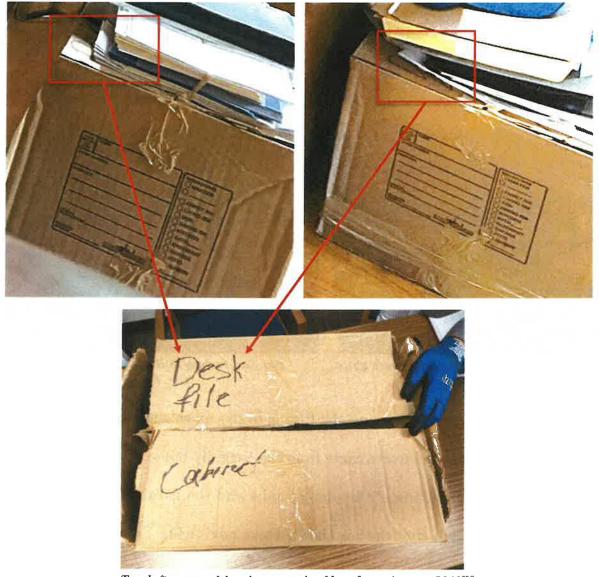
Box next to desk in Delaware home's office (Oct. 2019)⁶⁹⁶

The boxes shown above and the timing of the move suggest that the box next to Mr. Biden's desk in Delaware came from the Virginia home.

Upon close inspection of the photographs and the garage box itself recovered by the FBI, we conclude that the box shown above next to Mr. Biden's Delaware office desk in 2019 is the same as the garage box containing the Afghanistan documents found in Mr. Biden's Delaware garage in 2022. The words "Cabinet" and "Desk file" are handwritten on the top flaps of the recovered garage box. A portion of the "Desk file" handwriting can be seen on the box in the above photos from 2019 in Mr. Biden's Delaware office (magnified below):

⁶⁹⁵ 8/26/19 photograph, SCOH-000576; FBI Serial 625 1A720. Based on our review of the photographs, this cabinet pictured behind Mr. Biden's desk is not the same file cabinet from the basement office of the Virginia home.

⁶⁹⁶ SCOH-000768.



Top left: zoomed-in photograph of box from August 2019⁶⁹⁷
Top right: zoomed-in photograph of box from October 2019⁶⁹⁸
Bottom: photograph of garage box containing marked Afghanistan documents (Jan. 22, 2024)⁶⁹⁹

One possibility is that the classified Afghanistan documents were stored in the Virginia home, then placed in the box and moved to the Delaware home, where the box (with the Afghanistan documents inside) sat in Mr. Biden's office for several months between August and October 2019. But we cannot rule out other possibilities.

⁶⁹⁷ 8/26/19 photograph, SCOH-000576; FBI Serial 625 1A720.

⁶⁹⁸ SCOH-000768; FBI Serial 625 1A270.

^{699 1/22/24} photograph, GarageBox-001; Evidence item 1B87

The August and October 2019 photographs of Mr. Biden's Delaware office desk do not show the box's contents. When the garage box was recovered by the FBI in December 2022, it contained material dated between December 2019 and September 2020, after Mr. Biden moved out of the Virginia home and when he was living in the Delaware home. This means that at least some of the box's contents were added after the box was stored in Mr. Biden's Delaware home office in 2019. It is also possible that, sometime after the box was photographed in Mr. Biden's Delaware office in October 2019, someone put the classified Afghanistan documents into this box from elsewhere in the Delaware home, reusing the box for this purpose. One witness specifically recalled Mr. Biden reusing old boxes, even when they were damaged. In any case, the box containing the Afghanistan documents was eventually moved out of Mr. Biden's Delaware home office to the Delaware garage, where it was found in 2022.

We interviewed dozens of witnesses about the box and its contents, including Mr. Biden. All denied knowing that the classified Afghanistan documents were in the box, and all denied knowing when or how the box and its contents arrived in the garage, or who put them there. In the intervening years, boxes, furniture, the Corvette, and miscellaneous items were repeatedly moved in, out, and around the

⁷⁰⁰ 1B004-BOOK 2-000001177 (binder containing memos, schedules, and speeches dated between December 2019 and March 2020); 1B004-LOOSE DOCUMENTS AND PHOTO-000001-13; 1B004-CARDS-REMARKS AND NOTES-000001-73 (campaign speeches, schedules, and an event memo for Justice Ginsburg's memorial service dated between August 2019 to September 2020); Personal Aide 4 Tr. at 86-89. Secret Service emails show Mr. Biden also visited his beach house. *See, e.g.*, 6/13/20 e-mail between Secret Service agents, USSS-0000007733.

⁷⁰¹ NEA 1 Tr. at 123.

garage.⁷⁰² While staffers—and even Mr. Biden—recalled being in the garage and seeing boxes at various points, no one recognized the box containing marked classified documents or recalled moving boxes within the Delaware home to the garage.⁷⁰³

C. Investigation of the file cabinet that was moved from Virginia to Delaware was inconclusive

We also examined connections between the contents of the garage box and the file cabinet that moved from Virginia to Delaware, to investigate the possibility the Afghanistan files were at one time stored in the file cabinet. No witnesses recalled removing files from the cabinet.⁷⁰⁴ Ultimately, the investigation was inconclusive.

* * *

Independent of the February 2017 Zwonitzer recording, the dates of the files in the garage box and the way the box was labeled suggest that some or all the files in the garage box, including the classified Afghanistan documents, may have been moved from the Virginia home to the Delaware home in 2019, before they were found in a box in the Delaware garage in 2022. But there are alternative explanations for how the Afghanistan documents got into the garage box that are also consistent with the evidence described above. As discussed in Chapter Eleven, we find the evidence

⁷⁰² 1/20/23 FBI photographs of garage, 20230120_JLH_0027 and 20230120_JLH_001 8; 12/21/22 FBI photograph, 20221221_ERT_0013; April 2018 through December 2022 Mechanic records, SCOH-000568; Photograph of Delaware residence, SCOH-000575; FBI Serial 625 1A720; Secret Service photographs of Delaware home, USSS-0000366970, USSS-0000262676; Campaign photographs SCOH-000770, SCOH-000771, SCOH-000772, SCOH-000773.

⁷⁰³ See, e.g., Personal Aide 4 Tr. at 112-113; Director of Oval Office Operations Tr. at 64-70; Dr. Biden Personal Aide Tr. at 113-118.

⁷⁰⁴ NEA 1 Tr. at 111-12; Personal Aide 4 Tr. at 147-48 (doesn't remember going through the cabinet); Director of Oval Office Operations Tr. at 115 ("I have never accessed that, no.")

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as a whole insufficient to meet the government's burden of proving that Mr. Biden willfully retained the Afghanistan documents in the Virginia home in 2017.

CHAPTER EIGHT

MR. BIDEN'S FIRST BOOK, *PROMISES TO KEEP*, AND THE CLASSIFIED SENATE DOCUMENTS IN THE DELAWARE GARAGE

The Afghanistan documents were not the only marked classified documents in Mr. Biden's garage. FBI agents also found boxes containing organized files related to several international trips Mr. Biden took as a young senator in the late 1970s. 705 Like the 2009 debate over the troop surge in Afghanistan, Mr. Biden viewed these trips as seminal episodes in his public life. Indeed, in his 2007 memoir *Promises to Keep: On Life and Politics*, Mr. Biden described these trips as historic and formative experiences that prepared him for the presidency. 706

As explained below, some of the documents in these files were marked classified, though, because of the passage of time, we do not know whether Mr. Biden willfully retained the classified documents or consulted them when writing the book.

I. IN 2023, THE FBI FOUND FILES RELATED TO THE TRIPS CHRONICLED IN PROMISES TO KEEP IN MR. BIDEN'S DELAWARE GARAGE

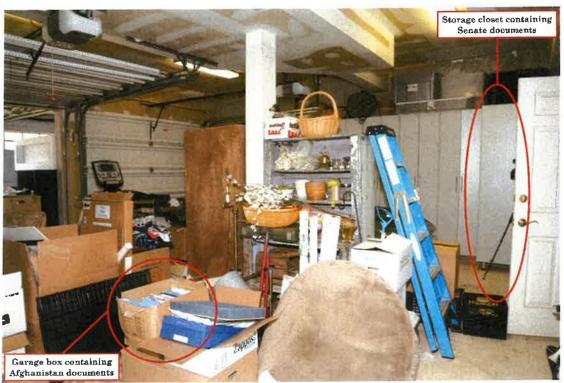
During the January 2023 search of Mr. Biden's Delaware garage, FBI agents recovered boxes labeled "International Travel 1973-1979" and "Foreign Travel." Agents found these boxes in a storage closet, in the same garage where they found the box containing the classified Afghanistan documents, as shown below. 708

⁷⁰⁵ Evidence items 1B17, 1B18.

⁷⁰⁶ Joseph R. Biden, PROMISES TO KEEP: ON LIFE AND POLITICS (Random House Trade Paperback ed. 2008).

⁷⁰⁷ Evidence items 1B17, 1B18.

⁷⁰⁸ FBI Serials 35, 77 1A86.



Garage box and storage closet in Mr. Biden's Delaware garage (Dec. 21, 2022)709



Interior of Mr. Biden's garage storage closet containing Senate documents (Jan. 20, 2023)⁷¹⁰

 $^{^{709}}$ 20221221_ERT_0013; FBI Serial 35 1A42.

⁷¹⁰ 20230120_FBI_0054; 20230120_FBI_0058; FBI Serial 35 1A42.

Like the box containing the classified Afghanistan documents, these boxes contained files and documents related to Mr. Biden's foreign policy experience and expertise—namely, organized files documenting his official foreign travel, including trips to the Soviet Union, West Germany, and Yugoslavia that he wrote about in his first book.⁷¹¹ The files contained handwritten notes, briefing materials, and travel itineraries related to the trips.⁷¹²

II. PROMISES TO KEEP

In 2007, Mr. Biden published a memoir titled *Promises to Keep: On Life and Politics*. As with his later book, Mr. Biden hired Zwonitzer as a ghostwriter.⁷¹³ Written in anticipation of Mr. Biden's run for president in 2008, *Promises to Keep* covered his life and political career from his childhood through his final years in the Senate.

In *Promises to Keep*, Mr. Biden discussed several international trips he took as a young senator in the late 1970s, including a congressional delegation to the Soviet Union where he met with the Soviet Premier, a trip to West Germany where he met with the Chancellor, and a trip to Yugoslavia, where he represented the United States at the state funeral of a Yugoslavian leader.⁷¹⁴

According to Zwonitzer, he and Mr. Biden included these anecdotes to show how then-Senator Biden gained experience in foreign policy "not just learning by being a staff member but by literally sitting across the table from people like [the

⁷¹¹ Biden, PROMISES TO KEEP 132, 143, 248; Evidence items 1B4, 1B17, 1B18.

⁷¹² Evidence items 1B17, 1B18.

⁷¹³ Biden, PROMISES TO KEEP 366; Zwonitzer 7/31/23 Tr. at 31-35.

⁷¹⁴ Biden, PROMISES TO KEEP 132, 142-43, 248-52.

Soviet Minister of Foreign Affairs]."⁷¹⁵ During a recorded interview with Zwonitzer, Mr. Biden explained that during these international trips, he learned the importance of foreign policy experience and that "[i]t matters what kind of personal relationships and rapport you can establish with foreign leaders."⁷¹⁶ Mr. Biden said that when he later considered a presidential run, he "was never worried . . . whether I could sit across [from] [Soviet President Leonid] Brezhnev or sit across from [British Prime Minister Margaret] Thatcher . . . or [that I would] sit there and be intimidated."⁷¹⁷

Promises to Keep put these anecdotes in a similar context. In discussing his decision to run for president in 1988, for example, Mr. Biden wrote that despite his relative youth, he felt he "measured up" to the other candidates in part due to his foreign policy experience:

I was just forty-two years old, but after a decade on the Senate Foreign Relations Committee and nearly that long on the Senate Select Committee on Intelligence, I knew the world and America's place in it in a way few politicians did. My education in foreign affairs wasn't just the time spent in committee hearings but in traveling the world and meeting leaders.⁷¹⁸

III. FOREIGN TRIPS CHRONICLED IN PROMISES TO KEEP

A. Mr. Biden's 1979 trip to Yugoslavia

One of the trips Mr. Biden wrote about was his 1979 trip to Yugoslavia to represent the United States at the state funeral of a Yugoslavian political leader. Mr. Biden described the trip as "a strange kind of awakening for me." He made the trip

⁷¹⁵ Zwonitzer 7/31/23 Tr. at 46-47.

⁷¹⁶ 1978-race.doc at 18, Zwonitzer-00009492.

⁷¹⁷ 1988.doc at 10, Zwonitzer-00009499.

⁷¹⁸ Biden, PROMISES TO KEEP 143.

⁷¹⁹ *Id.* at 248.

with Averell Harriman, one of America's most distinguished diplomats, who "adopted" Mr. Biden and served as his "own personal tutor."⁷²⁰ During the trip, Mr. Biden and Harriman had a private meeting with longtime Yugoslavian president and World War II hero Josip Broz Tito.⁷²¹ Mr. Biden called the meeting "remarkable," an opportunity to be in the room with "the last two living men who remembered" the Yalta Conference at the end of World War II.⁷²²

B. Mr. Biden's 1979 congressional delegation to the Soviet Union

Elsewhere in the book, Mr. Biden wrote that he observed the benefits of direct engagement with foreign leaders during a congressional delegation he led to the Soviet Union in 1979. The purpose of the trip was to discuss arms control and the SALT II strategic nuclear arms limitations agreement.⁷²³ In *Promises to Keep*, Mr. Biden described how he "gained the grudging respect" of his Russian counterpart during a frank and sometimes tense face-to-face meeting with the Soviet Premier, where Mr. Biden also met President Leonid Brezhnev.⁷²⁴

Mr. Biden also sought to put the trip in the larger context of his foreign policy expertise and political ambitions. As the 1988 presidential election approached, Mr. Biden explained, "it was becoming clear that the new Soviet leader, Mikhail Gorbachev, was looking for a partner to write the end to the Cold War. And there

⁷²⁰ Biden, PROMISES TO KEEP 248.

⁷²¹ *Id.* at 248, 250-52.

⁷²² *Id.* at 251.

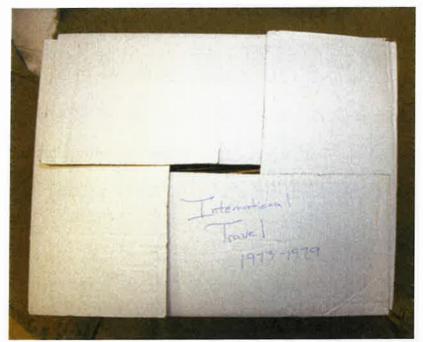
⁷²³ *Id.* at 143-45.

 $^{^{724}}$ *Id*.

wasn't anybody lining up to run for the nomination I thought would be a better partner than me."725

IV. THE FILES RELATED TO THE TRIPS CHRONICLED IN *PROMISES TO KEEP* IN MR. BIDEN'S DELAWARE GARAGE CONTAINED MARKED CLASSIFIED DOCUMENTS

One of the boxes containing organized files about the trips Mr. Biden wrote about in *Promises to Keep* contained marked classified documents from the late 1970s.⁷²⁶ The box labeled "International Travel 1973-1979" contained materials from Mr. Biden's trips to Asia and Europe, including trips to Yugoslavia and the Soviet Union.⁷²⁷ The box contained roughly a dozen marked classified documents that are currently classified at the Secret level.⁷²⁸



"International Travel" box containing marked classified documents (29)

⁷²⁵ Biden, PROMISES TO KEEP 146.

⁷²⁶ Evidence item 1B18.

⁷²⁷ Id.

⁷²⁸ Id.; Recovered documents D11-19.

⁷²⁹ 20211221_ERT_0102; FBI Serial 35 1A42.

For example, the "International Travel 1973-1979" box contained files related to the congressional delegation that Mr. Biden led to the Soviet Union in 1979.⁷³⁰ Inside the files were more than a dozen folders devoted to aspects of the trip, including Mr. Biden's travel itinerary, handwritten notes, letters, and briefing material.⁷³¹

The files also contained documents marked as classified. For example, a folder labeled "Senator Biden" stored several documents, including background information about Soviet officials.⁷³² These documents were marked "CONFIDENTIAL" and "CONFIDENTIAL NOFORN [not releasable to foreign nationals]."⁷³³ The intelligence community has determined that these documents are currently classified at the Secret level.⁷³⁴

The box also contained a file related to Mr. Biden's 1979 trip to Yugoslavia.⁷³⁵ A note on the front page indicates that the file consists of a "reproduction of the contents of [Mr. Biden's] Yugoslavia file."⁷³⁶ The file contained documents marked "Classified" and "Confidential" as well as a memo marked "SECRET."⁷³⁷ The

⁷³⁰ Evidence item 1B18.

 $^{^{731}}$ *Id*.

⁷³² *Id.*; Recovered documents D11-D19.

⁷⁸³ Recovered documents D11-D19.

⁷³⁴ FBI Serial 676; Recovered documents D11-D19. The reason for the change is that the relevant intelligence agency no longer uses the designation "Confidential." Information that was previously classified as "Confidential" is now classified as "Secret."

⁷³⁵ Recovered documents D04-D06, folder labeled "Yugoslavia."

⁷³⁶ Evidence item 1B18.

⁷³⁷ Recovered documents D04-D06, folder labeled "Yugoslavia."

intelligence community has determined that these documents are classified at the Secret level. 738

* * *

We were limited in our ability to investigate these documents because of the significant passage of time since their creation. Although we cannot prove that Mr. Biden retained these classified documents willfully or used them in writing *Promises to Keep*, he did write about the foreign trips that were the subject of the documents. And like the classified Afghanistan documents, the classified files in Mr. Biden's garage relating to the trips discussed in *Promises To Keep* were part of a larger set of materials in Mr. Biden's home chronicling his experiences and achievements, particularly in foreign policy.

⁷³⁸ FBI Serial 676.

CHAPTER NINE

LEGAL STANDARDS

Our investigation focused on the "possible unauthorized removal and retention of classified documents or other records discovered at the" Penn Biden Center, the University of Delaware, and Mr. Biden's personal residences. The criminal statutory provision that best fits the facts of our investigation is 18 U.S.C. § 793(e), a section of the Espionage Act that proscribes unauthorized retention and disclosure of national defense information. The law governing that crime is discussed below in sections I and II. We discuss other criminal prohibitions, and why they do not apply, in section III.

I. UNAUTHORIZED RETENTION OF NATIONAL DEFENSE INFORMATION

To prove unauthorized retention of national defense information under 18 U.S.C. § 793(e) the government must show: (1) the defendant had unauthorized possession of a document, writing, or note; (2) the document, writing, or note related to the national defense; and (3) the defendant willfully retained the document, writing, or note and failed to deliver it to an employee or officer entitled to receive it.⁷⁴⁰

⁷³⁹ Office of the Attorney General, Order No. 5588-2023, Appointment of Robert K. Hur as Special Counsel (January 12, 2023).

⁷⁴⁰ See United States v. Rosen, 445 F. Supp. 2d 602, 623-26 (E.D. Va. 2006), amended, Order, No. 1:05-cr-225, 2006 WL 5049154 (E.D. Va. Aug. 16, 2006); Court's Instruction to the Jury at 19, United States v. Brown, No. 21-cr-348 (M.D. Fla. Dec. 12, 2022), ECF No. 304; Government's Proposed Jury Instructions at 18, United States v. Sterling, No. 1:10-cr-485 (E.D. Va. Oct. 11, 2011), ECF No. 258; Final Jury Instructions at 44, United States v. Ford, No. 05-cr-235 (D. Md.).

A. Unauthorized possession

The Espionage Act does not define "unauthorized possession," but courts in recent decades have construed that language and a related phrase in the same statute ("entitled to receive") by referencing the executive order governing the handling of classified information in effect at the time of the conduct. As explained in Chapter One, under that executive order a private citizen's access to classified information is authorized only if he or she receives a favorable eligibility determination, signs an approved non-disclosure agreement, and has a need to know the information or obtains a formal waiver of that requirement. All Classified information must also be kept in approved and secure storage containers.

By implication from the exception in § 4.4 of the executive order, the restrictions on access to classified information in the order appear to govern a former

⁷⁴¹ United States v. Morison, 844 F.2d 1057, 1075 (4th Cir. 1988) (construing governing executive order and holding, "the words 'entitled to receive' in [18 U.S.C. § 793(d) and (e)] can be limited and clarified by the Classification Regulations "); Rosen, 445 F. Supp. 2d at 622 ("the rule regulating who is 'entitled to receive' is the Executive Order setting forth a uniform classification system for national security information"); see also United States υ. Hung, 629 F.2d 908, 919 n.10 (4th Cir. 1980) ("The trial judge provided adequate content for ('unauthorized possession') by advising the jury that a person would have authorized possession if he had an appropriate security clearance and if he gained access to the document because it was necessary to the performance of his official duties."). Jury instructions in Espionage Act cases have generally mirrored the executive order's requirements for access to classified information by defining unauthorized possession to mean that the possessor lacks a security clearance, lacks a need to know, or removes the information from its proper storage location. See Final Jury Instructions at 45, Ford, No. 05-cr-235; Government's Proposed Jury Instructions at 10, Sterling, No. 1:10-cr-485, ECF No. 258; Transcript of Jury Instructions at 194, United States v. Morison ("An individual has unauthorized possession of documents and writings when he possesses those under circumstances or in a location which is contrary to law or regulation for the conditions of his employment.").

⁷⁴² Executive Order 13526 §§ 4.1(a), 4.4.

⁷⁴³ Id. § 4.1(g); see 32 C.F.R. §§ 2001.43(b)(1) and (2), 2001.53; Office of the Director of National Intelligence, Intelligence Community Directive 705.

vice president, which Mr. Biden was between January 2017 and January 2021.⁷⁴⁴ Under the executive order's provisions, a former vice president (or former president) may receive a waiver of the need-to-know requirement, but only if a senior official of the agency that originated the classified information "determines in writing that access is consistent with the interest of national security" and "takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order[.]"⁷⁴⁵

For all of the classified materials recovered during this investigation, after the vice presidency, Mr. Biden did not receive a written waiver of the need-to-know requirement, and no agency official made the findings required by the executive order. Therefore, Mr. Biden's possession of those materials in unsecured spaces in his home after his vice presidency was unauthorized within the meaning of the Espionage Act.⁷⁴⁶

The White House Counsel's Office and Mr. Biden's personal attorneys have argued to us that, despite these requirements, the Presidential Records Act authorizes a former president or vice president to keep classified materials in locations that are not approved for storage of classified information at home, as long as those materials are not defined as presidential records under the Act. Counsel note

⁷⁴⁴ Executive Order 13526 § 4.4.

⁷⁴⁵ Id. §§ 4.1, 4.4; Trump v. United States, No. 22-13005, 2022 WL 4366684, at *8.

⁷⁴⁶ See Trump v. United States, No. 22-13005, 2022 WL 4366684, at *8; Superseding Indictment ¶¶ 18-19, United States v. Trump, et al., No. 23-cr-80101 (S.D. Fla. July 27, 2023), ECF No. 85.

that the Presidential Records Act excludes personal records (which can include diaries) from government ownership and preexisting White House guidance has interpreted the Act to exclude rough meeting notes from its definition of records. Pointing to Mr. Reagan's treatment of his diaries containing Top Secret/Sensitive Compartmented Information (as discussed in Chapter Ten), counsel contend that a former president or vice president may lawfully retain written national defense information provided it is not a presidential record under the Act and that Mr. Biden's notebooks, like Mr. Reagan's diaries, are not presidential records.

The approach that the Department and courts have taken in Espionage Act cases after passage of the Presidential Records Act cuts against this view.⁷⁴⁷ Courts and the Department have determined whether possession of national defense information is authorized principally based on the terms of the executive order. The order specifically addresses and is the primary source of law governing access to such information, in contrast with the Presidential Records Act, which mentions classified material in just one irrelevant provision.⁷⁴⁸ The executive order's restrictions on access to classified information also appear to apply to former presidents and vice presidents.⁷⁴⁹ We therefore decline to adopt the argument that compliance with the

 $^{^{747}}$ E.g., Trump v. United States, No. 22-13005, 2022 WL 4366684, at *8; Superseding Indictment $\P\P$ 18-19, United States v. Trump, No. 23-cr-80101, ECF No. 85.

⁷⁴⁸ See 44 U.S.C. § 2204(a)(1)(A).

⁷⁴⁹ See nn.744-46 above.

Presidential Records Act authorizes former presidents and vice presidents to retain national defense information in unsecured and unapproved locations.⁷⁵⁰

As explained in Chapters Ten, Twelve, and Thirteen, we do consider the historical practices of former presidents and vice presidents—including Mr. Reagan's treatment of his diaries—when evaluating whether Mr. Biden acted willfully and when weighing the factors set forth in the Principles of Federal Prosecution.

B. Related to the national defense

The Espionage Act, including Section 793(e), is concerned with "information relating to the national defense," which is distinct from but related to the term "classified information." "Classified information" is defined by the executive order as information whose "unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security[.]" Information relating to the national defense (often referred to as "national defense information") is not defined in the Espionage Act and so its meaning has been construed by courts. As the Supreme Court held in the seminal case *Gorin v. United States*, "national defense" is a "generic concept of broad connotations, referring to military and naval

⁷⁵⁰ Additionally, the Presidential Records Act makes no mention of the relevant criminal statutes and there is no conflict between the Act and those criminal laws. *See Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) ("Absent a clearly expressed congressional intention, an implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute.") (cleaned up).

⁷⁵¹ Compare 18 U.S.C. § 793 (concerning information "relating to the national defense"), with 18 U.S.C. § 1924 (concerning "classified information of the United States," which is statutorily defined as "information originated, owned, or possessed by the United States Government concerning the national defense or foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure in the interests of national security.").

⁷⁵² Executive Order 13526 §§ 1.2, 1.4, 6.1(i).

establishments and the related activities of national preparedness."⁷⁵³ It includes "all matters directly and reasonably connected with the defense of our nation against its enemies."⁷⁵⁴

Information relating to the national defense must be "closely held" and not lawfully "made public" or "available to the general public."⁷⁵⁵ But "[t]he mere fact that similar but unofficial information is publicly available does not automatically remove information in closely-held documents from the realm of 'national defense' information."⁷⁵⁶

In determining whether information relates to the national defense under the Espionage Act, the fact that the information is classified is neither sufficient nor necessary, but it is "highly probative" evidence.⁷⁵⁷

⁷⁵³ Gorin v. United States, 312 U.S. 19, 28 (1941).

⁷⁵⁴ *Id.* at 30; see *United States v. Drummond*, 354 F.2d 132, 151-52 (2d. Cir. 1965) (applying *Gorin* definition to 18 U.S.C. § 794 and finding jury instructions "more than ample" where district court instructed jury to consider documents as well as testimony about their content and significance to determine whether standard was met).

⁷⁵⁵ Morison, 844 F.2d at 1071-72; see also Hung, 629 F.2d at 918 n.9 (publicly available information not national defense information under the Espionage Act); United States v. Dedeyan, 548 F.2d 36, 39-40 (4th Cir. 1978) (affirming jury instruction for Section 793(f) stating information did not relate to the national defense if it was "made public [by the government and] . . . is found in sources lawfully available to the general public" or if government "made no effort to guard such information").

⁷⁵⁶ United States v. Squillacote, 221 F.3d 542, 579 (4th Cir. 2000).

Charge at 22-23, *United States v. Schulte*, No. 17-cr-548 (S.D.N.Y. July 8, 2022), ECF No. 879 ("In determining whether material is 'closely held,' you may consider whether it has been classified by appropriate authorities and whether it remained classified on the date or dates pertinent . . . I caution you that the mere fact that information is classified does not mean that the information qualifies as NDI."); Court's Instructions to the Jury at 20, *Brown*, No. 21-cr-348, ECF No. 304 (same); Government's Proposed Jury Instructions at 44, *Sterling*, No. 1:10-cr-485, ECF No. 258 ("[Y]ou are to determine whether certain information in this case was national defense information. That is not the same as 'classified information.' However, you may consider the fact that information was classified in determining whether the

C. Willfully retains

Finally, the government must prove that a defendant willfully retained the material and failed to deliver it to an officer or employee "entitled to receive" the information. The statute does not define who is "entitled to receive" the information, so again, courts have looked to the governing rules concerning the handling of classified materials, primarily the executive order. The Generally, those entitled to receive the information are people with the requisite security clearance and the need to know.

Willfulness is a heightened *mens rea*, which as articulated by the Supreme Court in *Bryan v. United States*, requires proof "that the defendant acted with knowledge that his conduct was unlawful."⁷⁶⁰ Under the Espionage Act, an act is willful when "it is done voluntarily and intentionally and with the specific intent to do something that the law forbids. That is to say, with a bad purpose either to disobey or to disregard the law."⁷⁶¹ While willfulness requires proving an intent to disobey

information at issue was national defense information."); Final Jury Instructions at 46, Ford, No. 05-cr-235 ("In determining whether material is 'closely held,' you may consider whether it has been classified by appropriate authorities and whether it remained classified on the date or dates pertinent").

⁷⁵⁸ Morison, 844 F.2d at 1075 ("the words 'entitled to receive' in [18 U.S.C. § 793(d) and (e)] can be limited and clarified by the Classification Regulations . . ."); Rosen, 445 F. Supp. 2d at 622 ("the rule regulating who is 'entitled to receive' is the Executive Order setting forth a uniform classification system for national security information").

⁷⁵⁹ Rosen, 445 F. Supp. 2d at 622-23.

⁷⁶⁰ Bryan v. United States, 524 U.S. 184, 191-92 (1998); accord Ratzlaf v. United States, 510 U.S. 135, 136-37 (1994); United States v. Bursey, 416 F.3d 301, 308-09 (4th Cir. 2005).

⁷⁶¹ Morison, 844 F.2d at 1071; accord Court's Instructions to the Jury at 22, Brown, No. 21-cr-348, ECF No. 304; Government's Proposed Jury Instructions at 15, Sterling, No. 1:10-cr-485, ECF No. 258; Final Jury Instructions at 19, Ford, No. 05-cr-235.

the law, courts have applied *Bryan*'s standard of "simple willfulness" to Section 793(e) and rejected any need for the government to prove an intent to cause harm.⁷⁶²

Accordingly, to prove a violation of Section 793(e) we would need to show that Mr. Biden knowingly retained national defense information and failed to deliver it to an appropriate government official, and that he knew this conduct was unlawful. As discussed in more detail below, because of the interrelation between "national defense information" and "classified information," when evaluating a potential Section 793(e) charge, the Department considers whether the information the person possessed was classified and whether the person knew it was classified.

II. UNAUTHORIZED DISCLOSURE OF NATIONAL DEFENSE INFORMATION

Section 793(e) also prohibits the willful communication, delivery, or transmission of national defense information to a person not entitled to receive it. The first two elements, unauthorized possession and relating to the national defense, are identical to those addressed above in sections I.A. and I.B. The element of willful disclosure to a person not entitled to receive is addressed below.

⁷⁶² United States v. Hitselberger, 991 F. Supp. 2d 101, 107-08 (D.D.C. Dec. 3, 2013) (applying Bryan's willfulness standard to Section 793(e) and explaining "the core of 'willful' misconduct is to act with the knowledge or intent to disregard the law, not an evil intent to injure the United States"); United States v. Drake, 818 F. Supp. 2d 909, 918 (D. Md. 2011) (applying Bryan's willfulness standard to Section 793(e) and noting the definition is consistent with Fourth Circuit precedent predating Bryan); see also United States v. Kim, 808 F. Supp. 2d 44, 54 (D.D.C. 2011) (applying Bryan's willfulness standard to Section 793(d)).

A. Willfully communicates, delivers, or transmits to a person not entitled to receive

Just as with retention, disclosure under Section 793(e) requires that the defendant act willfully—that is, with the intent to do something the law forbids. A person is not entitled to receive national defense information if he or she lacks a need to know and an appropriate clearance as required by the executive order.

For an oral disclosure of information (as opposed to the disclosure of a classified document), the government must also prove that "the possessor has reason to believe [the information] could be used to the injury of the United States or to the advantage of any foreign nation."⁷⁶⁵ Accordingly, to establish that Mr. Biden violated Section 793(e) when he read information from his notebooks to his ghostwriter, we would need to prove that he acted with an intent to violate the law and had reason to believe the information he disclosed could be used to harm the United States or benefit a foreign nation.

 $^{^{763}}$ $Rosen,\,445$ F. Supp. 2d at 625-26 (applying will fulness standard to disclosure under Sections 793(d) and 793(e)).

⁷⁶⁴ See nn. 758-59 above: Chapter One.

⁷⁶⁵ 18 U.S.C. § 793(e); *Rosen*, 445 F. Supp. 2d at 625-26 (when disclosure involves intangible information government must prove this "additional and significant scienter requirement" that is analogous to bad faith, but this requirement does not apply in instances where the disclosure is through a tangible medium such as a document); *accord Drake*, 818 F. Supp. 2d at 917 ("Section 793(e) provides for different scienter requirements depending on the character of the national defense item or data that a defendant is charged with possessing. In cases like this one, involving documents, the defendant need only have acted willfully, as a defendant will more readily recognize a document relating to the national defense based on its content, markings or design than it would intangible or oral 'information' that may not share such attributes.").

III. OTHER CRIMINAL PROVISIONS

A. Other Espionage Act provisions

The other provisions of the Espionage Act do not fit the facts of this case. Subsections (a), (b), and (c) of Section 793 are facially inapplicable because at no point did we find evidence that Mr. Biden intended or had reason to believe the information would be used to injure the United States or to benefit a foreign nation, which is a requirement of those subsections. Subsection (d) also does not apply, because it requires a failure to deliver materials on demand, and when asked to return any classified materials from his vice presidency, Mr. Biden consented to searches and returned all potentially classified materials that were discovered.

Among other reasons, Section 793(f) does not fit because that subsection requires removal of national defense information from "its proper place of custody" by a person who has lawful possession. That is a difficult requirement to apply here because presidents and vice presidents are generally permitted to retain classified information at their residences while in office. Because Section 793(f) can only be violated when Mr. Biden had lawful possession (i.e. when he was vice president) any removal of classified information would have occurred while Mr. Biden was still vice president, when that conduct was not proscribed by the executive order issued

⁷⁶⁶ 18 U.S.C. § 793(a) requires acting "for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation." Subsections (b) and (c) incorporate this requirement by reference to "the purpose aforesaid."

⁷⁶⁷ 18 U.S.C. § 793(d) criminalizes conduct where the defendant "fails to deliver [the national defense information] on demand to the officer or employee of the United States entitled to receive it."

pursuant to the president's authority to control national security information. It is at least arguable that as vice president, Mr. Biden could not have removed national defense information "from its proper place of custody," as the statute requires, because his home and other locations were proper places of custody during his time in office. In any case, interpreting Section 793(f) to apply to a sitting vice president's conduct in that context would raise significant separation of powers concerns. The Where such concerns exist, the Supreme Court and the Department of Justice have declined to interpret statutes as applying to the president or vice president absent clear statutory text.

[&]quot;has the fundamental duty, under Art. II, § 1, of the Constitution, to 'preserve, protect and defend the Constitution of the United States."); Disclosure of Grand Jury Material to the Intelligence Community, 21 Op. O.L.C. 159, 172 (1997) ("The Constitution vests the President with responsibility over all matters within the executive branch that bear on national defense and foreign affairs, including the collection and dissemination of national security information.").

separation of powers, "[w]e would require an express statement by Congress" before applying the Administrative Procedure Act to the president); The Constitutional Separation of Powers Between the President and Congress, 20 Op. O.L.C. 124, 178 (1996) ("plain statement rule" is rooted in principles of constitutional avoidance and separation of powers); Application of Consumer Credit Reporting Reform Act of 1996 to Presidential Nomination and Appointment Process, 21 Op. O.L.C. 214, 214 (1997) ("It is a well settled principle of law, applied frequently by both the Supreme Court and the executive branch, that statutes that do not expressly apply to the President must be construed as not applying to him if such application would involve a possible conflict with his constitutional prerogatives."); Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges, 19 Op. O.L.C. 350, 351-53 (1995) (articulating the "well-settled principle that statutes that do not expressly apply to the President must be construed as not applying to the President if such application would involve a possible conflict with the President's constitutional prerogatives").

⁷⁷⁰ The Executive power is vested in the president, U.S. CONST. art. II § 1, and the vice president has limited constitutionally enumerated functions, U.S. CONST. art. I § 3, amends. XII, XX, XXV (vice president's constitutional duties include serving as president of the Senate, opening the certified votes from electors for the president and vice president, and duties related to the death, disqualification, or inability of the president). Thus, it could be argued that the separation of powers concerns giving rise to the express statement rule are

B. Unauthorized removal of classified materials

We also considered the applicability of 18 U.S.C. § 1924, which criminalizes the unauthorized removal of classified material by an officer, employee, contractor, or consultant of the United States. In addition to concerns about the statute's five-year limitations period, 771 the statute's text suggests that it should not apply to the conduct of a sitting president or vice president.

First, the statute requires removal "without authority," and when Mr. Biden was vice president he was authorized to take and keep classified materials at his private residences. Because any act of removal must have occurred when Mr. Biden was vice president, it was arguably done with authority.

Second, the statute does not explicitly apply to a president or vice president, and given the significant separation of powers concerns that would result from the statute's application to a sitting president or vice president, the express statement rule cautions against construing the statute to apply.⁷⁷²

less applicable to the vice president. See Mem. from Laurence H. Silberman, Dep. Att'y Gen., for Richard T. Burress, Office of the President, Re: Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution, at 2 (Aug. 28, 1974). Nonetheless, given that the vice president is an elected constitutional officer who is regularly delegated significant executive duties, the Department of Justice has long applied the express statement rule to vice presidents. Whether the Office of the Vice President is an "Agency" for Purposes of the Freedom of Information Act, 18 Op. O.L.C. 10, 11 (1994) ("Because the Vice President is also a constitutional officer, the same 'express statement' rule should apply" (citation omitted) in the context of determining whether the Freedom of Information Act applies to the Office of the Vice President.); Conflict of Interest Problems, at 5-6 (concluding that a federal conflict-of-interest statute does not apply to either the president or vice president because "[i]t would be strange for Congress to subject the President and the Vice President to possible criminal prosecution without naming them explicitly....").

⁷⁷¹ 18 U.S.C. § 3282.

⁷⁷² See nn.768-70 above.

Finally, because Section 1924 requires that a defendant "knowingly remove[d]" classified information "without authority and with the intent to retain [it] at an unauthorized location," a prosecution under this statute would face many of the same evidentiary hurdles discussed in Chapters Eleven and Twelve.

C. Removing, concealing, or destroying a government record

Title 18 U.S.C. § 2071 criminalizes removing, concealing, or destroying government records. While there is scant case law, most courts that have addressed the statute's elements have required proof that the defendant deprived, or attempted to deprive, the government of its ability to use a given record. 773 We found no evidence that the government was deprived of the use of any of the materials recovered during this investigation or that Mr. Biden acted with the intent to deprive the government of any record. In fact, no one in the government seems to have noticed that any classified materials were missing at any point from the time Mr. Biden left office on January 20, 2017, until marked classified documents were found at the Penn Biden

⁷⁷³ United States v. Hitselberger, 991 F. Supp 2d 108, 122-24 (D.D.C. March 5, 2014) (analyzing case law and concluding "the government will need to prove that [the defendant] obliterated information from the public record"); United States v. Rosner, 352 F. Supp. 915, 921 (S.D.N.Y. 1972); United States v. North, 708 F. Supp. 364, 369 n.3 (D.D.C. 1988); accord United States v. Poindexter, 725 F. Supp. 13, 20 (D.D.C. 1989) ("The obvious purpose of the statute is to prohibit the impairment of sensitive government documents"); McInerney v. United States, 143 F. 729, 730-31 (1st Cir. 1906) (Section 2071's predecessor statute was "enacted for the purpose of protecting records, papers, and proceedings of courts of justice, and papers, documents, and records filed or deposited in the public offices of the federal government"); United States v. De Groat, 30 F. 764, 765 (E.D. Mich. 1887) (the "essential element" of Section 2071's predecessor statute was "the specific intent to destroy them as records of a public office; or in other words, to obliterate or conceal them as evidence of that which constitutes their value as public records, or to destroy or impair their legal effect or usefulness as a record of our governmental affairs . . . "); but see United States v. Lang, 364 F.3d 1210, 1221-22 (10th Cir. 2004) (finding that "a copy of a government record itself functions as a record for purposes of § 2071"), cert. granted, rev'd on other grounds, 543 U.S. 1108 (2005), and opinion reinstated in part, 405 F.3d 1060 (10th Cir. 2005).

Center on November 2, 2022. It is therefore unlikely we could prove deprivation. Section 2071 also requires proof of willfulness, a heightened *mens rea* discussed above in sections I.C, II.A. And so even putting aside the issue of deprivation, any Section 2071 charge would fail for the same reasons discussed in Chapters Eleven and Twelve.

CHAPTER TEN

HISTORICAL BACKGROUND

I. HISTORICALLY, FORMER PRESIDENTS AND VICE PRESIDENTS TREATED ALL RECORDS AS PERSONAL PROPERTY

For most of our nation's history, presidents and vice presidents treated all records from their respective administrations—including records relating to issues of national security—as personal property that they took with them upon leaving office. 774 A congressionally commissioned study found in 1977 that, when leaving office, past presidents routinely took national security files including "briefing materials for the President, records of negotiations with foreign governments, correspondence with foreign heads of state or governments, [and] correspondence with or directives to agencies within the Executive branch on foreign affairs."775

The practice of outgoing presidents and vice presidents retaining their records was reconsidered in the 1970s, culminating in the passage of the Presidential Records Act in 1978.776 The Act provides that all "Presidential records"—documents created

The "long and unbroken history relating to the use, control, and disposition of presidential papers" and concluding "that Mr. Nixon, like every President before him, had a compensable property interest in his presidential papers"); Title to Presidential Papers—Subpoenas, 43 Op. Att'y Gen. 11, 11 (1974) (former presidents' ownership of materials from their administration was a matter of "almost unvaried understanding of all three branches of the Government since the beginning of the Republic"); FINAL REPORT OF THE NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS at 16 (March 31, 1977) ("The papers of Vice Presidents of the United States have traditionally been disposed of in the same manner as Presidential papers; that is, Vice Presidents have removed them when they left office.").

⁷⁷⁵ Final Report of the National Study Commission at 14-15.

⁷⁷⁶ Before the Presidential Recordings and Materials Preservation Act of 1974, which applied only to former President Nixon, "Presidents exercised complete dominion and control over their presidential papers." *Nixon*, 978 F.2d at 1277. "In 1978, Congress prospectively

or received by the president or his staff to assist or advise him in carrying out his official duties—belong to the government.⁷⁷⁷ In contrast, "[p]ersonal records" remain the property of the former officeholder.⁷⁷⁸

The Act defines "personal records" to mean "all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President."779 Such personal records include "diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business."780

While the Presidential Records Act marked a turning point in the treatment of presidential materials, as discussed in Chapter Nine, the Act does not exempt former presidents and vice presidents from specific prohibitions on removing, retaining, losing, or disclosing classified and national defense information.⁷⁸¹

After the Act's passage, at least one former president, President Reagan, left office with his presidential diaries, which contained classified information, and stored those diaries at his private home. The Department of Justice, the National Archives, and others knew that President Reagan treated his diaries (containing classified

abolished presidential ownership of White House materials with the Presidential Records Act." *Id.* at 1277 n.19.

⁷⁷⁷ 44 U.S.C. §§ 2201-02.

⁷⁷⁸ Id. §§ 2201-03; Nixon, 978 F.2d at 1277 n.19.

^{779 44} U.S.C. §§ 2201(3).

⁷⁸⁰ *Id*.

⁷⁸¹ See Executive Order 13526 §§ 4.1 4.4; 18 U.S.C. § 793.

information) as personal property, but no agency took action to recover the classified materials or to investigate or prosecute the former president.

II. THE REAGAN DIARIES

The first president subject to the Presidential Records Act, Mr. Reagan kept a diary in which he wrote an entry nearly each day while he served as president. His diaries contained information that was classified up to Top Secret/Sensitive Compartmented Information level, and remained so until 2007 or later, years after Mr. Reagan died. Mr. Reagan took all five volumes of his diaries home with him when he left office, and at that time, it was known to the Department of Justice, the Iran-Contra Independent Counsel, and the National Archives that (1) Mr. Reagan's diaries contained Top Secret classified information, and (2) Mr. Reagan treated his diaries as personal property that was not in the National Archives' possession. The

 $^{^{782}}$ Ronald Reagan, THE REAGAN DIARIES ix (Douglas Brinkley ed., First Harper Perennial Ed. 2009).

⁷⁸³ Other former presidents kept diaries or journals that they took with them after they left office. For example, President George H. W. Bush regularly kept a dictated diary that was later quoted extensively in published works. Interview by George W. Bush with Jon Meacham, Author, DESTINY AND POWER, (Nov. 8, 2015), https://www.cspan.org/video/?400044-2/destiny-power; JON MEACHAM, DESTINY AND POWER: THE AMERICAN ODYSSEY OF GEORGE HERBERT WALKER BUSH (Kindle ed. 2015); George H. W. Bush & Brent Scowcroft, A WORLD TRANSFORMED (First Vintage Books ed. 1999). President Carter also kept a dictated diary that was typed up by his secretary and that he took with him upon leaving office. Jimmy Carter, WHITE HOUSE DIARY xii-xv (2010). Mr. Carter published excerpts from that diary—keeping the original, full version with him at his home and transferring a copy to his presidential library. Id. While there is some reason to think that the Bush and Carter diaries may have also contained classified information, the historical record is clear that Mr. Reagan's diaries did and that relevant government entities knew of Mr. Reagan's possession of that material.

We also examined the practices of other former Presidents predating the Presidential Records Act, but we were unable to glean much from that inquiry. Like the key statutory provision, 18 U.S.C. § 793(e), the modern classification system did not come into being until the mid-20th century. See Cong. Research Serv., The Protection of Classified Information:

Department of Justice also repeatedly described the diaries in public court filings as Mr. Reagan's personal records.⁷⁸⁴

Mr. Reagan's personal possession of his diaries, and the fact that portions of his diaries were classified up to the Top Secret level, was also known to the Congress⁷⁸⁵ and the federal courts.⁷⁸⁶ In the wake of the Iran-Contra affair, Mr. Reagan produced relevant excerpts from his diaries to various investigative bodies, including congressional committees and the Independent Counsel.⁷⁸⁷ During the Independent Counsel's prosecution of former National Security Adviser John

The Legal Framework 1 (updated Feb. 2, 2023). Two Presidents during this period died in office (Franklin D. Roosevelt and John F. Kennedy), and several appear to have entered agreements while in office expressly contemplating their continued access to classified information in their presidential papers after the end of their terms. See Letter for James B. Rhoads and Robben W. Fleming from Gerald R. Ford, annex B, § 5(c)(vii), (d), (g) (Dec. 13, 1976), https://www.fordlibrarymuseum.gov/library/forddeed.asp; Letter for Lawson B. Knott, Jr., from Lyndon B. Johnson, §§ 2(c)(ii) & (e), 5 (Aug. 13, 1965), reprinted in 111 Cong. Rec. 21661-62 (1965); Letter for Franklin Floete from Dwight D. Eisenhower, §§ 5, 7(a), 8 (Apr. 13, 1960), reprinted in The "Public Documents Act": Hearings on H.R. 16902 and Related Legislation Before the Subcomm. on Printing of the H. Comm. on H. Admin., 93d Cong., 2d Sess. 134 (1974). Nor were we able to find specific evidence that the Department of Justice was contemporaneously aware of any instances where these earlier Presidents kept classified materials without appropriate safeguards. For these and other reasons, what we have been able to discern about the earlier history sheds little light on the question at hand and our analysis focuses on the Reagan diaries as the most probative historical example.

⁷⁸⁴ See, e.g., Memorandum in Support of Motion to Quash Subpoena to Archivist and Statement of Interest by the Department of Justice at 5-6, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG) (D.D.C. Dec. 6, 1989) (DOJ Mot. to Quash in *Poindexter*).

⁷⁸⁵ Lawrence Walsh, FINAL REPORT OF THE INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS: VOLUME III at 686 n.30 (1993) ("Access to the President's relevant diary entries was provided by the President to the Tower Commission, the Congressional Committees and to the Independent Counsel, who reviewed them in 1987.").

⁷⁸⁶ United States v. Poindexter, 732 F. Supp. 135, 137-41 (D.D.C. Jan. 30, 1990).

⁷⁸⁷ Memorandum of Points and Authorities in Support of Motion by Former President Ronald W. Reagan to Quash Subpoena at 32-33, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG) (D.D.C. Dec. 6, 1989) (Reagan Mot. to Quash in *Poindexter*); David E. Rosenbaum, *Reagan Will Allow Investigators to See Diary Items on Iran Affair*, N.Y. TIMES (Apr. 9, 1987), https://www.nytimes.com/1987/04/09/world/reagan-will-allow-investigators-to-see-diary-items-on-iran-affair.html.

Poindexter, Poindexter sought Mr. Reagan's diary entries for purposes of his criminal defense. Reagan left office, the Department of Justice and the U.S. District Court both acknowledged that Mr. Reagan's diaries contained information that was classified, including Top Secret information about sensitive matters.

While this litigation was ongoing, Mr. Reagan was a private citizen living in California, where he kept his diaries at his private home, apparently outside of facilities that were authorized to store Top Secret information. According to the editor of the published versions of Mr. Reagan's diaries, "[f]or several years after their return to California, the Reagans would often sit together in their den after dinner, reading aloud from their diaries and reminiscing about their White House years." While it is unlikely that, after leaving office, Mr. Reagan's den was approved for the storage of Top Secret/Sensitive Compartmented Information, Mr. Reagan retained Secret Service protection at his home for the remainder of his life. Reagan maintained the ability to receive and handle classified information after leaving the

⁷⁸⁸ Memorandum in Support of Motion to Quash Subpoena to Archivist and Statement of Interest by the Department of Justice at 5-6, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG) (DOJ Mot. to Quash in *Poindexter*); Lawrence Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters: Volume III* at 686 n.30 (1993).

⁷⁸⁹ E.g., DOJ Mot. to Quash at 5-7, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG); *Poindexter*, 732 F. Supp. at 137-41.

⁷⁹⁰ See Ronald Reagan, THE REAGAN DIARIES x (Douglas Brinkley ed., First Harper Perennial ed. 2009).

⁷⁹¹ *Id.* It is not clear that the Department of Justice knew, at the time of the *Poindexter* litigation, how Mr. Reagan's diaries were stored, or who had access to them.

⁷⁹² Act of Sept. 15, 1965, Pub. L. No. 89-186, 79 Stat. 791 (1965) (codified as amended at 18 U.S.C. § 3056); Former Reagan Official Tr. at 51-52 (Mr. Reagan's private residence had Secret Service protection that involved converting portions of the home into Secret Service Space. Former Reagan Official described the home as a "very tight secured 24/7 protected facility.").

White House, as he continued to receive national security briefings at his office space located a few miles from his home, and he consulted with President George H. W. Bush about foreign affairs. Notably, Secret Service agents collected daily intelligence briefing materials after Mr. Reagan had finished with them and ensured that they were properly destroyed.

The wider American public also knew of the existence of Mr. Reagan's diaries. Indeed, the diaries served as sources for at least three publications that Mr. Reagan or his representatives authorized: (1) An American Life, 795 Mr. Reagan's autobiography published in 1990; (2) Dutch, a biography authored by Edmund Morris and published in 1999; 796 and (3) The Reagan Diaries, a collection of the diaries themselves first published in 2007 after Mr. Reagan's death. 797 Notably, An American Life was being written during the Poindexter litigation 798 and includes dozens of verbatim quotations from Mr. Reagan's diaries. 799 And even as early as 1989, the classified nature of Mr. Reagan's diaries was discernable to any member of the public who read filings and opinions from the Poindexter litigation. 800

⁷⁹³ Former Reagan Official Tr. at 26-41.

⁷⁹⁴ Id

⁷⁹⁵ Ronald Reagan, AN AMERICAN LIFE (First Threshold trade paperback ed. Jan. 2011).

⁷⁹⁶ Edmund Morris, DUTCH (Random House 1999).

⁷⁹⁷ Ronald Reagan, THE REAGAN DIARIES (Douglas Brinkley ed., First Harper Perennial ed. 2009).

⁷⁹⁸ Robert Lindsey, GHOST SCRIBBLER: SEARCHING FOR REAGAN, BRANDO AND THE KING OF POP, Chapter 37 (2d ed. 2014) (explaining that ghostwriter Robert Lindsey began helping Mr. Reagan write the book after a March 1989 interview).

⁷⁹⁹ E.g., Reagan, AN AMERICAN LIFE 445-47.

⁸⁰⁰ E.g., DOJ Mot. to Quash at 5-7, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG); *Poindexter*, 732 F. Supp. at 137-41.

Mr. Reagan died in 2004.⁸⁰¹ In 2005, Nancy Reagan provided his diaries to the Reagan Library,⁸⁰² which is run by the National Archives,⁸⁰³ so that the diaries could be publicly displayed as part of the collection of Mr. Reagan's personal papers.⁸⁰⁴ At that time, the Archives worked with officials at the National Security Council to identify several pages of material that were still classified up to the Top Secret/Sensitive Compartmented Information level. Archives officials removed all pages containing classified information from the diaries so they could be publicly displayed.

Meanwhile, a historian reviewed the unclassified portions of Mr. Reagan's diaries and compiled a collection of them for publication in 2007.805 The Reagan Diaries was a bestseller,806 and a New York Times article from May 2007 remarked that "readers can get a retroactive sense of being in on some classified information."807 Today, anyone can view online the full set of Mr. Reagan's presidential diaries,

 $^{^{801}}$ Press Release, The White House, $Announcing\ the\ Death\ of\ Ronald\ Reagan$ (June 6, 2004), https://georgewbush-whitehouse.archives.gov/news/releases/2004/06/20040606-1.html.

 $^{^{802}}$ Anna Bakalis, $Library\ Gets\ First\ Look\ at\ 'Reagan\ Diaries',\ VC\ STAR\ (May\ 20,\ 2007),\ https://archive.vcstar.com/news/library-gets-first-look-at-reagan-diaries-ep-375630016-352887941.html.$

⁸⁰³ Ronald Reagan Presidential Library & Museum: About Us, Ronald Reagan Presidential Library & Museum, https://www.reaganlibrary.gov/about-us (last visited Feb. 2, 2024).

⁸⁰⁴ Interview of Michael Duggan & Douglas Brinkley (Apr. 27, 2007), https://www.c-span.org/video/?198343-1/the-reagan-diaries#.

 $^{^{805}}$ Anna Bakalis, $Library\ Gets\ First\ Look\ at\ 'Reagan\ Diaries',\ VC\ STAR\ (May\ 20,\ 2007),\ https://archive.vcstar.com/news/library-gets-first-look-at-reagan-diaries-ep-375630016-352887941.html.$

 $^{^{806}\,}BEST$ SELLERS: July 29, 2007, N.Y. TIMES (July 29, 2007), https://archive.nytimes.com/query.nytimes.com/gst/fullpage-9C05E7DD1431F93AA15754C0A9619C8B63.html.

⁸⁰⁷ Motoko Rich, *History Made Intimate Through Reagan's Diaries*, N.Y. TIMES (May 3, 2007), https://www.nytimes.com/2007/05/03/books/03diar.html.

excluding a small number of excerpts that were redacted for personal reasons or national security concerns.⁸⁰⁸

There is no indication that Mr. Reagan acted with any ill intent, attempted to secret away his diaries, or hid their existence or content from appropriate authorities. Quite the opposite, he disclosed the existence of his diaries to several investigative bodies during the Iran-Contra investigations. And during the *Poindexter* litigation, Mr. Reagan's personal attorneys and the Department of Justice repeatedly asserted that the diaries were Mr. Reagan's personal property.⁸⁰⁹ But it was apparent his diaries contained classified information. Indeed, some diary entries specifically described information recorded there as "very hush, hush" or "top secret."⁸¹⁰ Some entries were obviously classified at the time he wrote them; some continued to be classified until at least 2007; and some contain national security information that appears to be sensitive to this day.⁸¹¹

⁸⁰⁸ E.g., White House Diaries, Diary Entry 01/20/1988, Ronald Reagan Presidential Foundation & Institute, https://www.reaganfoundation.org/ronald-reagan/white-house-diaries/diary-entry-01201988/ (last visited Feb. 2, 2024).

 $^{^{809}}$ Reagan Mot. to Quash at 1-2, $United\ States\ v.\ Poindexter,$ Crim. No. 88-0080-01 (HHG).

^{810 12/1/23} National Security Council production of classified excerpts from Reagan diaries.

⁸¹¹ We reviewed some of the materials that were deemed to be classified at the Top Secret/Sensitive Compartmented Information level when the National Security Council conducted prepublication review for the *Reagan Diaries*. While we did not submit those unpublished entries for a new classification review, the subject matter appears to us to be sensitive even today. 12/1/23 National Security Council production of classified excerpts from Reagan diaries. Additionally, National Archives officials seem to have inquired about the classification status of the diaries in 2022 and were told that the diaries remained classified at the Top Secret/Sensitive Compartmented Information level. NARA Employee Tr. at 61-63.

CHAPTER ELEVEN

ANALYSIS OF THE EVIDENCE - CLASSIFIED AFGHANISTAN DOCUMENTS

I. Introduction

There is evidence that, after his vice presidency, Mr. Biden willfully retained marked classified documents about Afghanistan and unmarked classified handwritten notes in his notebooks, both of which he stored in unsecured places in his home. He had no legal authority to do so, and his retention of these materials, and disclosure of classified information from his notebooks to his ghostwriter, risked serious damage to America's national security.

But the evidence falls short of proof beyond a reasonable doubt that Mr. Biden retained and disclosed these classified materials willfully. The Department's prior treatment of former presidents and vice presidents who kept national security materials also counsels against prosecution of Mr. Biden, as do the most relevant aggravating and mitigating facts presented here.⁸¹² Therefore, under established Department principles, we decline criminal charges against Mr. Biden relating to the classified Afghanistan documents and his classified notebooks.⁸¹³ We would do so even if we were not bound by the Office of Legal Counsel's legal conclusion that a sitting president may not be charged with federal crimes.⁸¹⁴

In reaching these conclusions, we consider two questions. First, whether the evidence proves beyond a reasonable doubt that a crime occurred; and then, if so,

⁸¹² See U.S. Dep't of Just., Just. Manual § 9-27.320 (2023).

⁸¹³ See id. at §§ 9-27.001, 9-27.220, 9-27.230 (2023).

⁸¹⁴ A Sitting President's Amenability to Indictment and Criminal Prosecution, 24 Op. O.L.C. 222, 260 (2000).

whether criminal charges are warranted. Thus, the Department's Justice Manual requires federal prosecutors to determine whether the person under investigation committed a federal offense and whether "the admissible evidence will probably be sufficient to obtain and sustain a conviction."815 Next, the Manual directs prosecutors to evaluate relevant aggravating and mitigating facts and to determine whether criminal charges are supported by a "substantial federal interest."816 A prosecutor should seek criminal charges only after considering each of these questions and making "a policy judgment that the fundamental interests of society require the application of federal criminal law to a particular set of circumstances[.]"817

We address the first question, the sufficiency of the evidence, for the classified Afghanistan documents immediately below, then for the classified notebooks in Chapter Twelve. We discuss the second question, whether criminal charges are otherwise warranted, for both sets of classified material in Chapter Thirteen.

II. THERE IS EVIDENCE THAT MR. BIDEN WILLFULLY RETAINED THE CLASSIFIED AFGHANISTAN DOCUMENTS

In a recorded conversation on February 16, 2017, at Mr. Biden's rental home in Virginia, Mr. Biden told Mark Zwonitzer that Mr. Biden had "just found all the

⁸¹⁵ U.S. Dep't of Just., Just. Manual § 9-27.220 (2023).

substantial federal interest, prosecutors should weigh "all relevant considerations," including: (1) federal law enforcement priorities; (2) the nature and seriousness of the offense; (3) the deterrent effect of prosecution; (4) the person's culpability; (5) the person's criminal history, or its absence; (6) the person's willingness to cooperate in the investigation or prosecution of others; (7) the person's personal circumstances; (8) the interests of any victims; and (9) the probable sentence or other consequences if the person is convicted; and (10) other relevant facts. *Id.* § 9-27.230.

⁸¹⁷ *Id.* § 9-27.001 (emphasis added).

classified stuff downstairs."⁸¹⁸ According to what Mr. Biden told Zwonitzer, "all the classified stuff" related to President Obama's 2009 decision to surge American troops to Afghanistan, and to a pivotal moment when Mr. Biden sent President Obama his handwritten Thanksgiving memo opposing the troop surge.⁸¹⁹ Photos of the Virginia home show that the lowest level "downstairs"—where Mr. Biden told Zwonitzer he had "just found all the classified stuff"—included rooms that Mr. Biden used as work and storage spaces.⁸²⁰

Six years later, during this criminal investigation, the FBI recovered marked classified documents relating to the debate over the 2009 Afghanistan troop surge in a box in Mr. Biden's Delaware garage. Place and documents were in folders that also contained drafts of Mr. Biden's Thanksgiving memo, other source documents for that memo, and other memos establishing Mr. Biden's strong contemporaneous opposition to the surge. The folders of classified Afghanistan documents appear to be files of Mr. Biden's creation, labeled in his handwriting, and containing memos and intelligence products he removed from the ordinary flow of paper he received as vice president. Inside Mr. Biden's home office, agents found his "Af/Pak 1" notebook with the classified Thanksgiving memo tucked inside.

⁸¹⁸ See Chapter Five.

⁸¹⁹ See Chapters Five and Six.

⁸²⁰ See Chapter Five.

⁸²¹ See Chapter Six.

⁸²² See *id*.

⁸²³ See id.

⁸²⁴ See id.

In the same box in the garage where FBI agents found the classified Afghanistan documents, agents also found other documents of great personal importance to Mr. Biden, including photos of his son Beau and documents Mr. Biden filed, accessed, and used in early 2017, during the same time he told Zwonitzer he found the classified documents about Afghanistan in his Virginia home.⁸²⁵ The evidence suggests that Mr. Biden maintained these files himself.

Mr. Biden had a strong motive to keep the classified Afghanistan documents. He believed President Obama's 2009 troop surge was a mistake on par with Vietnam.⁸²⁶ He wanted the record to show that he was right about Afghanistan; that his critics were wrong; and that he had opposed President Obama's mistaken decision forcefully when it was made—that his judgment was sound when it mattered most.⁸²⁷

This evidence provides grounds to believe that Mr. Biden willfully retained the marked classified documents about Afghanistan. If he was not referring to those documents—later found in his garage—when he told Zwonitzer he had "just found all the classified stuff downstairs," it is not clear what else Mr. Biden could have been referring to.⁸²⁸

Nevertheless, for the reasons below, we believe this evidence is not strong enough to establish Mr. Biden's guilt beyond a reasonable doubt.

⁸²⁵ See Chapters Five and Six.

⁸²⁶ See Chapter Six.

⁸²⁷ See id.

⁸²⁸ See Chapters Five and Six.

III. THE EVIDENCE FALLS SHORT OF ESTABLISHING MR. BIDEN'S WILLFUL RETENTION OF THE CLASSIFIED AFGHANISTAN DOCUMENTS BEYOND A REASONABLE DOUBT

In February 2017, when Mr. Biden told Zwonitzer he had "just found all the classified stuff downstairs," Mr. Biden was at his home in Virginia.⁸²⁹ In December 2022, the FBI recovered the marked classified documents about Afghanistan in the garage of Mr. Biden's home in Delaware, nearly six years later and over one hundred miles away.⁸³⁰ When the FBI recovered the documents in 2022, Mr. Biden was the sitting president, and he was authorized to have classified documents in his private home. Thus, any criminal charges would most plausibly depend on Mr. Biden's possession of the Afghanistan documents in the Virginia home in 2017, when he was not in office.

There are at least three defenses likely to create reasonable doubt as to such charges. First, Mr. Biden could have found the classified Afghanistan documents at the Virginia home in 2017 and then forgotten about them soon after. This could convince some reasonable jurors that he did not willfully retain them. Second, Mr. Biden might not have retained the classified Afghanistan documents in the Virginia home at all. They could have been stored, without his knowledge, at his Delaware home since the time he was vice president. This would rebut charges that he willfully retained the documents in Virginia. Finally, Mr. Biden could have found only some of the classified Afghanistan documents in the Virginia home in 2017—the ones in the manila "Afganastan" folder found in the garage box—and it is unclear whether

⁸²⁹ See Chapter Five.

⁸³⁰ See Chapter Six.

this folder contained national defense information. This too would rebut charges that he willfully retained national defense information, as required by the criminal statute.⁸³¹

We discuss each potential defense in turn.

A. Mr. Biden may have found the classified documents in Virginia in February 2017 and then forgotten about them

It is possible that Mr. Biden encountered the classified Afghanistan documents at the Virginia home in February 2017, told Zwonitzer about them, and then, soon after, forgot about them and did not willfully retain them. While such a swift and permanent bout of forgetfulness may seem implausible, several pieces of evidence provide some support for this possibility.

If Mr. Biden discovered classified documents at the Virginia home on February 16, 2017, when he told Zwonitzer he "just found all the classified stuff downstairs," it may not have been something he found memorable. Mr. Biden, after all, had seen classified documents nearly every day for the previous eight years. As vice president, he regularly—and permissibly—kept classified documents in his home.⁸³² When he spoke to Zwonitzer in February 2017, Mr. Biden had left the White House less than a month earlier. After more than forty years in the highest ranks of government, he was accustomed to having staff members attend to the details of handling, storing, and retrieving classified documents.⁸³³ For a person of his position, the presence of classified documents might not have been noteworthy, and it may have seemed

⁸³¹ See 18 U.S.C. § 793(e).

⁸³² See Chapter Three.

⁸³³ See *id*.

natural that someone else would inevitably take care of it, because, for Mr. Biden, that is how it had nearly always worked.

In response to this defense, the government could note that several weeks before the February 2017 conversation with Zwonitzer, just after leaving the vice presidency, Mr. Biden returned different classified material he found in the Virginia home, giving a slim binder of material possibly relating to foreign leader calls to his personal aide to return to the White House.⁸³⁴ One explanation is that Mr. Biden returned the binder of foreign leader calls because he did not care about it, whereas he intentionally kept the classified Afghanistan documents because he cared about them a great deal.

But another inference the evidence permits is that Mr. Biden returned the binder of classified material to the personal aide because, after leaving office, Mr. Biden did not intend to retain any marked classified documents. As Mr. Biden said in his interview with our office, if he had found marked classified documents after the vice presidency, "I would have gotten rid of them. I would have gotten them back to their source. . . . I had no purpose for them, and I think it would be inappropriate for me to keep clearly classified documents." Some reasonable jurors may credit this statement and conclude that if Mr. Biden found the classified Afghanistan documents in the Virginia home, he forgot about them rather than willfully retaining them.

Mr. Biden's own words to Zwonitzer provide some support for this conclusion.

In the recorded conversation when Mr. Biden told Zwonitzer he had "just found all

⁸³⁴ See Chapter Seven.

⁸³⁵ Biden 10/9/23 Tr. at 41.

the classified stuff downstairs," Mr. Biden's tone was remarkably casual. His sole reference to this discovery of classified documents was this brief aside. Mr. Biden did not sound surprised or concerned by the documents he referenced. While reasonable jurors could draw different conclusions from Mr. Biden's seeming nonchalance, one conclusion is that if Mr. Biden discovered classified documents, it simply was not significant to him and was something he could have quickly forgotten.

After all, the Afghanistan documents and the 2009 troop surge played no role in *Promise Me, Dad*, the book Mr. Biden wrote with Zwonitzer in early 2017.⁸³⁶ There is no reason to believe Mr. Biden intended to discuss the 2009 Afghanistan troop debate in his book, which, as explained in Chapter Five, covered his experiences in 2014 and 2015. In dozens of hours of recorded conversations with Zwonitzer in 2016 and 2017, when Mr. Biden talked about a vast array of topics, the Afghanistan documents never came up again.⁸³⁷ This may suggest that after February 16, 2017, the documents were simply not on Mr. Biden's mind.

Mr. Biden's memory also appeared to have significant limitations—both at the time he spoke to Zwonitzer in 2017, as evidenced by their recorded conversations, and today, as evidenced by his recorded interview with our office. Mr. Biden's recorded conversations with Zwonitzer from 2017 are often painfully slow, with Mr. Biden struggling to remember events and straining at times to read and relay his own notebook entries.⁸³⁸

⁸³⁶ See generally Biden, PROMISE ME, DAD; Chapter Five.

⁸³⁷ See generally FBI Serials 315, 335.

⁸³⁸ See generally id.

In his interview with our office, Mr. Biden's memory was worse. He did not remember when he was vice president, forgetting on the first day of the interview when his term ended ("if it was 2013 – when did I stop being Vice President?"), and forgetting on the second day of the interview when his term began ("in 2009, am I still Vice President?").839 He did not remember, even within several years, when his son Beau died.840 And his memory appeared hazy when describing the Afghanistan debate that was once so important to him. Among other things, he mistakenly said he "had a real difference" of opinion with General Karl Eikenberry, when, in fact, Eikenberry was an ally whom Mr. Biden cited approvingly in his Thanksgiving memo to President Obama.841

In a case where the government must prove that Mr. Biden knew he had possession of the classified Afghanistan documents after the vice presidency and chose to keep those documents, knowing he was violating the law, we expect that at trial, his attorneys would emphasize these limitations in his recall.

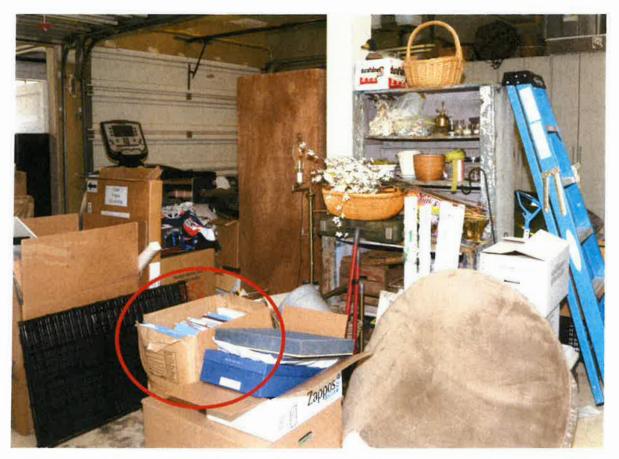
We also expect many jurors to be struck by the place where the Afghanistan documents were ultimately found in Mr. Biden's Delaware home: in a badly damaged box in the garage, near a collapsed dog crate, a dog bed, a Zappos box, an empty bucket, a broken lamp wrapped with duct tape, potting soil, and synthetic firewood.⁸⁴²

⁸³⁹ Biden 10/8/23 Tr. at 146; 10/9/23 Tr. at 45.

⁸⁴⁰ Biden 10/8/23 Tr. at 82-83.

⁸⁴¹ Biden 10/9/23 Tr. at 17; Recovered document D20.

⁸⁴² See Chapter Six.



Garage box with classified Afghanistan documents as encountered by FBI (Dec. 21, 2022)843

A reasonable juror could conclude that this is not where a person intentionally stores what he supposedly considers to be important classified documents, critical to his legacy. Rather, it looks more like a place a person stores classified documents he has forgotten about or is unaware of. We have considered—and investigated—the possibility that the box was intentionally placed in the garage to make it appear to be there by mistake, but the evidence does not support that conclusion.

Finally, Mr. Biden's cooperation with our investigation will likely cause some jurors to conclude that the Afghanistan documents were in his Delaware home by mistake, which is consistent with him forgetting about the documents soon after he

⁸⁴³ See id.

discovered them in the Virginia home. Most significantly, Mr. Biden self-reported to the government that the Afghanistan documents were in his Delaware garage and consented to searches of his house to retrieve them and other classified materials. He also consented to searches of other locations, and later in the investigation, he participated in an interview with our office that lasted more than five hours and provided written answers to most of our additional written questions.

Many will conclude that a president who knew he was illegally storing classified documents in his home would not have allowed a search of his home to discover those documents and then answered the government's questions afterwards. While various parts of this argument are debatable, we expect the argument will carry real force for many reasonable jurors. These jurors will conclude that Mr. Biden—a powerful, sophisticated person with access to the best advice in the world—would not have handed the government classified documents from his own home on a silver platter if he had willfully retained those documents for years. Just as a person who destroys evidence and lies often proves his guilt, a person who produces evidence and cooperates will be seen by many to be innocent.

To prove that Mr. Biden willfully retained the Afghanistan documents, the government must establish that he acted "with a bad purpose either to disobey or to disregard the law."844 Reasonable jurors could conclude that Mr. Biden discovered the

⁸⁴⁴ See Chapter Nine; Morison, 844 F.2d at 1071 (emphasis omitted); accord Court's Instructions to the Jury at 22, Brown, No. 21-cr-348, ECF No. 304; Government's Proposed Jury Instructions at 24, Sterling, No. 1:10-cr-485, ECF No. 258; Final Jury Instructions at 19, Ford, No. 05-cr-235.

Afghanistan documents in his Virginia home and then forgot about them almost immediately. Such jurors would likely acquit him.

B. The classified documents may never have been in the Virginia home

The second potential defense argument is that Mr. Biden may not have retained the classified Afghanistan documents in the Virginia home at all. While there is evidence that he did, most notably his recorded statement to Zwonitzer in February 2017, that evidence is not conclusive.

First, as discussed in Chapter Seven, while the evidence provides clues that the classified Afghanistan documents were stored in the Virginia home, there is no definitive evidence putting them there. Beyond the Zwonitzer recording, no witness, photo, e-mail, text message, or other evidence establishes that the documents were ever stored in Virginia. When considering charges that Mr. Biden willfully retained the classified documents in the Virginia home in February 2017, this absence of additional direct evidence that the documents were in the Virginia home in February 2017 is significant.

Second, the Zwonitzer recording itself is not conclusive. When writing *Promise Me, Dad*, Zwonitzer recorded dozens of hours of conversation with Mr. Biden, and those recordings show that Mr. Biden's statements were often imprecise and his meaning was not always clear.⁸⁴⁵ That was particularly true when Mr. Biden spoke elliptically or in asides, as he did when he briefly referenced finding "all the classified stuff downstairs." Given Mr. Biden's tendency towards loose talk with Zwonitzer—

⁸⁴⁵ See generally FBI Serials 315, 335.

and Mr. Biden's limited precision and recall during his interview with our office, discussed above—reasonable jurors may hesitate to place too much evidentiary weight on a single eight-word utterance to Zwonitzer from almost seven years ago, in the absence of other, more direct evidence.

Third, there are alternative explanations for Mr. Biden's statement to Zwonitzer that do not involve the classified Afghanistan documents later found in the Delaware garage. For example, Mr. Biden could have been referring to the collection of handwritten notebooks he kept when he was vice president. As discussed in Chapter Four, Mr. Biden retained more than a dozen such notebooks, which contained his handwritten notes from the President's Daily Brief and White House Situation Room meetings. Some of these notes were themselves classified. One of those notebooks was his Af/Pak 1 notebook, which contained his detailed notes about the 2009 Afghanistan policy review, and a copy of the handwritten Thanksgiving memo. 846

Mr. Biden explained in his interview with our office that he believed he gathered his notebooks in the Virginia home after moving in, which was at around the same time he met with Zwonitzer in February 2017.⁸⁴⁷ And we know from his recorded conversations with Zwonitzer that Mr. Biden planned to, and did, refer to some of his notebooks regularly while writing his book.⁸⁴⁸

⁸⁴⁶ See Chapter Six.

⁸⁴⁷ Biden 10/9/23 Tr. at 30, 40-41.

⁸⁴⁸ See Chapter Five.

Thus, some evidence suggests that when Mr. Biden told Zwonitzer he had "just found all the classified stuff downstairs," he could have been referring to his collection of notebooks, including his Af/Pak 1 notebook, which contained classified information. As explained in Chapter Twelve, we do not believe there are viable criminal charges against Mr. Biden for willfully retaining classified information in the notebooks.⁸⁴⁹ This would make the notebook explanation a potentially successful defense.

Another possible explanation is that Mr. Biden could have been referring to the slim binder of classified documents he found at the Virginia home shortly after leaving office and gave to his personal aide to return to the White House. As discussed above, this appears to have happened several weeks before Mr. Biden's recorded statement to Zwonitzer in February 2017.

This explanation seems improbable, as Mr. Biden said he "just" found the classified material, which typically suggests more recency—a matter of hours or days, rather than several weeks. And the personal aide recalled that Mr. Biden handed him a single slim binder or folder of material, which the aide believed related to calls with foreign leaders in the last week of the administration.⁸⁵¹ It is unlikely Mr. Biden was referring to such a small amount of material when he said he just found "all the classified stuff," and it would have been a non sequitur during a conversation about his decision-making on Afghanistan in 2009.⁸⁵² But our assessment that this

⁸⁴⁹ See Chapter Twelve for an analysis of the evidence pertaining to the classified notebooks.

⁸⁵⁰ See Chapter Seven.

⁸⁵¹ Personal Aide 3 3/28/23 Tr. at 197-212.

⁸⁵² See Chapter Five.

explanation seems unlikely does not make it unreasonable, and reasonable jurors could conclude that Mr. Biden's statement to Zwonitzer referred to classified information Mr. Biden had already found and returned.

Mr. Biden could also point to the possibility that the classified Afghanistan documents were never in Virginia but were stored elsewhere without his knowledge: for example, tucked away in his Delaware home since the time he was vice president. We cannot rule out that possibility. As discussed in Chapter Seven, if the documents were somewhere in the Delaware home for many years, someone must have moved them to the garage box after the move from the Virginia home to the Delaware home in July 2019, because that is likely when the garage box arrived in Delaware. But it is possible Mr. Biden or others moved the Afghanistan documents to the garage box without carefully reviewing the files or realizing they contained marked classified documents. As explained in Chapters Fourteen, Fifteen, and Sixteen, our investigation has revealed several other instances of Mr. Biden and others making similar filing mistakes.

Unlike most defendants in classified mishandling cases, Mr. Biden was allowed to have classified documents in his home for eight years as vice president. He also had layers of staff who were responsible for assembling, carrying, storing, and retrieving the types of classified briefing materials found among the Afghanistan documents.⁸⁵³ Even if Mr. Biden intended to keep the Afghanistan documents for some time while he was vice president—to help him write the 2009 Thanksgiving

⁸⁵³ See Chapter Three.

memo, for example, or as reference material for the Afghanistan policy debates to come in the later years of the Obama administration—it remains possible that Mr. Biden lost track of the documents in the nearly eight years that followed, and that he did not know he still had them after leaving office.

Mr. Biden's house was also filled with paperwork and other materials from almost five decades in government service. He kept boxes of files from nearly every political campaign he ran between 1972 and 2012; files documenting his more than thirty years in the Senate; files from his eight years as vice president; and files relating to his family, his house, his car, and his pets.⁸⁵⁴ It is possible the Afghanistan documents, which were in ordinary folders that were not packaged or marked as containing classified information, were needles in the haystack of Mr. Biden's papers.

While it is natural to assume that Mr. Biden put the Afghanistan documents in the box on purpose and that he knew they were there, there is in fact a shortage of evidence on these points. We do not know why, how, or by whom the documents were placed in the box. We do not know whether or when Mr. Biden carefully reviewed the box's contents. We do not know why only some of Mr. Biden's classified Afghanistan memos to President Obama from the fall of 2009 were found in the box, but several other memos he wrote during that time were not.⁸⁵⁵ And we do not know why Mr. Biden would have wanted to keep some of the other marked classified documents in

⁸⁵⁴ See generally FBI Serial 512, 1A614, FBI Serial 77, 1A86.

⁸⁵⁵ During the fall 2009 Afghanistan review, Mr. Biden wrote President Obama multiple additional classified memos opposing the troop surge. None of these memos were in the garage box with the other classified Afghanistan documents, and none of the memos were recovered during this investigation, though we obtained copies of the memos from the current White House. See Classified memos on file with Special Counsel's Office.

the box—in particular, a classified document relating to President Obama's secondterm foreign policy goals, which was kept in a folder right next to the Afghanistan documents, and which served no particular purpose of Mr. Biden's of which we are aware.⁸⁵⁶

The location of the box containing Afghanistan documents in a seemingly random place in the Delaware garage, and Mr. Biden's cooperation with our investigation—both discussed above—could provide additional reasons for jurors to conclude that the Afghanistan documents were stored in the Delaware home without Mr. Biden's knowledge, and were not in Virginia in 2017.

C. Mr. Biden may not have found the "Facts First" folder containing national defense information

A reasonable juror could also conclude that, even if Mr. Biden found classified documents about Afghanistan in his Virginia home in February 2017, and even if he remembered he had them after that day, and even if they were the same documents found in his garage six years later and one hundred miles away in Delaware, there is a shortage of evidence that he found both the "Afganastan" folder and the "Facts First" folder. This is important because even though the "Afganastan" folder contained documents that were marked classified in 2009, there are serious questions about whether those particular documents remain sensitive today, or when Mr. Biden met with Zwonitzer in 2017. Thus, the "Afganastan" folder alone is not a strong basis upon which to prosecute Mr. Biden for willfully retaining national defense information. And if Mr. Biden saw only the "Afganastan" folder and not the "Facts

⁸⁵⁶ FBI Serial 512, 1A614; B4, B5.

First" folder, which did contain national defense information, he did not willfully retain such national defense information.

This "only one folder" defense is not very strong, but it does find some support in the evidence. Mr. Biden spoke of finding "all the classified stuff downstairs" in the context of telling Zwonitzer about the 2009 handwritten Thanksgiving memo. ⁸⁵⁷ And the folder most closely associated with that memo is the "Afganastan" folder, which held the raw materials that we know Mr. Biden must have relied on when writing the Thanksgiving memo. The "Afganastan" folder contained previous handwritten and typewritten drafts of the Thanksgiving memo, some of which were incorporated nearly word-for-word into the final document. ⁸⁵⁸ The folder also held a November 2009 memo from Mr. Biden's communications director, and Mr. Biden incorporated portions of this memo, again nearly word-for-word, into the final Thanksgiving memo. ⁸⁵⁹ Thus, the evidence establishes that Mr. Biden used the documents in the "Afganastan" folder to write the 2009 Thanksgiving memo to President Obama.

Mr. Biden probably also used the documents in the "Facts First" folder when writing the Thanksgiving memo, but the connection between that folder and the memo is not as strong. The "Facts First" folder contains numerous documents relevant to the memo, but none of them are documents Mr. Biden *must* have used. And most of the materials in the "Facts First" folder were from September 2009, two months before Mr. Biden wrote the Thanksgiving memo.⁸⁶⁰

⁸⁵⁷ See Chapter Five.

⁸⁵⁸ See Chapter Six.

^{859 11/27/09} e-mail from Blinken to Klain, SCOH-000230.

⁸⁶⁰ FBI Serials 35 1A42, 512 1A614, 683 1A772; Recovered documents B6-B24.

Based on this difference between the two folders, some reasonable jurors may conclude that when Mr. Biden told Zwonitzer he "just found all the classified stuff downstairs," he may have been referring only to the "Afganastan" folder, which reminded him of his Thanksgiving memo. The "Afganastan" folder contained roughly a dozen marked classified documents, which could correspond to Mr. Biden's reference to "all the classified stuff" he found. And if Mr. Biden found the "Afganastan" folder, it is possible he did not continue looking through the contents of the separate "Facts First" folder, whose cover had no label or other indication that the materials inside related to Afghanistan.

None of these possibilities are particularly plausible. There is no reason to think, for example, that after identifying the contents of the "Afganastan" folder, Mr. Biden stopped looking through folders that were nearby, including the "Facts First" folder, and that he never returned to these materials.

But reasonable jurors who are unwilling to read too much into Mr. Biden's brief aside to Zwonitzer—"I just found all the classified stuff downstairs"—may find a shortage of evidence to establish that Mr. Biden looked through the "Facts First" folder, which is the only folder known to contain national defense information. These jurors would acquit Mr. Biden of willfully retaining national defense information from the "Facts First" folder.

D. For other reasons, a jury will be unlikely to unanimously convict Mr. Biden

Several additional facts would make it difficult for the government to present a case that reasonable jurors would unanimously find compelling.

First, the Afghanistan documents are now almost fifteen years old. While there is evidence that some contain national defense information, in general, they concern a conflict that is now over, in a country where there are no longer any American troops, about a subject (the 2009 troop surge) that has already been widely discussed in books and media reports. At a trial, we expect the defense would strongly challenge whether the documents still contain sensitive national defense information.

Second, Mr. Biden was allowed to have the Afghanistan documents in his home for eight years as vice president. And when the documents were discovered in his home in December 2022, he was again allowed to have them there as president. To prevail, the government must convince a jury to convict him for having the documents in his home in between, in February 2017, about a month after he left the White House. Because of the possibility that, even if Mr. Biden discovered the Afghanistan documents, he might have forgotten about them soon after, any criminal charges would likely be limited to the days or perhaps weeks surrounding his conversation with Zwonitzer in February 2017. It may be difficult to convince a jury they should care about Mr. Biden's brief illicit possession of documents from 2009, particularly since he was allowed to possess the same documents both before February 2017 (as vice president) and after (as president).

Third, as discussed to some extent above, Mr. Biden will likely present himself to the jury, as he did during his interview with our office, as a sympathetic, well-meaning, elderly man with a poor memory. While he is and must be accountable for his actions—he is, after all, the President of the United States—based on our direct

observations of him, Mr. Biden is someone for whom many jurors will want to search for reasonable doubt. It would be difficult to convince a jury they should convict him—by then a former president who will be at least well into his eighties—of a serious felony that requires a mental state of willfulness.

Finally, while jurors might not find reasonable doubt in any one of the evidentiary shortcomings identified above, some jurors may find reasonable doubt because of the cumulative effect of some or all of these shortcomings.

E. There is also insufficient evidence that Mr. Biden willfully retained the handwritten Thanksgiving memo

As explained in Chapter Six, inside the office of Mr. Biden's Delaware home, agents found his Af/Pak 1 notebook, which contained his handwritten notes about the 2009 Afghanistan troop reviews. In the front of the notebook, binder-clipped together, were the pages of the handwritten 2009 Thanksgiving memo in which Mr. Biden made his final argument to President Obama opposing the Afghanistan troop surge. The Thanksgiving memo discussed a November 2009 State Department cable, and the cable itself, which is marked as Confidential, is clipped to the memo.⁸⁶¹ In Mr. Biden's interview with our office, he said he "guess[ed]" he "wanted to hang onto [the Thanksgiving memo] for posterity's sake" because "this was my position on Afghanistan."⁸⁶² The handwritten memo, though unmarked, contains information that remains classified up to the Secret level.⁸⁶³ The State Department cable shows a

 $^{^{861}\,\}mathrm{FBI}$ Serials 77 1A86, 682, 683 1A772; Evidence item 1B66; Recovered document D20.

⁸⁶² Biden 10/9/23 Tr. at 21.

⁸⁶³ FBI Serial 676.

declassification date of November 2019, but the State Department has been unable to tell us if it has been formally declassified.⁸⁶⁴

Though the handwritten Thanksgiving memo has been determined to be currently classified, we cannot prove that Mr. Biden believed it was classified after leaving office in 2017. The memo was derived from at least one document that was marked as classified in 2009, but during his interview with our office, Mr. Biden said he did not consider the memo classified when he discussed it with his ghostwriter, Zwonitzer, in 2017.865 The memo concerned deliberations from more than seven years earlier about the Afghanistan troop surge, and in the intervening years those deliberations had been widely discussed in public, so Mr. Biden could have reasonably expected that the memo's contents became less sensitive over time. Because we cannot prove that he knew the memo was classified when he left office, we cannot prove that by retaining the memo, he willfully retained national defense information.

As for the State Department cable, it does not appear to contain national defense information today, and there is no reason to believe it did in 2017. Therefore, the cable cannot be the subject of a willful retention charge under Section 793(e). In addition, Mr. Biden told us in his interview that he does not recognize the marking "Confidential" as a classification marking. To him, the marking means the document should be held in confidence, but not necessarily that it is classified. 866 Although "Confidential" is, in fact, a category of classified information enumerated in the

 $^{^{864}}$ Id.

 $^{^{865}}$ See Chapter Six; Biden 10/9/23 Tr. at 31-33, 38 (explaining that the memo "wasn't a Top Secret thing," and was "not confidential in the classification sense").

⁸⁶⁶ Biden 10/9/23 Tr. at 24-25.

governing executive order, we would likely be unable to refute Mr. Biden's claim that he did not know this.

* * *

We conclude that the evidence is insufficient to meet the government's burden. In accordance with the Justice Manual, because we do not believe the government is likely to obtain a conviction at trial, we decline prosecution.

CHAPTER TWELVE

ANALYSIS OF THE EVIDENCE – CLASSIFIED NOTEBOOKS

There is evidence that when Mr. Biden left office in 2017, he willfully retained his classified notebooks—that is, he knew he kept classified information in notebooks stored in his house and he knew he was not allowed to do so. There is also evidence that Mr. Biden willfully disclosed classified information in his notebooks to his ghostwriter by reading it aloud to him. We conclude that this evidence does not establish Mr. Biden's guilt beyond a reasonable doubt. We therefore decline prosecution of Mr. Biden based on his retention of his notebooks and disclosure of information in them.

I. WILLFUL INTENT

A. There is evidence that Mr. Biden retained the classified notebooks, knowing he was not allowed to do so

As with the classified Afghanistan documents, there is evidence that Mr. Biden kept his notebooks after his vice presidency knowing they were classified and he was not allowed to have them.

The evidence shows convincingly that Mr. Biden knew the notebooks, as a whole, contained classified information. For eight years, he wrote in his notebooks about classified information during classified meetings in the White House Situation Room and elsewhere. He was familiar with the notebooks' contents, which included obviously classified information. When reviewing the notebooks with Zwonitzer, Mr. Biden sometimes read aloud classified notes verbatim, but he also sometimes

⁸⁶⁷ See Chapter Four.

appeared to skip over classified information, and he warned Zwonitzer that the material in the notebooks could be classified.⁸⁶⁸ Mr. Biden also stored the notebooks in a classified safe in the White House for a time as vice president because the notebooks were classified.⁸⁶⁹

In Mr. Biden's written answers to questions from our office, he called into question whether he knew the information in his notebooks was classified. In those answers, Mr. Biden explained that when he described material in his notebooks to Zwonitzer as "classified" he did not actually mean "classified." According to Mr. Biden, "I may have used the word 'classified' with Mr. Zwonitzer in a generic sense, to refer not to the formal classification of national security information, but to sensitive or private topics to ensure that Mr. Zwonitzer would not write about them." Biden qualified this answer by explaining, "I do not recall the specific conversations you reference with Mr. Zwonitzer, which took place more than six years ago." 871

This explanation—that "classified" does not mean "classified"—is not credible. At the time Mr. Biden met with Zwonitzer, Mr. Biden had nearly fifty years of experience dealing with classified information, including as a member of the Senate Select Committee on Intelligence, a member and Chairman of the Senate Committee on the Judiciary, a member and Chairman of the Senate Committee on Foreign

⁸⁶⁸ Zwonitzer recordings 170424 0091, Carved_000556, Carved_000571.

⁸⁶⁹ See Chapter Four.

⁸⁷⁰ Biden 10/1/23 written responses at 1. Mr. Biden said something similar during our in-person interview of him. Biden 10/9/23 Tr. at 32-33.

⁸⁷¹ Biden 10/1/23 written responses at 1.

Relations, and Vice President of the United States.⁸⁷² It is not plausible that a person of his knowledge and experience used the term "classified" in this context as a euphemism for "private."

Mr. Biden's explanation is even less credible in light of his actual words to Zwonitzer. As described below, among the times Mr. Biden spoke to Zwonitzer about classified information was when Mr. Biden handed Zwonitzer a notebook entry about a National Security Council meeting in the Situation Room and asked if Zwonitzer could read Mr. Biden's handwriting.⁸⁷³ Mr. Biden warned Zwonitzer, "Some of this may be classified, so be careful," and added, "I'm not sure. It isn't marked classified, but"⁸⁷⁴

This is not a reference to merely private material. In this context, when a former official of Mr. Biden's stature and experience warns someone without a security clearance to "be careful" because some information "may be classified," and then refers to "marked classified" material, the former official is talking about classified national security information.⁸⁷⁵ The evidence shows that Mr. Biden knew his notebooks contained such information.

There is also evidence that Mr. Biden knew he could not keep classified handwritten notes unsecured at home after his time as vice president.

⁸⁷² NARA_SCAN_00000904; Biden, Joseph Robinette (Joe), Jr., Biographical Directory of the United States Congress, https://bioguideretro.congress.gov/Home/MemberD etails?memIndex=b000444 (last visited Jan. 30, 2024).

⁸⁷³ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Evidence item 1B80.

⁸⁷⁴ Zwonitzer recording 170424 0091; 170424 0091 Tr. at 13-14; Evidence item 1B80.

⁸⁷⁵ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Evidence item 1B80.

1. Mr. Biden knew the purpose of classified handling rules: to prevent unauthorized disclosure of our nation's secrets

The basic principles of the system that protects classified information should be clear to anyone who understands why it is necessary to protect such material in the first place. Information is classified only if its unauthorized disclosure "reasonably could be expected to cause ... damage to the national security."876 To prevent such disclosure, people who access classified information must store it in authorized, secure places.877 And if classified information is disclosed, for example to a foreign adversary, it can damage national security whether it is typewritten or handwritten.878

These principles are familiar, even obvious, to anyone with experience handling classified information. And they have long been enshrined in the legal and policy regime used to safeguard our nation's secrets. That regime requires classified information to be safeguarded properly whether it is written by hand or typed on a keyboard.⁸⁷⁹

As noted above, when Mr. Biden left office in 2017, he had nearly fifty years of experience with classified information, including eight years in the second-highest position in the Executive Branch. He was deeply familiar with the measures taken to

⁸⁷⁶ Executive Order 13526 § 1.2.

 $^{^{877}}$ Id. § 4.1(g); 32 C.F.R. §§ 2001.43(b)(1) and (2), 2001.53 (2024); Office of the Director of National Intelligence, Intelligence Community Directive 705 (2010).

⁸⁷⁸ Under Executive Order 13526, information is classified only if "its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security," § 1.4, and "information" refers to "any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics." § 6.1(t).

⁸⁷⁹ See id. §§ 2.1, 6.1(i), 6.1(o), 6.1(p), 6.1(t).

safeguard classified information and the reasons for them. As Ron Klain, one of Mr. Biden's closest aides, explained, Mr. Biden "had traveled the world. He knew the risks that men and women were taking to gather this information and . . . felt a great deal of responsibility about it."880 And John McGrail, Mr. Biden's top lawyer at the end of the Obama administration, said he would be "surprise[d]" if Mr. Biden intentionally took classified materials home because he well knew, from extensive government experience, that disclosure "can harm sources and methods and the national security interests of the United States."881

2. Mr. Biden's public statements show he knew the restrictions on handling classified information after leaving office

Mr. Biden's public statements show he knew classified information must be safeguarded to protect intelligence sources and methods. As Mr. Biden has put it, "People know I take classified documents and classified information seriously."882 In a September 2022 interview with CBS, Mr. Biden said the following in response to a question about the marked classified documents allegedly found in Mr. Trump's private home:

Reporter: When you saw the photograph of the top secret documents laid out on the floor at Mar-a-Lago, what did you think to yourself? Looking at that image.

Mr. Biden: How that could possibly happen. How one—anyone could be that irresponsible. And I thought, what data was in

⁸⁸⁰ Klain Tr. at 52-53.

⁸⁸¹ McGrail 1/22/24 Tr. at 100-01, 111.

⁸⁸² Carol E. Lee, Ken Dilanian, Kristen Welker, and Zoë Richards, *Biden says he was* "surprised" to learn government docs were found at his former office, NBC NEWS (Jan. 10, 2023), https://www.nbcnews.com/politics/white-house/less-dozen-classified-documents-found-biden-office-sources-say-rcna65179 (last visited Feb. 2, 2024).

there that may compromise sources and methods? By that I mean names of people who helped or th-- et cetera. And it just-- totally irresponsible.⁸⁸³

Mr. Biden's emphatic and unqualified conclusion that keeping marked classified documents unsecured in one's home is "totally irresponsible" because it "may compromise sources and methods" applies equally to his own decision to keep his notebooks at home in unlocked and unauthorized containers. The notebooks, like the marked documents, contained classified information, the unauthorized disclosure of which could compromise intelligence sources and methods and damage national security.⁸⁸⁴ And Mr. Biden's public statements, during his vice presidency and after, demonstrate that he understands "classified information," not merely marked classified documents, is what must be protected.⁸⁸⁵ These statements undercut his purported belief that he could lawfully retain the classified information in his notebooks.

⁸⁸³ President Joe Biden: The 2022 60 Minutes Interview, CBS NEWS, at 12:09 (Sept. 12, 2022), https://www.youtube.com/watch?v=u1UC89H4Swc (last visited Feb. 2, 2024) (emphasis added).

⁸⁸⁴ See Chapter Four.

^{**}surprised" to learn government docs were found at his former office, NBC NEWS (Jan. 10, 2023), https://www.nbcnews.com/politics/white-house/less-dozen-classified-documents-found-biden-office-sources-say-rcna65179 (last visited Jan. 30, 2024); *Transcript And Audio: Vice Presidential Debate, NPR NEWS (Oct. 11, 2012), https://www.npr.org/2012/10/11/16275 4053/transcript-biden-ryan-vice-presidential-debate (last visited Jan. 30, 2024) (during a vice presidential debate in October 2012, Mr. Biden asserted that he had to be careful about safeguarding classified information when he said, "with regard to the ability of the United States to take action militarily, it is — it is not in my purview to talk about classified information").

Mr. Biden has also publicly acknowledged limits on how he may properly handle classified information in his home, even as a sitting president. In August 2022, he told reporters:

Reporter: Mr. President, in simple terms, is it ever appropriate for a

President to take home with them classified and top secret

documents?

Mr. Biden: Depending on the circumstance. For example, I have in my

home, a cabined-off space that is completely secure. I'm taking home with me today's PDB. It's locked. I have a person with me—military with me. I read it, I lock it back

up, and give it to the military.

Reporter: Without a specialized area in which you can declassify

documents, is it ever appropriate for a president to bring

classified and top secret documents home with them?

Mr. Biden: It depends on the document, and it depends on how secure

the room is.886

If Mr. Biden thought in 2022 that he was obligated to keep the PDB—the President's Daily Brief—secured in his home as a sitting president, he should have known in 2017 that as a former vice president and a private citizen he was not permitted to keep handwritten notes about the President's Daily Brief and other classified information in unlocked drawers in his home.

⁸⁸⁶ Remarks by President Biden Before Marine One Departure, The White House (Aug. 26, 2022), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/08/26/remarks-by-president-biden-before-marine-one-departure-18/ (last visited Jan. 30, 2024).

3. As vice president, Mr. Biden received advice from staff about the need to secure classified notes properly

Mr. Biden received advice from his staff about the need to secure classified information in the form of notes. In 2011, his first Counsel to the Vice President, Cynthia Hogan, advised him in writing that classified notes generated in the context of discussions with a historian "must be maintained in secure safes" and "stored in a secure facility." And as vice president, Mr. Biden stored his classified notebooks in a safe, at least for a time, in contrast with his decision after leaving office to keep the notebooks at home in unlocked and unauthorized drawers.888

4. After his vice presidency, Mr. Biden stored his classified notecards in a SCIF, but kept his classified notebooks in unlocked drawers at home

When Mr. Biden left office, he knew his staff decided to keep his classified notecards in a SCIF at the National Archives, and he knew his notebooks contained the same type of classified information. As he told his ghostwriter during a recorded interview in October 2016, the same staff who eventually arranged for careful storage of his classified notecards in an Archives SCIF "didn't even know" he also had possession of his notebooks, which he simply took home without informing his staff.889

After his vice presidency, Mr. Biden was reminded twice more that his classified notes should be secured in a SCIF: on each of the two days in 2017 when he visited the Archives SCIF to review his notecards in writing his book.⁸⁹⁰ The form he

⁸⁸⁷ 4/28/11 e-mail from Hogan to OVP staff, 1B001_02881349; 4/27/11 Briefing Memo from Hogan, 1B001_02881350.

⁸⁸⁸ See Chapter Four.

⁸⁸⁹ See id.

⁸⁹⁰ See *id*.

was required to sign at the Archives made clear he was accessing classified information that could not leave the SCIF, and that he had an ongoing obligation to protect this information.⁸⁹¹ And at the end of his first visit, Archives staff asked to see the notes he had taken during his review of the notecards, to ensure he was not removing and mishandling classified information.⁸⁹² It should have been clear to Mr. Biden that not only were his classified notecards required to be in a SCIF, he also could not take classified notes about those notecards home with him—and, by extension, he could not keep any classified notes at home at all.

5. Mr. Biden had strong motivations to ignore proper procedures for safeguarding his classified notebooks

Finally, Mr. Biden had strong motivations to ignore the proper procedures for safeguarding the classified information in his notebooks. He decided months before leaving office to write a book and began meeting with his ghostwriter while still vice president. After his vice presidency, the notebooks continued to be an invaluable resource that he consulted liberally. During hours of recorded interviews in which he read aloud from his notebooks in his private home, Mr. Biden provided raw material to his ghostwriter detailing meetings and events that would be of interest to prospective readers and buyers of his book. He also likely viewed the notebooks, like the marked classified documents related to Afghanistan recovered from his garage, as an irreplaceable contemporaneous record of some of the most important

⁸⁹¹ See id.

⁸⁹² See id.; NARA Archivist 1 Tr. at 56-59, 77-78, 81-82, 93-94, 122-23.

⁸⁹³ See Chapter Five.

⁸⁹⁴ See Chapter Four.

⁸⁹⁵ See id.

moments of his vice presidency. This record was valuable to him for many reasons, including to help defend his record and buttress his legacy as a world leader.

B. The evidence does not prove beyond a reasonable doubt that Mr. Biden willfully retained the notebooks

We do not believe this evidence would meet the government's burden at trial to prove Mr. Biden knew his handling of the notebooks broke the law. We expect Mr. Biden's defense would be that he thought his notebooks were his personal property and that he was allowed to take them home after his vice presidency, even if they contained classified information. Enough evidence supports this defense to establish reasonable doubt.

First, we expect Mr. Biden to offer direct evidence that he believed he was entitled to take the notebooks home. During his interview with the Special Counsel's Office, Mr. Biden was emphatic, declaring that his notebooks are "my property," and that "every president before me has done the exact same thing," that is, kept handwritten materials after his term in office, even if they contain classified material. Begin He also specifically cited the diaries President Reagan kept while in office, noting that they included classified information. Begin Mr. Biden repeated this theme in his written answers to our questions, writing that, "[l]ike presidents and vice presidents before me, I understand these notes to be my personal property.

At trial, we expect Mr. Biden to offer similar evidence of his subjective understanding. Such evidence would be admissible as to the element of willfulness,

⁸⁹⁶ Biden 10/9/23 Tr. at 41-43; Biden 10/8/23 Tr. at 111-12.

⁸⁹⁷ Biden 10/8/23 Tr. at 111-12.

⁸⁹⁸ Biden 12/1/23 written responses at 1.

which requires proof that Mr. Biden acted with intent to do something the law forbids. 899 And we expect the evidence of Mr. Biden's state of mind to be compelling—clear, forceful testimony that he did, in fact, believe he was allowed to have the notebooks. While the government could question this testimony's veracity as a convenient answer perhaps suggested by his attorneys after the discovery of his classified notebooks, such a suggestion lacks evidentiary support and Mr. Biden's testimony will likely carry significant weight with many jurors.

The government could also question the veracity of Mr. Biden's testimony by introducing evidence that he appears to have come to and acted on the belief that he could take home classified notes entirely on his own, without the advice or knowledge of any of his staff, including the Counsel to the Vice President, John McGrail. Based on the evidence we found, Mr. Biden appears to have consulted no one on this significant question. None of the witnesses we interviewed recalled Mr. Biden mentioning that he intended to take his classified notebooks home or that he believed he was permitted to do so, even during conversations in which McGrail told Mr. Biden that *all* of Mr. Biden's records—including all his notes—would be sent to the National

some states would not be admissible for crimes that require a less culpable mental state. United States v. Lankford, 955 F.2d 1545, 1550 (11th Cir. 1992) (when willfulness is at issue, a defendant is entitled to "wide latitude in the introduction of evidence tending to show lack of intent") (quoting United States v. Garber, 607 F.2d 92, 99 (5th Cir. 1979) (en banc)); see also Cheek v. United States, 498 U.S. 192, 203 (1991) (reversible error to instruct the jury to disregard evidence of defendant's belief that he was not required to pay taxes "as incredible as such misunderstandings of and beliefs about the law might be"). Indeed, the Supreme Court has admonished, in the context of a tax crime requiring proof of willfulness, "forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision." Cheek, 498 U.S. at 203.

⁹⁰⁰ McGrail 1/22/24 Tr. at 84-87, 97-119.

Archives.⁹⁰¹ When interviewed, McGrail recalled that Mr. Biden "understood why his documents were going to [the National Archives.] . . . He understood it and accepted it."⁹⁰² McGrail also told us the following:

- Mr. Biden never told McGrail that he was retaining any notes he took while vice president. 903 McGrail said Mr. Biden understood the approach of sending all his records to the National Archives so that archivists could separate presidential records from the rest. 904
- Mr. Biden never told McGrail that he was retaining any classified notes.⁹⁰⁵ McGrail said he would have expected that to be part of the conversation he had with Mr. Biden about the handling of his notes.⁹⁰⁶
- McGrail never advised Mr. Biden that he could bring home classified material of any kind. 907 Indeed, McGrail said he would be surprised to learn that Mr. Biden took classified materials home—even personal notes—knowing they were classified because (1) that would have been "inconsistent with everything that we were killing ourselves trying to accomplish," 908 (2) he knows his home is not a SCIF, 909 and (3) as former chairman of the Senate Foreign Relations Committee, Mr. Biden knew that classified information cannot be stored outside a secure facility because its disclosure can harm national security and compromise intelligence sources and methods. 910
- McGrail never spoke to Mr. Biden or anyone else about the Reagan diaries, or historical practices of presidents taking home classified diaries or other materials.⁹¹¹

⁹⁰¹ See Chapter Four.

⁹⁰² McGrail 1/22/24 Tr. at 115.

⁹⁰³ Id. at 84, 117.

⁹⁰⁴ Id. at 86-87, 115.

⁹⁰⁵ *Id.* at 98-99.

⁹⁰⁶ *Id.* at 117.

⁹⁰⁷ Id. at 107, 111-12.

⁹⁰⁸ Id. at 112.

⁹⁰⁹ Id. at 101.

⁹¹⁰ Id. at 100-01, 111.

⁹¹¹ Id. at 73-74, 119.

All that said, we expect Mr. Biden's defense at trial to remain fairly simple. According to McGrail, the only thing he recalls telling Mr. Biden about the disposition of his records was that all his records would go to the National Archives after the administration to separate personal from presidential records.⁹¹² McGrail says he never spoke to Mr. Biden about classified notes or how they should be stored.⁹¹³

From this, Mr. Biden will likely claim that McGrail outlined a cautious arrangement—not a legal requirement—to treat all his records as presidential records until the Archives could sort out what was personal. But, Mr. Biden will likely say, he never believed his notebooks, which he thought of as his personal diaries, fell within that arrangement. He treated the notebooks markedly differently from the rest of his notes and other presidential records throughout his vice presidency, for example, allowing staff to store and review his notecards, but not his notebooks. 914 This treatment, he will argue, and the extremely personal content of some of the notebooks, shows that he considered them to be his personal property. Mr. Biden's notebooks included gut-wrenching passages about his son's death and other highly personal material. 915 His claim that he believed he did not need to send what he considered to be his personal diary to be stored at a government facility will likely appeal to some jurors. 916

⁹¹² See Chapter Four.

⁹¹³ See *id*.

⁹¹⁴ See id.

⁹¹⁵ E.g., Notebook entries 1B57-0051, 54.

⁹¹⁶ The government could respond that many of the notebooks are unlike diaries because they contain work notes, including minutes of meetings of the National Security Council and other classified briefings. See Chapter Four. These notebooks do not meet the

We expect Mr. Biden also to contend that the presence of classified information in what he viewed as his diary did not change his thinking. As a member of the exclusive club of former presidents and vice presidents, Mr. Biden will claim that he knew such officials kept diaries, and he knew or expected that those diaries—like Mr. Reagan's—contained classified information. He also understood that former presidents and vice presidents took their diaries home upon leaving office, without being investigated or prosecuted for it. Thus, whatever McGrail now thinks of the matter, Mr. Biden will claim that it did not occur to him to store what he thought of as his personal diaries—which he held close for eight years—at the National Archives, and he certainly did not know that by failing to do so he committed a crime.

Contemporaneous evidence from immediately after the vice presidency supports this defense. In a recorded conversation with Zwonitzer on April 26, 2017, three months after leaving office, Mr. Biden said the following:

Mr. Biden:

I'm told by [a personal aide], I guess he checked with you, in order for me to get my, uh, get all those presidential notes I had for lunch, the luncheon meetings, I have to go to McGrail?

Assistant:

Yes, McGrail has them. We were supposed to turn it in and that is the last person who had them.

definition of "personal records" under the Presidential Records Act because they "relate to or have an effect upon the carrying out of" the duties of the vice president, and they are not "of a purely private or nonpublic character." 44 U.S.C. § 2201(3). But Mr. Biden will likely present a compelling case that he viewed the notebooks as his personal diaries or the rough equivalent. Indeed, in a recorded conversation with Zwonitzer, while reviewing a notebook entry about a national security meeting, Mr. Biden twice referred to the passage as a "diary entry." Carved_000556. And, as discussed extensively in Chapter Ten, Mr. Reagan's diaries contained several instances of classified information, the Department of Justice described them as his "personal records," and Mr. Reagan brought them home after his presidency without repercussion.

⁹¹⁷ See Chapter Ten.

Mr. Biden: OK. Uh. See if you can get me McGrail on the line

while I have you now. OK? And stay on okay?

Assistant: Got it sir. Hold on.

Zwonitzer: This is probably something that goes to the

presidential papers.

Mr. Biden: I don't think so. It was in between. I didn't

want to turn them in.

Zwonitzer: Right so, it's the gray area.⁹¹⁸

This exchange concerned Mr. Biden's handwritten notecards, which, like his notebooks, addressed both personal and official matters, and which also contained classified information. The evidence suggests, as explained above, that McGrail decided the classified notecards should be stored at the National Archives after the administration, with Mr. Biden telling Zwonitzer he did not want to do so. But when Zwonitzer suggested that the notecards might be "presidential papers"—that is, presidential records that are required by law to be stored at the National Archives—Mr. Biden disagreed. Mr. Biden explained that he did not think he was required to turn in the notecards and that he had not wanted to do so.

One interpretation of this exchange that the evidence permits is that, while Mr. Biden followed McGrail's advice to store the classified notecards in a SCIF at the Archives, he did not believe he was required to, and he thought that, at most, the notecards fell into an "in between" or "gray area." Indeed, when interviewed, McGrail

⁹¹⁸ Zwonitzer recording Carved_000599 (emphasis added); Carved_000599 Tr. at 3-4; FBI Serials 315, 335.

⁹¹⁹ See Chapter Four.

⁹²⁰ See id.

recalled that he advised Mr. Biden to turn over all his records, "whether personal or not," to the National Archives.⁹²¹ McGrail's advice was premised on a desire to avoid taking a constrained view of the Presidential Records Act's requirements, as McGrail believed former vice president Dick Cheney had, and the understanding that archivists would review Mr. Biden's notes and separate presidential records from the rest.⁹²² McGrail also said he believed that the notes were to be stored in a SCIF at the Archives due to their general sensitivity, not because they were classified.⁹²³

At trial, Mr. Biden would argue that the 2017 Zwonitzer recording is the best evidence of what he believed after the vice presidency, and it shows he did not believe he was legally required to store his notecards at the Archives, and that he thought the same about his notebooks. In this way, the Zwonitzer recording dovetails with Mr. Biden's expected defense at trial that the Presidential Records Act defined his notebooks as his personal property, and that the Act authorized him to keep these

⁹²¹ McGrail 1/22/24 Tr. at 83.

⁹²² *Id.* at 83.

⁹²³ Id. at 114. McGrail's recollection on this point is inconsistent with e-mails and other documents that suggest he knew the notecards contained classified information in late 2016 and early 2017. 10/7/16 e-mails between Ratner, Associate Counsel, McGrail, and others, NARAWH-00017698, NARAWH-00017743, NARAWH-00019307; 10/18/16 e-mails between Associate Counsel, McGrail, and others, NARAWH-00017820; 10/20/16 e-mail from Ratner to Ricchetti, McGrail, Kahl et al., 1B001_03798594; 11/14/16 e-mail from McGrail, SCOH-000340; 1/05/17 e-mail from Associate Counsel to McGrail, SCOH-000339; 1/5/17 and 1/6/17 e-mails between Associate Counsel, McGrail, and NARA Archivist 1, SCOH-000326, SCOH-000330, SCOH-000332, SCOH-000334; 1/6/17 Handwritten Note diary/notecards. It is also at odds with the recollection of the NARA archivist that McGrail told him the notecards contained classified information, NARA Archivist 1 Tr. at 56, 62, and the understanding of the associate counsel who helped McGrail arrange for the notecards to be stored at the Archives. In an interview with our office, she said that "it was the safest decision to have [the notecards] be in a SCIF since there w[ere] likely classified documents." Associate Counsel 8/29/23 Tr. at 9-10, 76 (emphasis added). McGrail's memory of these events could well have faded over the course of more than six years.

notebooks in his home, even if they contained classified information. That Mr. Biden was mistaken in his legal judgment is not enough to prove he acted willfully, which requires intent to do something the law forbids.⁹²⁴

The defense will buttress these claims by contending that other credible authorities, including at least one former president and the Department of Justice, also have concluded that a former president may keep handwritten notes even if they contain classified information. As discussed in Chapter Ten, the clearest historical example is President Reagan, who left the White House in 1989 with eight years' worth of handwritten diaries, which he kept at his private home in California. The Reagan diaries contained classified information, such as entries recounting National Security Council meetings and referencing highly sensitive intelligence sources and methods, including human sources and signals intelligence. Some entries that addressed sensitive subjects included descriptions such as "top secret" and "very hush hush," and some entries remained classified Top Secret as of 2007, decades after Mr. Reagan wrote them.

As we also describe in Chapter Ten, during the *Poindexter* litigation in 1989 and 1990, after Mr. Reagan's presidency, the Department of Justice took the position in public court filings that the diaries were both "currently classified" and Mr. Reagan's "personal records" that were not in the Archives' possession. 926 In a later

⁹²⁴ See Chapter Nine and n.899 above.

⁹²⁵ See Chapter Ten.

⁹²⁶ Memorandum in Support of Motion to Quash Subpoena to Archivist and Statement of Interest by the Department of Justice at 2-3, 6-7, 17 n.8, 20, *United States v. Poindexter*, Crim No. 88-0080-01 (HHG).

written order, the district court, after conducting an *in camera* review of diary excerpts, described the diaries as containing "classified and highly sensitive information" including an entry about "a certain top-secret and extremely sensitive activity."927

After these legal declarations by the Department and the court, the classified diaries remained in Mr. Reagan's private home for another fifteen years, until he died in 2004. And even though the Department of Justice publicly acknowledged that Mr. Reagan treated the diaries as his personal records and they were not in possession of the National Archives, to our knowledge neither the Department nor anyone else sought the diaries' return or initiated a criminal investigation.⁹²⁸

In short, there will be evidence at trial that at least one former president did what Mr. Biden now claims it was proper for him to do too: take his diaries home after leaving the White House, even though the diaries contained classified information. As indicated by letters we have received from the White House Counsel's Office and Mr. Biden's personal attorneys, the defense will argue that the Department of Justice blessed this view in Mr. Reagan's case by stating in public filings that the diaries were both classified and Mr. Reagan's personal records and by taking no recovery or enforcement action. Most jurors would likely find this precedent

⁹²⁷ United States v. Poindexter, 732 F. Supp. 135, 138 n.5, 141 (D.D.C. Jan. 30, 1990).

⁹²⁸ See Chapter Ten.

and Mr. Biden's claimed reliance on it, evidence of which we expect would be admitted at trial,⁹²⁹ to be compelling evidence that Mr. Biden did not act willfully.

The government could reply that, whatever the reasons for the Department of Justice's inaction in Mr. Reagan's case—including, perhaps, that former presidents have Secret Service protection indefinitely after leaving office, or simply that officials at the Department did not realize Mr. Reagan stored his diaries at home—the relevant executive order and controlling regulations require former presidents and vice presidents to store classified information in a secured location after their time in office. 930

While we agree with this statement of the law, and we recognize that the Reagan precedent is from a different era with a different legal landscape, we think jurors assessing Mr. Biden's guilt and intent will be persuaded less by what the government says in executive orders and agency regulations, and more by what the government actually has done (or not done) by way of enforcement among the small

⁹²⁹ Admissible evidence concerning a lack of willfulness can include legal materials upon which the defendant claims to have relied in forming the view that his conduct was not forbidden by law, so long as the defendant lays a proper foundation. *United States v. Powell*, 955 F.2d 1206, 1214 (9th Cir. 1991); see also United States v. Harris, 942 F.2d 1125, 1132 n.6 (7th Cir. 1991) (noting that, in the context of tax crimes requiring proof of willfulness, defendants can introduce expert testimony about case law "to the extent that the defendant claims actual reliance on that case law"); *United States v. Willie*, 941 F.2d 1384, 1392-98 (10th Cir. 1991) (to show lack of willfulness in a tax case, defendant can introduce evidence to prove his "descriptive" belief that the law does not apply to him, but not his "normative" belief that the law should not apply to him).

⁹³⁰ See Executive Order 13526 §§ 4.1, 4.4; Superseding Indictment ¶¶ 18-19, United States v. Trump, No. 23-CR-80101-AMC, ECF No. 85. It is not clear that the presence of Secret Service agents materially enhances the level of protection afforded to classified materials. Agents we interviewed said they focus on the protection of persons, not documents, and they do not monitor the movement of or access to documents. Secret Service Supervisor Tr. at 12-13; Secret Service Special Agent 1 8/24/23 Tr. at 27-29, 87-88; Secret Service Special Agent 2 Tr. at 31-33.

group of former presidents and vice presidents. Many jurors would conclude that, given the Department's treatment of Mr. Reagan, who kept his classified diaries for more than a decade before his death, it would have been plausible for Mr. Biden to believe he could properly keep his classified notebooks. Citing the relevant sources of law likely would not sway such jurors from this conclusion.

We also believe some of the same evidence that supports reasonable doubt for the classified Afghanistan documents also supports reasonable doubt for the notebooks, including Mr. Biden's cooperation with the investigation, his diminished faculties in advancing age, and his sympathetic demeanor. These factors will likely make it difficult for jurors to conclude he had criminal intent.

Finally, the two main sets of evidence summarized above, suggesting that Mr. Biden knew he was not allowed to keep classified notebooks, do not suffice to prove his willfulness beyond a reasonable doubt. The first set of evidence is that Mr. Biden, at his staff's insistence, stored his classified notecards in a SCIF at the Archives, and several months earlier in the fall of 2016 he told Zwonitzer "they didn't even know I have this [notebook]." This could suggest that Mr. Biden concealed his notebooks from staff to avoid restrictions on his access to or use of them.

But the defense will argue that this treatment of the notecards and notebooks is also consistent with an innocent explanation: Mr. Biden may have simply acquiesced to his staff's decision to store his notecards in the Archives SCIF, even though, as he suggested to his ghostwriter on April 26, 2017, he (like Mr. Reagan and

⁹³¹ See Chapter Four.

the Department of Justice before him) did not think he was required to do so. If that is what happened, Mr. Biden was not required to inform his staff that their (in his view) unnecessary advice could also apply to his notebooks. His failure to flag the notebooks for what he believed to be his staff's overly cautious treatment is not compelling evidence of willfulness. In the same vein, Mr. Biden could have concluded that the forms he signed about safeguarding classified information in the Archives SCIF were boilerplate paperwork that applied in most cases, but not to the handwritten materials of a former president or vice president, which historically have been treated as the former officeholder's personal property. And he could point to McGrail's current understanding that the notecards were stored in a SCIF simply to keep them secure, not because they were classified. 932

The second set of evidence concerns the guidance on "best practices" that Counsel Cynthia Hogan gave Mr. Biden in 2010 and 2011 about handling classified information, and his decision after receiving this guidance to store the notebooks in a safe in the White House. 933 This evidence, too, is consistent with innocence. By the time Mr. Biden left the White House in 2017, Hogan's guidance about storage in a safe was six years old, and Mr. Biden had long since stopped following it. The evidence suggests that he did not store his notebooks in a safe for the last several years of his administration, and no one in the White House raised concerns. 934

⁹³² McGrail 1/22/24 Tr. at 69-70, 113-14, 129-30.

⁹³³ See Chapters Three and Four.

⁹³⁴ See id.

While Mr. Biden may have recalled Hogan's advice and concluded that it meant he should not bring the notebooks home with him when he left the White House, there is no evidence he did so recall. And there would have been good reason for him not to think this way, especially since Hogan gave her 2010 advice seven years earlier during a meeting scheduled to last ten minutes, and Mr. Biden had long since stopped following her advice, which Hogan told us would have reflected best practices rather than legal requirements.⁹³⁵

For these reasons, we do not believe the government could prove beyond a reasonable doubt that Mr. Biden knew it was unlawful to retain his notebooks at his home after the vice presidency.

C. The evidence does not prove beyond a reasonable doubt that Mr. Biden willfully disclosed national defense information in the notebooks to his ghostwriter

We have also considered whether Mr. Biden willfully disclosed national defense information to Zwonitzer by reading certain passages of his notes, aloud and nearly verbatim, from national security meetings. Mr. Biden should have known that by reading his unfiltered notes about classified meetings in the Situation Room, he risked sharing classified information with his ghostwriter. But we do not believe the evidence supports charges of willful disclosure beyond a reasonable doubt.

At least three times, Mr. Biden read classified notes from national security meetings to Zwonitzer nearly verbatim. The first two incidents involved the same

⁹³⁵ See id.

 $^{^{936}}$ See 18 U.S.C. § 793(e) (prohibiting the willful transmission of national defense information).

notebook passage.⁹³⁷ On February 16, 2017, Mr. Biden appeared to explain to Zwonitzer that a notebook entry related to "a long meeting on the Security Council on – it probably was classified."⁹³⁸ Mr. Biden had skipped over this entry entirely during a recorded conversation with Zwonitzer several months earlier in October 2016.⁹³⁹ But during the February 16, 2017 recorded conversation, Mr. Biden read aloud to Zwonitzer portions of the notebook entry that contained classified information.⁹⁴⁰

Two months later, on April 10, 2017, during another recorded conversation with Zwonitzer, Mr. Biden turned to the same notebook entry and read additional classified portions aloud, again nearly verbatim.⁹⁴¹ He did so immediately after reviewing aloud highly emotional notebook entries about the death of his son Beau and other personal topics, which appeared on the pages right before the classified entry.⁹⁴²

This evidence shows that Mr. Biden disclosed classified information to Zwonitzer, who was not authorized to receive it. But the evidence falls short of proving that Mr. Biden did so willfully—that is, that he knew these notebook passages were classified and that he intended to share classified information with Zwonitzer. During the February 16, 2017 conversation, Mr. Biden appeared to say

⁹³⁷ See Chapter Five.

⁹³⁸ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence item 1B79; Evidence item 1B81.

⁹³⁹ See Chapter Five.

⁹⁴⁰ See id.

⁹⁴¹ See id.

⁹⁴² See id.

that the meeting his notes summarized—not his notes themselves—"probably" was classified.⁹⁴³ Though it was foreseeable that Mr. Biden's notes about a classified meeting would themselves be classified (which they were), the evidence does not prove definitively that Mr. Biden actually knew that, or that he intended to share classified information.

And during the April 10, 2017 meeting, jurors could well conclude that Mr. Biden read from the same classified entry without pausing to consider that it was classified, given his discussion of highly emotional topics with Zwonitzer just before he read the classified passage, and the lack of any pause before Mr. Biden launched into reading the classified entry. Though it would require jurors to find that Mr. Biden ignored or missed clear warning signs that he was sharing classified information with Zwonitzer in February and April 2017, we believe some reasonable jurors would likely reach that conclusion.

The third incident happened on April 24, 2017, when Mr. Biden read aloud to Zwonitzer portions of a different entry of classified notes from a National Security Council meeting, also nearly verbatim. When Mr. Biden could not read a particular word in the entry, he showed the entry to Zwonitzer but warned him, "Some of this may be classified, so be careful . . . I'm not sure. It isn't marked classified, but..."946

⁹⁴³ See *id*.

⁹⁴⁴ See id.

⁹⁴⁵ See id.

⁹⁴⁶ See id.

Mr. Biden nonetheless continued to read aloud and nearly verbatim portions of the same passage of his notes, some of which remain classified at the Secret level.⁹⁴⁷

Mr. Biden's decision to read notes nearly verbatim to Zwonitzer that Mr. Biden had just identified as potentially classified cannot be justified. But the evidence does not prove beyond a reasonable doubt that he intended to share classified information. Mr. Biden told Zwonitzer he was "not sure" the notebook passage he read was classified. That is enough to create reasonable doubt about whether Mr. Biden acted willfully.

There is also evidence that Mr. Biden took some steps to avoid sharing classified information with Zwonitzer. As explained in Chapter Five, Mr. Biden sometimes skipped over notebook passages to avoid reading classified information. And if called as a witness at trial, Zwonitzer would testify that Mr. Biden mentioned the need to be careful "because he was worried that there was a possibility that . . . some of this stuff [handwritten entries in the notebooks] could be classified," and, "there were things he couldn't tell me, lines he couldn't cross."948

Given the intelligence and military officials present and the topics discussed at the meetings Mr. Biden recounted for Zwonitzer, Mr. Biden should have realized that his notes did or were likely to contain classified information. But taken as a whole, the evidence will likely leave jurors with reasonable doubts about whether Mr. Biden knew he was sharing classified information with Zwonitzer and intended to do so. For these jurors, Mr. Biden's apparent lapses and failures in February and April

⁹⁴⁷ See id.

⁹⁴⁸ Zwonitzer 7/31/23 Tr. at 83.

2017 will likely appear consistent with the diminished faculties and faulty memory he showed in Zwonitzer's interview recordings and in our interview of him.⁹⁴⁹ Therefore, we conclude that the evidence does not establish that Mr. Biden willfully disclosed national defense information to Zwonitzer.

⁹⁴⁹ See Chapter Eleven.

CHAPTER THIRTEEN

Analysis of Principles of Federal Prosecution Factors

In addition to considering the sufficiency of the evidence, we have also evaluated "all relevant considerations" in aggravation and mitigation and determined that on balance, for both the marked classified Afghanistan documents and the classified notebooks, these factors do not warrant criminal charges.⁹⁵⁰

I. HISTORICAL PRACTICE

While in office, the president and vice president, like members of Congress and federal judges, are exempt from the ordinary rules governing classified information that apply to almost everyone else.⁹⁵¹ As discussed in Chapter Nine, presidents and vice presidents are constitutional officers whose handling of classified information supports their Article II functions of conducting foreign affairs and providing for the national defense.⁹⁵² After their time in office, for much of our nation's history, it appears that many former presidents and vice presidents knowingly retained information concerning national security without being subject to criminal investigations or charges. ⁹⁵³ This historical record is important context for judging

⁹⁵⁰ Memorandum for All Federal Prosecutors: General Department Policies Regarding Charging, Pleas, and Sentencing, Office of the Att'y Gen. (Dec. 16, 2022) at 1-2 (even if a prosecutor is able to obtain and sustain a conviction, "a prosecutor should not commence a prosecution if the prosecution would not serve a substantial federal interest," and in determining whether a substantial federal interest exists, the prosecutor should "weigh all relevant considerations," including nine enumerated factors); U.S. Dep't of Just., Just. Manual §§ 9-27.001, 9-27.230 (2023).

⁹⁵¹ See Chapter One.

⁹⁵² See nn.768-70 above.

⁹⁵³ See Chapter Ten.

whether and why to charge a former vice president (and president) such as Mr. Biden for the same acts taken by several of his predecessors.

With one exception, there is no record of the Department of Justice prosecuting a former president or vice president for mishandling classified documents from his own administration. The exception is former President Trump. It is not our role to assess the criminal charges pending against Mr. Trump, but several material distinctions between Mr. Trump's case and Mr. Biden's are clear. Unlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump, if proven, would clearly establish not only Mr. Trump's willfulness but also serious aggravating facts.

Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite. 954 According to the indictment, he not only refused to return the documents for months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it. 955 In contrast, Mr. Biden alerted authorities, turned in classified documents to the National Archives and the Department of Justice in 2022 and 2023, consented to the search of multiple locations including his homes, permitted the seizure and review of handwritten notebooks he believed to be his personal property, and in numerous other ways cooperated with the investigation. 956

 $^{^{954}}$ Superseding Indictment $\P\P$ 7-8, $United\ States\ v.\ Trump,\ No.\ 23-CR-80101-AMC,$ ECF No. 85.

 $^{^{955}}$ Id

⁹⁵⁶ See Chapter Two; see also U.S. Dep't of Just., Just. Manual § 9-27.230 (2023) (a person's willingness to cooperate is a relevant factor in determining whether prosecution is warranted).

With respect to Mr. Biden's notebooks, the Reagan precedent provides an additional reason to forgo criminal charges. The Department of Justice previously informed a court in public filings that Mr. Reagan's diaries were both "currently classified" and Mr. Reagan's "personal records." This should give the Department pause before now concluding that Mr. Biden will be charged with a crime for retaining his own classified writings. Such an about-face, without previous public warning that is sharper than the relevant executive order and regulations, would be seen by many to violate basic principles of notice and fairness. And even though it is possible the Department lacked knowledge of all the facts about how Mr. Reagan stored his diaries, officials knew they contained classified information and that Mr. Reagan was treating them as his personal records, and it appears no one ever asked how the diaries were stored or made efforts to recover them.

⁹⁵⁷ See Chapter Ten.

⁹⁵⁸ Other officials have been prosecuted for the retention of classified notes—most notably, David Petraeus, who served as a four-star general in the Army and later Director of the Central Intelligence Agency. See Plea Agreement at ¶ 1, United States v. Petraeus, 3:15cr-00047 (W.D.N.C. Mar. 3, 2015), ECF No. 2. There are significant similarities between Petraeus's case and Mr. Biden's, but the differences are more significant. First, Petraeus's retention of notebooks violated numerous nondisclosure agreements he signed as an employee of the Department of Defense. By contrast, by virtue of his unique constitutional role as vice president, Mr. Biden signed no such nondisclosure agreements or attestations. Second, Petraeus lied when questioned by FBI agents, telling them he had not provided classified information to his biographer. See id. at ¶ 32. Mr. Biden's case began with a proactive self-disclosure, and he has cooperated with the Department of Justice and special counsel by consenting to multiple searches of his personal residence and offices. Third, there was stronger evidence of willfulness in Petraeus's case, in light of his lies and obfuscations, whereas Mr. Biden has asserted his rightful ownership of his notebooks based on a long history of former presidents and vice presidents retaining diaries, notes, and other writings that contained classified information. Despite these important differences, Petraeus was charged only with a misdemeanor violation of 18 U.S.C. § 1924, a statute that, as discussed in Chapter Nine, is not applicable to the facts of this case.

⁹⁵⁹ See Chapter Ten.

In the past forty years, twelve men and women have served as president and vice president. At least two—Mr. Reagan and Mr. Biden—have kept handwritten notes containing classified material at their homes after leaving office. It is quite possible that others had or presently have such handwritten notes in their personal possession to this day. We have not identified aggravating facts that compel bringing the first prosecution of such actions here.

In reaching our decision, we did not consider every circumstance in which criminal charges against a former president or vice president for mishandling classified information may be warranted. But on the facts of this case, given the historical practices we have discussed, the evidence revealed in our investigation, and the extent of Mr. Biden's cooperation, criminal charges are not warranted.⁹⁶⁰

II. OTHER FACTORS

We have also considered other factors the Department traditionally applies when considering charges for mishandling classified information. Those factors are:

- (1) The volume of classified information and the manner in which it is stored;
- (2) The sensitivity of the information, including the level of classification and whether it is dated or recent;
- (3) Reasons the person retained the information;
- (4) Whether the information was disclosed to someone else, and under what circumstances:
- (5) Whether there is a potential foreign nexus;
- (6) Whether the person made false statements related to the retention; and

⁹⁶⁰ See 28 C.F.R. § 600.7 (explaining that "[a] Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice.").

(7) Other relevant aggravating and mitigating factors.

While these factors cut in different directions, on balance, they favor declination of charges against Mr. Biden.

The volume of classified information is not small, and while it could support a decision to being criminal charges, it does not require such charges. As for the sensitivity and recency of the information, the Afghanistan documents are relatively old and concern a conflict that is now over. The notebook entries contain some highly sensitive information that is more recent, dating as late as 2017. But Mr. Reagan also kept classified information at home in his diaries after his presidency.

If Mr. Biden retained the classified documents intentionally, he appears to have done so to defend his record and burnish his credentials to run for president. This factor counts against him. It is difficult to conceive of good reasons to risk the nation's security by mishandling classified information, and bolstering one's reputation is not one.

There is no evidence that Mr. Biden shared classified information with any foreign person. As discussed in Chapter Twelve, though, he did share classified information with Zwonitzer by reading from classified notebook entries to Zwonitzer nearly verbatim. These entries included entries concerning human intelligence sources, as well as entries that Mr. Biden had previously identified as classified or potentially classified. Mr. Biden's decision to take home notebooks knowing that as a whole they contained classified information, and then read verbatim notes from

⁹⁶¹ See Chapter 5.

national security meetings to his ghostwriter—recognizing those notes were at least potentially classified—counts squarely in aggravation.

We cannot prove that Mr. Biden made any false statements related to his retention of classified information. As noted in Chapter Twelve, he provided one answer to our written questions that was not credible—that when he described his notebook entries to Zwonitzer as classified or potentially classified, he did not really mean "classified," he merely meant "private."962 But, while incredible, we cannot prove this statement was false. Mr. Biden prefaced it by explaining that he did not remember the specific conversations in question, which occurred more than six years ago. 963 And even if this written answer is a strike against Mr. Biden, the other instances of his cooperation with our investigation weigh heavily in his favor.

Other aggravating and mitigating facts addressed in the Justice Manual also counsel against prosecution. At the time of any trial or sentencing, Mr. Biden would be well into his eighties, an age when relatively few people are prosecuted. He has no criminal record. He is highly unlikely to be sentenced to prison or assessed a significant fine. Any deterrent effect of prosecution would likely be slight. He are not concerned with specific deterrence, as we see little risk he will reoffend. As for general deterrence, future presidents and vice presidents are already likely to be deterred by the multiple recent criminal investigations, and one prosecution, of

⁹⁶² Biden 12/1/23 written responses at 1.

⁹⁶³ Id

⁹⁶⁴ See U.S. Dep't of Just., Just. Manual § 9-27.230(7) (2023).

⁹⁶⁵ See id. § 9-27.230(5) (2023).

⁹⁶⁶ See id. § 9-27.230(9) (2023).

⁹⁶⁷ See id. § 9-27.230(3) (2023).

current and former presidents and vice presidents for mishandling classified documents. 968 Mr. Biden has served the nation for nearly fifty years as President and Vice President of the United States and United States Senator. 969 On balance, his record of service also supports a decision to forgo criminal charges.

* * *

The practice of retaining classified material in unsecured locations poses serious risks to national security, given the vulnerability of extraordinarily sensitive information to loss or compromise to America's adversaries. The Department routinely highlights such risks when pursuing classified mishandling prosecutions. But addressing those risks through the criminal law, the only means available to this office, is not the proper remedy here.

For the classified Afghanistan documents and the classified notebooks, we believe the evidence falls short of supporting criminal charges. And other factors that inform our decision under the Principles of Federal Prosecution lead us to conclude that "the fundamental interests of society" do not "require" such charges. ⁹⁷⁰ For these reasons, we decline prosecution.

⁹⁶⁸ See id. § 9-27.230(3) (2023).

⁹⁶⁹ See id. § 9-27.230(7) (2023).

⁹⁷⁰ See id. §§ 9-27.001, 9-27.220 (2023).

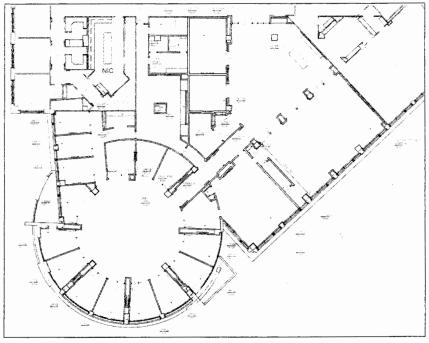
CHAPTER FOURTEEN

CLASSIFIED DOCUMENTS FOUND AT THE PENN BIDEN CENTER

I. FACTS

A. Description of the Penn Biden Center

The Penn Biden Center is housed in an office space leased by the University of Pennsylvania on the sixth floor of a commercial office building near the United States Capitol in Washington, D.C. The office space includes a reception area, conference rooms, a kitchen and pantry, a copy room, a large office for Mr. Biden designed to resemble the vice president's West Wing office, and roughly a dozen smaller offices and workrooms arrayed in a circle around a central, open office space. Mr. Biden's office adjoins one of the smaller workrooms—sometimes called the "outer office"—where Mr. Biden's personal assistant, scheduler, and trip director sat.⁹⁷¹



Penn Biden Center floor plan⁹⁷²

⁹⁷¹ PBC Scheduler Tr. at 63-64.

⁹⁷² SCOH-000451; FBI Serial 344 1A415.

B. Events leading up to the discovery of classified documents at the Penn Biden Center

In March 2021, Mr. Biden's director of Oval Office operations visited the Penn Biden Center at Mr. Biden's request. 973 She described the purposes of the visit as: (1) to look for personal items such as family photographs and awards that Mr. Biden might want to display in the Oval Office, and (2) to "get a sense of what was there" more generally. 974 The director of Oval Office operations took photographs to document her visit and compiled an inventory with the help of an assistant. 975 In addition to personal items such as framed photographs, flags, awards, books, and challenge coins located in Mr. Biden's office, she noted the presence of "40 boxes" in a "hallway closet." 976 She took photographs of the boxes. 977 After the visit, she reported back to Mr. Biden what she had found. According to the director of Oval Office operations, the conversation was "very fast" and "pretty informal," and Mr. Biden did not provide any further direction about the Penn Biden Center. 978

In May 2022, White House Counsel Dana Remus undertook an effort to retrieve Mr. Biden's files from the Penn Biden Center.⁹⁷⁹ Remus described the original purpose of that effort as gathering materials to prepare for potential congressional inquiries about the Biden family's activities during the period from

⁹⁷³ Director of Oval Office Operations Tr. at 12-13.

⁹⁷⁴ *Id.* at 12-14, 19, 25.

⁹⁷⁵ Id. at 19-21; FBI Serial 348 1A419; WH-SCH-000000003 at 17.

⁹⁷⁶ FBI Serial 348 1A419; Penn Center Inventory, WH-SCH-000000003.

⁹⁷⁷ FBI Serial 348 1A419; WH-SCH-000000007 at 10-11; Director of Oval Office Operations Tr. at 19-20.

⁹⁷⁸ Director of Oval Office Operations Tr. at 27-28.

⁹⁷⁹ Remus Tr. at 64-66; Moore 11/18/22, FBI Serial 16.

2017 through 2019, when Mr. Biden was actively engaged with the Center. Through later conversations, Remus learned that the Penn Biden Center's offices contained a mix of Mr. Biden's materials—including personal material—that was not limited to records of his activities from 2017 through 2019. Eventually, the goal of Mr. Biden's staff became to clear out all of his material from the Penn Biden Center. 982

Remus decided to ship material that could be relevant to future congressional inquiries to Patrick Moore, one of Mr. Biden's personal counsel in Boston, Massachusetts, for further review by Moore and Bob Bauer. Moore's office had become a repository for some of Mr. Biden's political materials, such as awards and copies of speeches. Bauer and Moore planned to inform the White House Counsel's Office of what they found. Strictly personal items would be shipped to Mr. Biden's Delaware home.

Remus initially coordinated with the executive assistant, who had worked for Mr. Biden both during his second term as vice president and at the Penn Biden Center.⁹⁸⁷ The executive assistant offered to pack up Mr. Biden's files at the Penn

 $^{^{980}}$ Remus Tr. at 65, 75-76, 80; Moore 11/18/22, FBI Serial 16; Personal Attorney 1 12/8/22, FBI Serial 40.

⁹⁸¹ Remus Tr. at 67, 80.

⁹⁸² *Id.* at 67; Dr. Biden Staffer 2 Tr. at 36-37.

⁹⁸³ Remus Tr. at 82-83.

⁹⁸⁴ Moore 11/18/22, FBI Serial 16 at 2, 4.

⁹⁸⁵ Remus Tr. at 82.

⁹⁸⁶ Id. at 83.

⁹⁸⁷ *Id.* at 66, 74-75; Executive Assistant Tr. 1/4/23 at 3-4, 66, 95; FBI Serial 350 1A421; 5/24/22 e-mail from Remus, SCOH-000747.

Biden Center.⁹⁸⁸ Remus understood the executive assistant was going to segregate personal files—such as photographs and handwritten letters to Mr. Biden—from files related to his work.⁹⁸⁹ As the executive assistant later told investigators, "[a] lot of the stuff was already packed up."⁹⁹⁰

On June 28, 2022, the executive assistant came to pack up the remaining unpacked files.⁹⁹¹ She completed the packing in about a half-hour.⁹⁹² Her packing involved simply transferring files from office drawers into Home Depot boxes she had picked up earlier.⁹⁹³ In doing so, she did not review individual files or documents.⁹⁹⁴

Most of the packing involved boxing up files the executive assistant stored for Mr. Biden in the outer office she formerly occupied along with Mr. Biden's former scheduler and trip director at the Penn Biden Center.⁹⁹⁵ The outer office was accessible on one end from Mr. Biden's office.⁹⁹⁶ At the other end, the outer office had a door to the Center's larger office area.⁹⁹⁷ Mr. Biden's office and the outer office are depicted in the photographs below.

 $^{^{988}}$ Executive Assistant Tr. 1/4/23 at 97; Remus Tr. at 81-82; FBI Serial 350 1A421; 6/21/22 e-mail from Executive Assistant to Remus, SCOH-000748; 6/23/22 e-mail from Former Executive Assistant to Remus, SCOH-000753.

⁹⁸⁹ Remus Tr. at 89-90.

⁹⁹⁰ Executive Assistant 1/4/23 Tr. at 98-99; Executive Assistant 9/28/2023 Tr. at 142.

⁹⁹¹ FBI Serial 350 1A421; 6/21/22 e-mail from Former Executive Assistant, SCOH-000750; 6/23/22 e-mail from Former Executive Assistant to Remus, SCOH-000753.

⁹⁹² Executive Assistant 9/28/23 Tr. at 138-39.

⁹⁹³ Executive Assistant 1/4/23 Tr. at 98-99.

⁹⁹⁴ Id. at 99.

⁹⁹⁵ *Id.* at 100-01; PBC Scheduler Tr. at 64.

⁹⁹⁶ Moore 11/18/22, FBI Serial 16 at 2-3, 6; Personal Attorney 1 12/8/22, FBI Serial 40 at 2.

⁹⁹⁷ Penn Biden Center Layout, SCOH-000452; FBI Serial 344 1A415.



Mr. Biden's office at the Penn Biden Center (Nov. 28, 2022)998



Mr. Biden's office at the Penn Biden Center (Nov. 28, 2022)999

 $^{^{998}}$ 20221128_ERT_0068; FBI Serial 14 1A14.

^{999 20221128}_ERT_0060; FBI Serial 14 1A14.



The outer office at the Penn Biden Center (Nov. 28, 2022)1000



The outer office at the Penn Biden Center (Nov. 28, 2022) 1001

¹⁰⁰⁰ 20221128_ERT_0074; FBI Serial 14 1A14. ¹⁰⁰¹ 20221128_ERT_0075; FBI Serial 14 1A14.

The executive assistant also looked for files in Mr. Biden's office and other staff offices but found none. 1002 She e-mailed Remus that evening: "13 boxes. There are clearly marked boxes with correspondence throughout 4 years." 1003 As the executive assistant later told investigators, many of the 13 boxes she referred to were boxes of correspondence files that had already been packed up and stored in a storage closet at the Penn Biden Center. 1004 The others were the boxes she packed with files from the outer office. 1005

Remus visited the Penn Biden Center two days later, on June 30, 2022, with a member of her staff and a top advisor to the First Lady. 1006 They expected to retrieve the 13 boxes mentioned by the executive assistant. 1007 Remus planned to ship some of the boxes to Moore. 1008 The member of her staff and the advisor to the First Lady would drive the rest to the Delaware residence. 1009 Upon arriving at the Penn Biden Center, though, Remus discovered that there was much more than 13 boxes of material belonging to Mr. Biden, and some of it was not even packed. 1010 The project of going through the volume of material and figuring out where things should go "was a much bigger task" than Remus had expected. 1011 Remus and her colleagues left the

¹⁰⁰² Executive Assistant 1/4/23 Tr. at 100-01.

¹⁰⁰³ FBI Serial 350 1A421; 6/28/23 e-mail to Remus, SCOH-000755.

¹⁰⁰⁴ Executive Assistant 9/28/23 Tr. at 140-44.

¹⁰⁰⁵ *Id.* at 144.

¹⁰⁰⁶ FBI Serial 364 1A429; Remus Tr. at 90, 93-94, 143-46; WHC Special Assistant Tr. at 19.

¹⁰⁰⁷ Remus Tr. at 138-39.

¹⁰⁰⁸ Id. at 90-91.

¹⁰⁰⁹ Remus Tr. at 90; WHC Special Assistant Tr. at 16-17.

¹⁰¹⁰ Remus Tr. at 68, 138-39.

¹⁰¹¹ Id. at 68; see also Dr. Biden Personal Aide Tr. at 142.

Penn Biden Center that day without removing anything.¹⁰¹² The photographs taken by the director of Oval Office operations in March 2021 corroborated Remus's statements about the quantity and variety of Mr. Biden's items stored at the Penn Biden Center:¹⁰¹³



Photos of a storage closet at the Penn Biden Center (March 2021)1014

Remus later contacted Moore and asked him to review and properly dispose of the material stored at the Penn Biden Center. 1015 Moore visited the Center months later, on October 12, 2022, along with one of Mr. Biden's Oval Office aides. 1016 Moore's

¹⁰¹² Remus Tr. at 68; WHC Special Assistant Tr. at 21.

¹⁰¹³ FBI Serial 348 1A419; Director of Oval Office Operations Tr. at 19-26; Penn Office Inventory, WH-SCH-000000003; *see also* 3/17/21 e-mails between Oval Office Aides, WH-SCH-00000002.

¹⁰¹⁴ Penn Office Inventory, WH-SCH-000000003 at 10; WH-SCH-000001234; FBI Serial 348 1A419.

¹⁰¹⁵ Moore 01/12/23, FBI Serial 96 at 7; Moore 11/18/22, FBI Serial 16 at 4; Remus Tr. at 68-69, 148.

¹⁰¹⁶ Moore 11/18/22, FBI Serial 16 at 5; Dr. Biden Staffer 2 Tr. at 40.

goal was to take stock of what was stored there, determine how much needed to be reviewed, and create a plan for moving everything out. 1017 According to Moore, conducting the review was not a high priority because nobody expected to find classified documents or presidential records there. 1018

The Oval Office aide accompanied Moore to facilitate his access to the Penn Biden Center and his initial review of material. While at the Penn Biden Center, the aide also searched for and found items that could be used at the White House, such as gifts for visitors and Mr. Biden's personal stationery and personal items. 1020

Moore first inspected material in a back storage closet—pictured above—located off the mail room/kitchenette. 1021 He found a variety of items including gifts, memorabilia, books, and condolence correspondence related to the 2015 death of Mr. Biden's son, Beau Biden. 1022

Moore then inspected Mr. Biden's office space. 1023 That space included Mr. Biden's office, a small closet in that office, and the outer office. 1024

Moore identified six or seven boxes containing documents to review. 1025 He recalled finding at least some of those boxes in the small closet in Mr. Biden's office

¹⁰¹⁷ Moore 11/18/22. FBI Serial 16 at 5.

 $^{^{1018}}$ Id. at 4.

 $^{^{1019}\,\}mathrm{Dr}.$ Biden Staffer 2 Tr. at 36, 45; 80; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

 $^{^{1020}\,\}mathrm{Dr}.$ Biden Staffer 2 Tr. at 71, 75-77; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰²¹ Moore 11/18/22, FBI Serial 16 at 5; Moore 1/12/23, FBI Serial 96 at 8; FBI Serial 348 1A419; Penn Office Inventory, WH-SCH-000000003, at 10; WH-SCH-000001216.

¹⁰²² Moore 11/18/22, FBI Serial 16 at 5-6; Moore 1/12/23, FBI Serial 96 at 8.

¹⁰²³ Moore 11/18/22, FBI Serial 16 at 6.

 $^{1024 \} Id$

¹⁰²⁵ *Id.*; Moore 1/12/23, FBI Serial 96 at 9.

and moving them to the outer office for review. 1026 When interviewed by FBI agents, Moore believed the small closet was initially locked and that a Penn Biden Center staff member provided a key to unlock it, but his memory was fuzzy on that point. 1027 He found the other boxes in the outer office, where he conducted his first cursory review of the material in the boxes. 1028 During that initial, quick review, Moore saw copies of speeches, political documents, and campaign materials. 1029 He also noticed documents dating from Mr. Biden's time as vice president; the format of these documents led him to believe they were from the White House. 1030 Moore knew such documents were potentially presidential records under the Presidential Records Act, which must be stored at the National Archives. 1031 He did not see any documents with classification markings at the time. 1032 Moore left that day intending to return later and, among other things, conduct a more detailed review of the material and determine whether any of it included presidential records. 1033

Moore returned to the Penn Biden Center several weeks later on November 2, 2022, with an associate from his law firm. 1034 They planned to review the materials

¹⁰²⁶ See Moore 1/12/23, FBI Serial 96 at 9-10; Moore 11/18/22, FBI Serial 16 at 6.

¹⁰²⁷ Moore 11/18/22, FBI Serial 16 at 6. The executive assistant stated that the Home Depot boxes she packed up during her June 2022 visit were left in the Outer Office. Executive Assistant 1/4/23 Tr. at 98-99, 106-08; Executive Assistant 9/28/23 Tr. at 147. She did not move these boxes into the closet in Mr. Biden's office. Executive Assistant 1/4/23 Tr. at 107-08; Executive Assistant 9/28/23 Tr. at 148-49.

¹⁰²⁸ FBI Serial 96 at 9-10; FBI Serial 16 at 6.

¹⁰²⁹ FBI Serial 16 at 6.

¹⁰³⁰ Moore 11/18/22, FBI Serial 16 at 6; Moore 1/12/23, FBI Serial 96 at 8.

¹⁰³¹ See Moore 11/18/22, FBI Serial 16 at 6.

 $^{^{1032}\,\}mathrm{Moore}$ 11/18/22, FBI Serial 16 at 6; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰³³ Moore 11/18/22, FBI Serial 16 at 6; Moore 1/12/23, FBI Serial 96 at 8-9.

¹⁰³⁴ Moore 11/18/22, FBI Serial 16 at 7; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

and send records that were not presidential records to their firm office in Boston. ¹⁰³⁵ Moore brought FedEx boxes, and the two packed up and eventually shipped some materials they determined were clearly not presidential records, such as material dated after Mr. Biden's vice presidency. ¹⁰³⁶ They set aside for further review four Home Depot boxes containing folders labeled with dates from 2009 to 2017, years during which Mr. Biden served as vice president. ¹⁰³⁷

Moore began reviewing the material in one of the Home Depot boxes. ¹⁰³⁸ About a third of the way through the box, he found a manila envelope marked "EYES ONLY" for the Vice President. ¹⁰³⁹ "IRAN" was handwritten on the envelope. ¹⁰⁴⁰ Inside the envelope, Moore found documents with classification markings. ¹⁰⁴¹ He took the box into the adjoining room and contacted Bauer, who in turn contacted the White House Counsel. ¹⁰⁴² Members of the White House Counsel's Office then notified the National Archives' general counsel. ¹⁰⁴³ Moore added Post-It notes to designate where he found

 $^{^{1035}\,\}mathrm{Moore}$ 11/18/22, FBI Serial 16 at 7; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

 $^{^{1036}}$ Moore 11/18/22, FBI Serial 16 at 7-9; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰³⁷ Moore 11/18/22, FBI Serial 16 at 7, 9.

¹⁰³⁸ Id. at 7-9.

¹⁰³⁹ *Id.* at 7-9.

¹⁰⁴⁰ *Id.* at 8.

 $^{^{1041}} Id.$

¹⁰⁴² Moore 11/18/22, FBI Serial 96 at 8; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 3.

 $^{^{1043}}$ FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 3; Moore 11/18/22, FBI Serial 16 at 8.

documents with classification markings. 1044 He photographed the files in the box, which an archivist from the National Archives later labeled "Box 3." 1045



Photo of Box 3 taken by Moore on or about Nov. 2, 20221046

Moore's associate also discovered material with classification markings in another box of files, which he had been reviewing page by page. 1047 That box also

¹⁰⁴⁴ Moore 1/12/23, FBI Serial 96 at 11.

¹⁰⁴⁵ Moore 11/18/22, FBI Serial 16 at 10-11; FBI Serials 17 1A19, 173 1A182; NARA Archivist 2 12/2/22, FBI Serial 26 at 1-2.

¹⁰⁴⁶ Bates-000016; FBI Serial 17 1A19.

 $^{^{1047}}$ Moore 11/18/22, FBI Serial 96 at 8; Personal Attorney 1 12/8/22, FBI Serial 40 at 3-4.

contained other records that Moore thought could qualify as presidential records. 1048

The associate used Post-It notes to flag documents he wanted Moore to look at and to keep track of documents he removed to review. 1049 Moore photographed the files in the box, which his associate labeled "Box 1." 1050



Photo of Box 1 taken by Moore on or about Nov. 2, 20221051

¹⁰⁴⁸ Moore 11/18/22, FBI Serial 16 at 7-9.

¹⁰⁴⁹ Personal Attorney 1 12/8/22, FBI Serial 40 at 4-5.

¹⁰⁵⁰ Moore 11/18/22, FBI Serial 16 at 10-11; FBI Serial 17 1A19; Personal Attorney 1 12/8/22, FBI Serial 40 at 5; NARA Archivist 2 12/1/22, FBI Serial 26 at 1.

¹⁰⁵¹ Bates-000028; Moore 11/18/22, FBI Serial 16 at 10; FBI Serial 17 1A19.

Moore and his associate identified one other of the four boxes that potentially contained presidential records but found no documents with classification markings in that box. 1052 The National Archives later labeled the box as "Box 2." 1053



Photo of Box 2 taken by Moore on or about Nov. 2, 20221054

¹⁰⁵² Moore 11/18/22, FBI Serial 16 at 9.

 $^{^{1053}\,}Id.;$ NARA Archivist 2 12/1/22, FBI Serial 26 at 1; FBI Serial 26 1A31; 20221201_WFO_13.

¹⁰⁵⁴ Bates-000030; Moore 11/18/22, FBI Serial 16 at 10; FBI Serial 17 1A19.

The fourth box did not appear to contain any presidential records but was in the same style Home Depot box as the other three. 1055 Moore and the associate repackaged the material in the fourth box into a new FedEx box because the Home Depot box was in relatively poor condition. 1056 Pursuant to instructions from the White House Counsel's Office, Moore locked the three boxes containing documents with classification markings or potential presidential records in the small closet off of Mr. Biden's office. 1057 He photographed the interior of the closet:

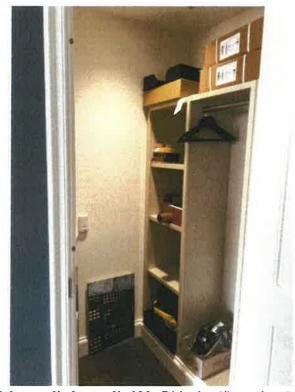


Photo of the interior of the small closet off of Mr. Biden's office taken by Moore (Nov. 3, 2022)1058

¹⁰⁵⁵ Moore 11/18/22, FBI Serial 16 at 9.

¹⁰⁵⁶ Id

¹⁰⁵⁷ See Moore 1/12/23, FBI Serial 96 at 10; Moore 11/18/22, FBI Serial 16 at 9; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 3.

¹⁰⁵⁸ Bates-000035; Moore 11/18/22, FBI Serial 16 at 10; 17 1A19.

The next day, November 3, 2022, two archivists from the National Archives met Moore and an Associate White House Counsel at the Penn Biden Center. 1059 Moore took the three Home Depot boxes out of the locked closet and put them in the outer office. 1060 He offered for the archivists to take the fourth (FedEx) box, but they said the National Archives had instructed them to take only the three. 1061 The archivists returned a few days later on November 8, 2022, however, and took the fourth box along with 28 Federal Records Center boxes from the Penn Biden Center. 1062 Moore told the archivists that the 28 boxes contained letters expressing condolences related to the death of Beau Biden. 1063

Upon reviewing the contents of the three boxes in a SCIF at the National Archives, an archivist determined that they included nine documents with classification markings totaling 44 pages. ¹⁰⁶⁴ Those documents were in Box 1 and Box 3. ¹⁰⁶⁵ She estimated that about 90 percent of the documents in Boxes 1, 2, and 3 were personal in nature and related to financial matters, correspondence, and pictures. ¹⁰⁶⁶ No other documents with classification markings were found in any of the material the National Archives took from the Penn Biden Center. ¹⁰⁶⁷ Box 4 contained an

 $^{^{1059}}$ Moore 11/18/22, FBI Serial 16 at 10; NARA Archivist 2 11/10/22, FBI Serial 3 at 2; NARA COS 11/21/22, FBI Serial 6 at 1-2.

¹⁰⁶⁰ Moore 11/18/22, FBI Serial 16 at 10.

¹⁰⁶¹ Moore 11/18/22, FBI Serial 16 at 9-10.

¹⁰⁶² *Id.* at 11; NARA Archivist 2 11/10/2022, FBI Serial 3 at 3.

¹⁰⁶³ NARA Archivist 2 11/10/22, FBI Serial 3 at 3.

¹⁰⁶⁴ *Id.* at 2.

¹⁰⁶⁵ NARA Archivist 2 12/1/22, FBI Serial 26 at 2.

¹⁰⁶⁶ NARA Archivist 2 11/10/22, FBI Serial 3 at 2.

¹⁰⁶⁷ NARA Archivist 2 12/1/22, FBI Serial 26 at 2.

otherwise blank page with a classification marking. 1068 The page appeared to be the last page of bound briefing material that had likely been removed from a classified briefing book. 1069

FBI agents visited a SCIF at the National Archives on December 1 and 2, 2022, to review and photograph the four boxes and their contents. 1070



The PBC boxes in a SCIF at the National Archives for FBI review (Dec. 1, 2022)1071

The National Archives later transferred custody of the marked classified documents in Boxes 1 and 3 to the ${\rm FBI}.^{1072}$

¹⁰⁶⁸ NARA Archivist 2 11/10/22, FBI Serial 3 at 3.

 $^{^{1069}} Id.$

¹⁰⁷⁰ FBI Serial 26.

¹⁰⁷¹ 20221201_WFO_0012; FBI Serial 26 1A31.

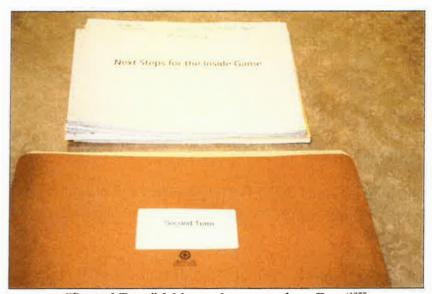
¹⁰⁷² FBI Serial 173.

C. Description of the documents recovered from the Penn Biden Center

The FBI identified ten documents recovered from the Penn Biden Center as classified or potentially classified and designated those documents as A1 through A10.¹⁰⁷³ In addition to the nine documents with classification markings that the National Archives had identified, FBI designated a set of handwritten notes as potentially classified.¹⁰⁷⁴ The handwritten notes were found in an envelope with marked classified documents and related to the same topic as those documents.¹⁰⁷⁵

Marked classified documents found in Box 1

The FBI located the marked classified document designated A1 among unclassified documents in a folder labeled "Second Term," pictured below. 1076



"Second Term" folder and contents from Box 11077

¹⁰⁷³ FBI Serials 26, 238, 683 1A772.

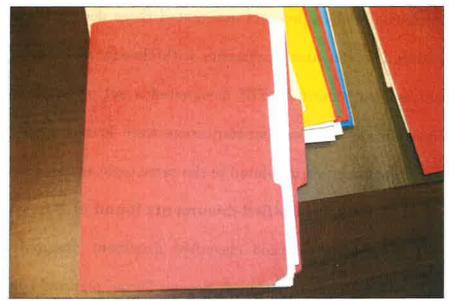
¹⁰⁷⁴ See Evidence item 1B48; FBI Serials 173, 177, 683 1A772.

¹⁰⁷⁵ Evidence item 1B48; FBI Serials 26, 173, 177, 683.

¹⁰⁷⁶ Evidence item 1B49.

¹⁰⁷⁷ FBI Serial 26 1A31, 20221201_WFO_0026.

The FBI located the marked classified document designated A2 among unclassified documents in a red file folder with a handwritten label "Filing 10-10-16." 1078



"Filing 10-10-16" folder from PBC Box 11079

Appendix A includes unclassified descriptions of documents A1 and A2.

2. Unclassified contents of Box 1

Box 1 includes a variety of unclassified files of personal and professional significance to Mr. Biden. These include:

- A file folder labeled "POTUS 21st Century Policing 2015" with a copy of the May 2015 final report of the President's Task Force on 21st Century Policing. 1080
- A file folder labeled "Biden Foundation" that included a 2017 Annual Report for the Biden Foundation. 1081

¹⁰⁷⁸ Evidence item 1B49.

¹⁰⁷⁹ FBI Serial 26 1A31, 20221201_WFO_0066.

¹⁰⁸⁰ NARA_SCAN_00000067-68; NARA Archivist 2 11/10/22, FBI Serial 3.

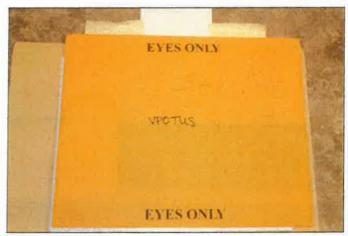
¹⁰⁸¹ NARA_SCAN_00000059, at 61; NARA Archivist 2 11/10/22, FBI Serial 3.

- A file folder labeled "VP Headshots" with photographs of Mr. Biden and President Obama. 1082
- A file folder labeled "American Possibilities" with event memoranda for Mr. Biden dated February 1, 2018. 1083
- A file labeled "Colorado Ski" with information from 2011 related to a ski trip.¹⁰⁸⁴

3. Classified documents found in Box 3

a. "EYES ONLY VPOTUS" manila envelope

The FBI located the marked classified documents designated A3 through A6 and a set of potentially classified handwritten notes designated A7 in a manila envelope stamped "EYES ONLY" on the top and bottom with "VPOTUS" handwritten in the middle. 1085 The envelope was also labeled with Mr. Biden's handwriting: "IRAN 1/30/15." 1086



The VP Eyes Only envelope from PBC Box 31087

¹⁰⁸² FBI Serial 26 1A31, 20221201_WFO_0024, 20221201_WFO_0146.

¹⁰⁸³ NARA_SCAN_00000063-65; NARA Archivist 2 11/10/22, FBI Serial 3.

¹⁰⁸⁴ NARA SCAN 00000426-35; NARA Archivist 2 11/10/22, FBI Serial 3.

¹⁰⁸⁵ Evidence item 1B48.

¹⁰⁸⁶ Evidence item 1B48; Executive Assistant 1/4/23 Tr. at 156-57; FBI Serial 64 1A74; Staff Assistant 3 10/4/23 Tr. at 80.

¹⁰⁸⁷ FBI Serial 26 1A31, 20221201_WFO_0006.

Appendix A includes unclassified descriptions of documents A3 through A7. Portions of redacted cover pages of some of the documents in the "EYES ONLY" envelope are below:



Portion of the redacted cover of recovered document A51088



Portion of reducted cover of recovered document $A6^{1089}$

¹⁰⁸⁸ Recovered document A5.

¹⁰⁸⁹ Recovered document A6.

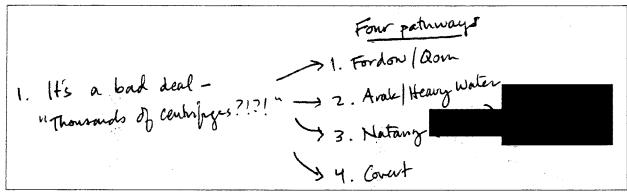
Notably, document A7 is ten pages of Mr. Biden's unmarked, handwritten notes, three of which are dated January 28, 2015. 1090 All but one page of the notes relate to the Obama administration's efforts to negotiate the Joint Comprehensive Plan of Action, otherwise known as the Iran nuclear deal. For example, five pages of the handwritten notes reference the four pathways to an Iranian nuclear weapon the Obama administration believed the nuclear deal would block:



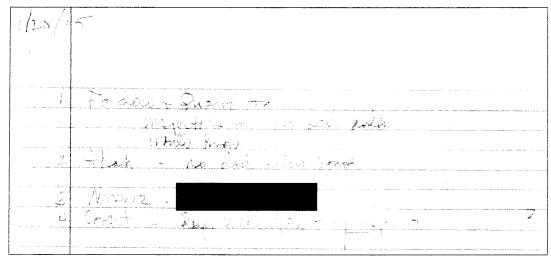
Graphic from Obama White House information page on the Iran nuclear deal 1091

¹⁰⁹⁰ Evidence item 1B48, A7 at 3, 5, 9; Executive Assistant Tr. 9/28/23 at 128-30 (handwriting identification), FBI Serial 515 1A618.

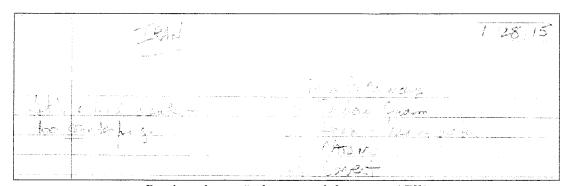
¹⁰⁹¹ The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon, The White House, https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal (last visited Jan. 31, 2024).



Portion of Page 2 of recovered document A71092



Portion of page 3 of recovered document A71093

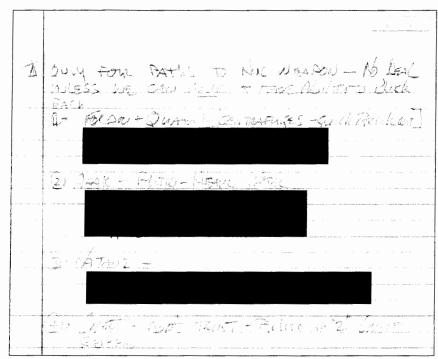


Portion of page 5 of recovered document $A7^{1094}$

¹⁰⁹² Recovered document A7.

 $^{^{1093}}$ Id.

 $^{^{1094}}$ Id.



Portion of page 7 of recovered document A71095

The handwritten references to blocking "Arak" and "heavy water" correspond to the Obama White House's reference to blocking weapons-grade plutonium. 1096

b. "Ukraine 02/09/15" and "VP Personal" file folders

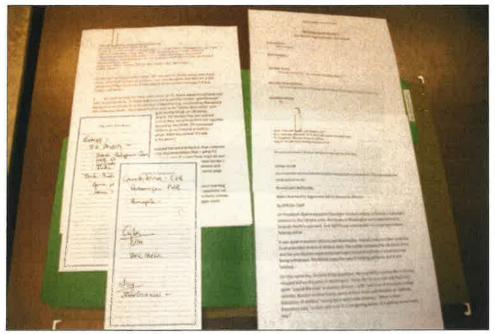
The FBI located the marked classified document designated A8 among unclassified documents in a green file folder labeled "Ukraine 02/09/15" within an unlabeled green hanging folder. Agents located documents designated A9 and A10 among unclassified documents in a red file folder labeled "VP Personal" within an

¹⁰⁹⁵ Id

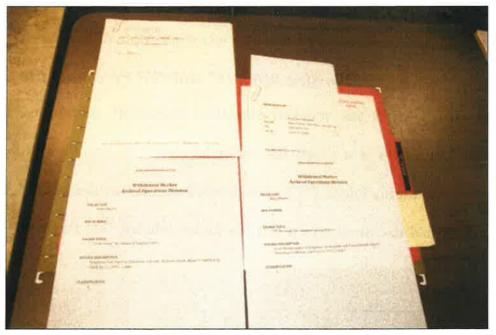
The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon, The White House, https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal (last visited Jan. 31, 2023); The White House, https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal (last visited Jan. 31, 2023) ("The third way Iran could build a nuclear weapon is by using weapons-grade plutonium. The only site where Iran could accomplish this is the Arak reactor, a heavy-water nuclear reactor.").

¹⁰⁹⁷ Recovered document A8; Evidence item 1B49.

unlabeled green hanging folder. 1098



"Ukraine 02/09/15" folder and unclassified contents 1099



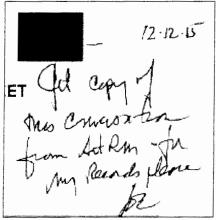
"VP Personal" folder and unclassified contents 1100

¹⁰⁹⁸ Recovered documents A9 and A10; Evidence item 1B49.

 $^{^{1099}}$ 20221201_WFO_0113. The document titled "Withdrawal Marker" is a placeholder for the classified document A8. See FBI Serials 683 1A772, 26 1A31.

¹¹⁰⁰ FBI Serial 26 1A31, 20221201_WFO_0117. The documents titled "Withdrawal Marker" are placeholders for the classified documents A9 and A10. See FBI Serial 683 1A772.

Appendix A includes unclassified descriptions of documents A8 through A10. Document A9 is a telephone call sheet setting forth the purpose and talking points for a call between Mr. Biden and the Ukrainian Prime Minister. Mr. Biden wrote a note to his executive assistant on the sheet: "Get [a] copy of this conversation from Sit Rm for my Records please" and signed it "Joe."



Handwritten note from Mr. Biden on recovered document A91101

c. Unclassified contents of Penn Biden Center Box 3

Like Box 1, Box 3 included a wide variety of unclassified files of personal and professional significance to Mr. Biden. To name a few:

- A file folder labeled "Genealogy" with information about the ancestors of Mr. Biden and Biden family history. 1102
- Various file folders with documents related to Mr. Biden's "Cancer Moonshot" initiative. 1103
- A file folder labeled "Economy" with documents from 2015 related to economic policy and meetings with officials such as the Secretary of the Treasury. 1104

¹¹⁰¹ Recovered document A9.

¹¹⁰² NARA_SCAN_00001390-98; NARA Archivist 2 11/10/2022, FBI Serial 3.

 $^{^{1103}}$ E.g., NARA_SCAN_00001505-16, NARA_SCAN_00001641-51; NARA Archivist 2 11/10/2022, FBI Serial 3.

¹¹⁰⁴ NARA SCAN 00001581-91; NARA Archivist 2 11/10/2022, FBI Serial 3.

• A file folder labeled "Notable Stories on the Life of Beau Biden" with compiled news clippings about Mr. Biden's son. 1105

D. Security and access controls at the Penn Biden Center

To access the Penn Biden Center, employees used a key fob, which they had to scan at the building's front door, the elevator, and the Center suite's front door. 1106 The Center did not allow visitors inside unless someone with a key fob escorted them. 1107 The Center required the logging of visitors through a third-party security-management system, and visitors had to check in with building security upon arrival in the building lobby. 1108

Despite those controls, we cannot account for all visitors to the Center. In practice, employees with key fobs could and sometimes did bring guests with them to the Center without logging them with security. The Center's office manager did not maintain a visitor log. The third-party vendor retained its visitor logs for only one year, so logs for the years 2017 through 2021, when Mr. Biden was a private citizen, were not available to investigators. The logs for all visitors to the Center. In practice, employees with key fobs could and sometimes did bring guests with them to the Center without logging them with security. The Center's office manager did not maintain a visitor log. The third-party vendor retained its visitor logs for only one year, so logs for the years 2017 through 2021, when Mr. Biden was a private

The Center hosted visitors from its inception until the recovery of marked classified documents in November 2022. In keeping with its stated purpose to

¹¹⁰⁵ NARA_SCAN_00001716-17; NARA Archivist 2 11/10/2022, FBI Serial 3.

¹¹⁰⁶ Executive Assistant 1/4/23 Tr. at 103-104; PBC Director of Programs Tr. at 48-49; PBC Scheduler Tr. at 63; Speechwriter Tr. at 92-93; OVP Intern Tr. at 41-42; Prescott Tr. at 85-86.

¹¹⁰⁷ PBC Employee 2 Tr. at 24; Prescott Tr. at 86.

Aide 3 3/28/23 Tr. at 147; PBC Employee 1 1/16/23 Tr. at 71; PBC Scheduler Tr. at 9, 100.

 $^{^{1109}}$ PBC Director of Programs Tr. at 60; PBC Scheduler Tr. at 100; PBC Employee 2 1/16/23 Tr. at 46.

¹¹¹⁰ PBC Employee 2 1/16/23 Tr. at 16.

¹¹¹¹ FBI Serial 345 1A416, SCOH-000448.

"convene world leaders," ¹¹¹² the Center hosted foreign dignitaries for roundtable events or to meet with Mr. Biden in his personal office. Center staff recalled events and meetings with the former President of Mexico, the President of Costa Rica, the former Secretary General of NATO, the Prime Minister of Estonia, members of the Ukrainian Orthodox Church, and Israeli officials. ¹¹¹³ The Center also hosted more than a dozen classes for University of Pennsylvania faculty, students, and interns over a period of years. For instance, a course on "Business Strategies for Engaging with Government" in March 2022 featured guest speakers from the U.S. Department of Commerce, General Electric, and Google. ¹¹¹⁴ In addition, a cleaning crew came through the Center every night to clean the offices. ¹¹¹⁵

As a general matter, the administrative staff at the Center tried to keep the offices locked or closed off during classes or events. However, Mr. Biden's office did not lock, and the adjoining outer office where Mr. Biden's executive assistant

¹¹¹² Penn Biden Center, Our Mission Statement, Penn Biden Center, https://global.upenn.edu/penn-biden-center/our-mission-statement (last visited Feb. 2, 2024).

¹¹¹³ Speechwriter Tr. at 101-02; PBC Employee 1 1/16/23 Tr. at 68; OVP NSA Staffer 2 Tr. at 109; Legislative Affairs Staff 1 Tr. at 30; Prescott Tr. at 82-83; Personal Aide 3 3/28/23 Tr. at 145; OVP Intern Tr. at 47-48. Mr. Biden also met with the former Prime Minister of Ukraine in May 2017 when the Penn Biden Center was housed in a temporary office space located at 701 Pennsylvania Avenue Northwest in Washington, DC. 5/14/17 e-mail from Penn Biden Center Business Manager, SCOH-000453.

¹¹¹⁴ FBI Serial 346 1A417; 2/9/23 Penn Biden Center List of Classes and Seminars, SCOH-000734.

¹¹¹⁵ PBC Employee 1 1/16/23 Tr. at 30.

¹¹¹⁶ Id. at 30-34; PBC Scheduler Tr. at 71-72.

maintained his files was always accessible through Mr. Biden's office. 1117 Other employees' habits varied as to whether they kept their offices locked. 1118

The Center relaxed security measures after Mr. Biden stopped working there in April 2019.¹¹¹⁹ It still required visitors to check in with security in the building lobby, but they did not need a key fob or an escort in order to access the sixth floor of the building.¹¹²⁰ The Center also permitted University of Pennsylvania students who took classes at the Center to work in the office space during the day.¹¹²¹ The Center was locked down for about two years due to the COVID-19 pandemic.¹¹²²

E. Investigation of the classified documents recovered from the Penn Biden Center

As described further below, Mr. Biden's now-former executive assistant maintained the files in the four relevant boxes recovered by FBI agents from the Penn Biden Center, two of which included marked classified documents. The executive assistant originally maintained those files in her office space outside Mr. Biden's West Wing office and moved them—through two temporary spaces—to the Penn Biden Center, where she continued to add to the files.

¹¹¹⁷ Executive Assistant 1/4/23 Tr. at 103-04; PBC Employee 1 1/16/23 Tr. at 29-32, 76-77; PBC Employee 2 1/16/23 Tr. at 22-23, 60-61. For security reasons, the Vice President's office could only be locked from the inside using a panic button. PBC Employee 2 1/16/23 Tr. at 22-23; PBC Employee 1 1/16/23 Tr. at 76-77.

¹¹¹⁸ PBC Director of Programs Tr. at 49; OVP Intern Tr. at 42-43.

¹¹¹⁹ Legislative Affairs Staff 1 Tr. at 42-43.

 $^{^{1120}}$ Id.

¹¹²¹ *Id*.

¹¹²² PBC Employee 1 1/16/23 Tr. at 11-13; PBC Director of Programs Tr. at 111; PBC Employee 2 1/16/23 Tr. at 42; Ricchetti Tr. at 151.

We set forth in particular detail what we learned about these documents and their path to the Penn Biden Center because they are the most highly classified, sensitive, and compartmented materials recovered during our investigation.

1. Document handling and filing in Mr. Biden's vice presidential office in the West Wing

Mr. Biden's office suite in the West Wing of the White House during his vice presidency consisted primarily of his office and a connected front office. During his vice presidency, Mr. Biden's first executive assistant and staff assistant worked in his front office from the start of the Obama administration through mid-2012. The assistants who staffed the front office at the end of the administration—the executive assistant and Staff Assistant 3—started in mid-2012 and mid-2014, respectively. The interest of the White House during his vice presidency of his office and a connected front office.

The front office staff collected and organized Mr. Biden's records. 1126 Classified records were retrieved by members of Mr. Biden's National Security Affairs team or sent to the White House Situation Room. 1127 The majority of unclassified records were regularly sent to the National Archives as presidential records. 1128 Given the volume of paper that passed through his office every day, if staff did not constantly collect,

 $^{^{1123}}$ 12/21/22 Staff Assistant 3 Interview, FBI Serial 36 at 2; Executive Assistant 1/4/23 Tr. at 17-19.

¹¹²⁴ Staff Assistant 1 Tr. at 4-5, 33-34; Executive Assistant 1/4/23 Tr. at 3-4, 10.

¹¹²⁵ FBI Serial 36 at 1; Executive Assistant Tr. 1/4/23 at 3-4.

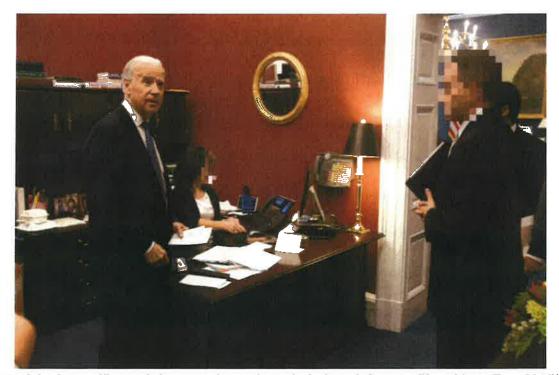
 $^{^{1126}}$ Executive Assistant 1/4/23 Tr. at 22-24, 30-31, 178-80; Staff Assistant 3 10/4/23 Tr. at 15-17; Staff Assistant 2 Tr. at 19; August 2015 West Wing Guide, SCOH-000427 at 3, 6

¹¹²⁷ FBI Serial 36 at 3-4; Staff Assistant 3 10/4/23 Tr. at 16-17; Executive Assistant 1/4/23 Tr. at 23-24; Staff Assistant 2 Tr. at 20-21.

¹¹²⁸ FBI Serial 36 at 2-3; Executive Assistant 1/4/23 Tr. at 22-23; Staff Assistant 2 Tr. at 19-20.

organize, and archive his records, paper would have piled up quickly and become unmanageable. 1129

In addition to records that were regularly archived, Mr. Biden's front office staff kept a relatively small number of files for him in their desk drawers and a credenza located behind the executive assistant. Those files were generally materials, including briefing materials, policy papers, and other official documents, that he wanted to keep outside of the normal archiving process, at least temporarily. 1131



View of the front office and the executive assistant's desk and the rear file cabinet (Dec. 2016) 1132

¹¹²⁹ See Executive Assistant 1/4/23 Tr. at 31-32, 179-80.

 $^{^{1130}}$ 1/4/2023 Staff Assistant 3 Interview, FBI Serial 36 at 2-3; Executive Assistant 1/4/2023 Tr. at 40-41; Staff Assistant 3 10/4/23 Tr. at 6-7.

¹¹³¹ Executive Assistant 1/4/23 Tr. at 77-80, 148-49; Executive Assistant 9/28/23 at 20; August 2016 West Wing Guide, SCOH-000427 at 6; Staff Assistant 3 10/4/23 Tr. at 77-80; FBI Serial 36 at 2-3.

^{1132 1}B001_00754774.



View of the front office toward the staff assistant's desk (Dec. 2016)1133

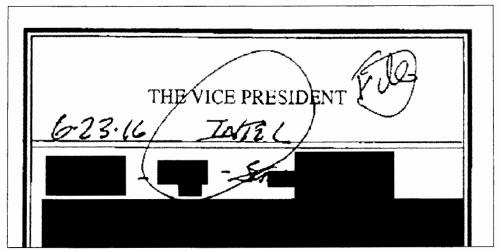
Mr. Biden sometimes wrote a note on material he wanted to save.¹¹³⁴ For example, he might write "save," "save in office, or "file." ¹¹³⁵ In at least one instance, Mr. Biden wrote a note on a classified call-sheet instructing his executive assistant to retrieve the transcript of a call with a foreign leader for "my [r]ecords." ¹¹³⁶

^{1133 1}B001_00766834.

¹¹³⁴ See, e.g., August 2016 West Wing Guide, SCOH-000427 at 6; Executive Assistant 1/4/23 Tr. at 141, 200.

¹¹³⁵ August 2016 West Wing Guide, SCOH-000427 at 6; Executive Assistant 1/4/23 Tr. at 141, 200.

¹¹³⁶ Evidence item 1B49; Recovered Document A9.



Portion of a redacted vice presidential notecard with "File" written on top 1137

The files kept in the front office also included some of Mr. Biden's personal documents. 1138 For example, Mr. Biden sometimes asked his front office assistants to save poems he liked or retrieve Biden-family genealogy information stored in the files. 1139

The front office assistants occasionally reviewed their files, selected material they determined Mr. Biden no longer needed or wanted, and sent it to be archived. 1140 Based on the documents recovered from the Penn Biden Center, however, the occasional review of files stored in the front office was imperfect or not exhaustive. Many of the files stored in the front office—both personal and official—were old. 1141

¹¹³⁷ NARA-Bx2 VP Notecards 2016-0090; FBI Serial 281.

¹¹³⁸ 12/21/22 Staff Assistant 3 Interview, FBI Serial 36 at 2; Executive Assistant 1/4/23 Tr. at 76-77; August 2016 West Wing Guide, SCOH-000427 at 6.

¹¹³⁹ Executive Assistant 1/4/23 Tr. at 79-80; Executive Assistant 9/28/23 Tr. at 25.

^{1140 12/21/22} Staff Assistant 3 Interview, FBI Serial 36 at 2-3.

¹¹⁴¹ Executive Assistant 1/4/23 Tr. at 41, 193; Executive Assistant 9/28/23 Tr. at 20, 69-70.

Some dated back to Mr. Biden's first term as vice president or even his Senate days. 1142

2. Mr. Biden's move out of the vice president's West Wing office

At the end of the Obama administration, Mr. Biden's staff prepared to pack up and move out of his West Wing office and into a transition office in Washington, D.C. 1143 Mr. Biden's front office staff, led by his executive assistant, packed up his West Wing office. 1144 Packing the office was a challenge: Staff had to pack up and move out by Inauguration Day while continuing operations until the very end of the administration. 1145 The executive assistant recalled packing everything up in "maybe a couple of days" in January 2017. 1146

The front office staff packed up both Mr. Biden's office and the front office. 1147

The front office contained the bulk of the files to be packed. The executive assistant recalled packing hanging file folders from the front office into boxes provided by the General Services Administration. 1148 The staff assistant packed up the contents of Mr. Biden's desk in his West Wing Office. 1149 The desk contained some files, most of

 $^{^{1142}}$ Executive Assistant 1/4/23 Tr. at 41, 193; Executive Assistant 9/28/23 Tr. at 20, 69-70.

¹¹⁴³ 11/17/16 Memorandum for the Vice President and Dr. Biden from Staff, SCOH-000305-SCOH-000306; FBI Serial 81 1A91 FBI_00000477.

¹¹⁴⁴ Executive Assistant 1/4/23 Tr. at 36-39.

¹¹⁴⁵ Id. at 36-39; Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 7.

been packed up as of January 11 or 12, 2017. Staff Assistant 4 Tr. at 114-15, 120-21.

¹¹⁴⁷ Executive Assistant 1/4/23 Tr. at 37-39.

¹¹⁴⁸ Executive Assistant 1/4/23 Tr. at 37.

¹¹⁴⁹ Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 5; Staff Assistant 3 10/4/23 Tr. at 92-93.

which were personal—for instance, quotes and speeches that Mr. Biden referred to often and notes from family members. 1150

Mr. Biden's staff did not recall him packing any of his own boxes in the West Wing Office. 1151 Nor did they recall him directing them to bring specific files as they were moving out of the White House. 1152 However, there were a number of types of files that the executive assistant believed Mr. Biden would want to keep with him, such as mementos relating to Beau Biden's death, the genealogy of the Bidens, news articles, policy papers, and copies of his schedules and speeches. 1153 She described the packing process as somewhat "random." 1154 She explained that "we knew that he was going to write a book" and "do some speaking engagements," but "none of us knew what we were going to need." 1155

The executive assistant did not believe the files they packed contained classified documents. 1156 The front office staff's practice was to return classified documents to their originating office or to the White House Situation Room, either daily or whenever Mr. Biden was finished with them. 1157 Staff lacked the time when

 $^{^{1150}}$ Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 5; Staff Assistant 3 10/4/23 Tr. at 92-93.

¹¹⁵¹ Executive Assistant 1/4/23 Tr. at 38; Executive Assistant 9/28/23 Tr. at 113-14.

¹¹⁵² Executive Assistant 1/4/23 Tr. at 82; Executive Assistant 9/28/23 Tr. at 113-14; Staff Assistant 3 Tr. at 93.

¹¹⁵³ Executive Assistant 1/4/23 Tr. at 83-87.

¹¹⁵⁴ Id. at 87.

 $^{^{1155}}$ Id.

¹¹⁵⁶ See Executive Assistant 1/4/23 Tr. at 173-75, 177-79; Executive Assistant 9/28/2023 Tr. at 81.

¹¹⁵⁷ Executive Assistant 1/4/23 Tr. at 23-27; Executive Assistant 9/28/23 Tr. at 81; Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 4-5; Staff Assistant 3 10/4/23 Tr. at 16-18; 9/1/16 West Wing Guide, SCOH-000434 at 7. Occasionally Staff Assistant 3 would store classified material in the safe in the Vice President's Office on a temporary basis until she

packing to review files methodically to ensure everything was disposed of correctly.¹¹⁵⁸

A total of roughly fifteen boxes were moved from the West Wing Office to the transition office in the administration's final days. 1159 Once at the transition office, Mr. Biden's staff did not unpack many of the boxes of files from the West Wing Office. 1160 Mr. Biden was not there daily but did come by occasionally for meetings. 1161

In late June 2017, Mr. Biden and a core group of staff moved from the transition office to the Penn Biden Center's temporary office in Washington, D.C. 1162

They stayed in this office for several months while the Penn Biden Center's permanent office was under construction. 1163 Because Mr. Biden's staff knew they would not be at the temporary office for long, they did not fully unpack, and material remained in boxes there. 1164

could return it to the appropriate National Security personnel. Staff Assistant 3 10/4/23 Tr. at 18-20.

¹¹⁵⁸ See Executive Assistant 1/4/23 Tr. at 39; Staff Assistant 3 12/21/23 Interview, FBI Serial 36 at 7.

^{1159 1/17/17} e-mail from Executive Assistant to Associate Director of Admin., et al., SCOH-000238; 1/17/17 e-mail from Associate Director of Admin. to GSA Employee 1, et al., SCOH-000216; 1/19/17 e-mail from Executive Assistant to OVP Purchase Manager, et al., SCOH-000217; 1/9/17 e-mail from Staff Assistant 4 to Associate Director of Admin. et al., SCOH-000574; 1/5/17 e-mail from OVP Operations Staffer to Staff Assistant 3 et al., SCOH-000445; Staff Assistant 4 Tr. at 119-20.

¹¹⁶⁰ Executive Assistant 1/4/23 Tr. at 51; Personal Aide 3 3/28/23 Tr. at 102-03.

¹¹⁶¹ Executive Assistant 1/4/23 Tr. at 48-49; Personal Aide 3 3/28/23 Tr. at 107.

¹¹⁶² FBI Serial 72 1A78; 6/12/17 e-mail from OVP Purchase Manager to PBC Scheduler, SCOH-000716; 6/19/17 e-mail from OVP Purchase Manager to PBC Employee 2, SCOH-000716; GSA Employee 2 Tr. at 53.

^{1163 12/8/22} PBC Employee 2 Interview, FBI Serial 20 at 1; PBC Scheduler Tr. at 33; Executive Assistant 1/4/23 Tr. at 55-56.

¹¹⁶⁴ Executive Assistant 1/4/23 Tr. at 54; PBC Scheduler Tr. at 57-58.

In October 2017, Mr. Biden and his staff moved into the Penn Biden Center's permanent office. 1165 Once there, the executive assistant recalled unpacking some boxes but not all of them "because there was just no need." 1166 She unpacked some of Mr. Biden's files into file drawers in the outer office adjoining Mr. Biden's office. 1167 In particular, she stored some files in a three-drawer filing cabinet adjacent to the door to Mr. Biden's office. 1168 The executive assistant could not recall how they determined what to unpack versus what to leave in boxes. 1169

When shown copies of the files in Boxes 1 through 3 recovered from the Penn Biden Center, the executive assistant recognized many of them as files she maintained for Mr. Biden in the West Wing. 1170 For instance, with respect to a manila envelope at the front of Box 3 labeled "Layout of Beau's House," she explained that this file "was very important" to Mr. Biden and "he wanted to have access to it." 1171 She stated that the file "came from the White House," where she had stored it in her desk in the front office or in the credenza behind her; she then brought it to the Penn Biden Center, where she stored it in the outer office. 1172 The executive assistant also identified her handwriting on many file folders in Boxes 1 and 3.1173 She noted that

¹¹⁶⁵ 12/8/22 PBC Employee 2 Interview, FBI Serial 20 at 1; PBC Employee 2 Tr. at 14; FBI Serial 344 1A415; 10/27/17 e-mail from PBC Employee 2 to Scott Hoffman, et al., SCOH-000777.

¹¹⁶⁶ Executive Assistant 1/4/23 Tr. at 65.

¹¹⁶⁷ *Id*. at 72.

¹¹⁶⁸ Id. at 72, 76.

¹¹⁶⁹ *Id.* at 65-66.

¹¹⁷⁰ *Id.* at 128-33, 147-48; see generally Executive Assistant 1/4/23 Tr. at 128-203.

¹¹⁷¹ Executive Assistant 1/4/23 Tr. at 153-54; FBI Serial 17 1A19, Bates-000016.

¹¹⁷² Executive Assistant 1/4/23 Tr. at 153-54.

¹¹⁷³ See, e.g., Executive Assistant 1/4/23 Tr. at 133, 151, 155; FBI Serial 26 1A31, 20221201 WFO 0052; FBI Serial 17 1A19, Bates-000019.

some of the files in Boxes 1 through 3 predated her time in the White House and she likely inherited many of them from her predecessor.¹¹⁷⁴

The executive assistant did not specifically recall any of the folders containing classified documents, although she acknowledged that they could have been files she maintained for Mr. Biden in the West Wing. She identified other files that postdated the Obama administration as ones she likely maintained for Mr. Biden at the transition office or the Penn Biden Center. 1175

Numerous unclassified files in Boxes 1 through 4 contained handwritten notes from Mr. Biden directing that the contents be "saved" or "filed." The executive assistant explained that these notes meant Mr. Biden wanted the files saved and kept in the office rather than archived in case he wanted them later. During the administration she did not have an expectation of where the files would go after Mr. Biden's term as vice president. 1176 But when she packed the files to move out, she expected the files from the West Wing Office would travel with Mr. Biden to his new office. 1177

3. Origin of marked classified documents in the "EYES ONLY" envelope

In January 2015—around the date handwritten on the "EYES ONLY" envelope recovered from the Penn Biden Center—the Obama administration was negotiating

¹¹⁷⁴ Executive Assistant 1/4/23 Tr. at 128-29, 146-47, 193.

¹¹⁷⁵ Id. at 206-12; FBI Serial 26 1A32, 20221202_WFO_0292-94; 20221202_WFO_0336; 20221202_WFO_0415-18.

¹¹⁷⁶ Executive Assistant 9/28/23 Tr. at 27-28.

¹¹⁷⁷ Id. at 27-29.

the Iran nuclear deal. 1178 The administration sought to obtain concessions from the Iranian government that would limit its ability to develop nuclear weapons. 1179 In exchange, the United States and other countries would ease economic and trade sanctions on Iran. 1180

During those negotiations, the administration worked both to gain congressional support for the Iran nuclear deal and to ensure Congress did not take action that would interfere with negotiations, in particular, by imposing additional sanctions on Iran. Additional sanctions, in the administration's view, would cause Iran to walk away from a deal and toward further development of nuclear weapons. The administration also opposed legislation that would purport to give the Senate an up-or-down vote on the final Iran nuclear deal.

¹¹⁷⁸ Evidence item 1B48; Colin Kahl, Iran Timeline, SCOH-000287 at 10-11.

¹¹⁷⁹ See, e.g., Key Points on the Joint Comprehensive Plan of Action with Iran, 1B001_00009530; The White House, The Iran Nuclear Deal: What You Need to Know about the JCPOA, SCOH-000456 at 4-5.

¹¹⁸⁰ See Legislative Affairs Staff 2 Tr. at 8-9; The White House, The Iran Nuclear Deal: What You Need to Know about the JCPOA, SCOH-000456 at 8; Top Lines Points – Sanctions, 1B001_01913030; Sanctions Relief – Countering Iran's Regional Activities, 1B001_01913035; Sanctions FAQ's, 1B001_02226166.

¹¹⁸¹ See 7/20/14 Memorandum for the President, Legislative Report for the Week of July 21, 2014, 1B001_02436788 at 1-2; Legislative Affairs Staff 2 Tr. at 8-9; 2/8/15 Memorandum for the President, Legislative Report for the Week of February 9, 2015, 1B001_01903477.

¹¹⁸² 1/28/15 Briefing Memo from OVP-NSA, Background and Points for Breakfast with Senators on Iran Legislation, 1B001_02256623 at 5.

¹¹⁸³ See 1/20/15 Memo re Telephone Call with Senator from White House Legislative Affairs Staff, NARA_SCAN_00001464; FBI Serial 3; Memorandum for the Vice President, Corker Iran Legislation: Policy and Precedent Issues, NARAWH_00016231.

The administration sought to engage members of Congress to advance these goals. Given his lengthy service in the Senate and longstanding relationships with members of Congress, Mr. Biden assisted in that effort as vice president, 1184

As part of that effort, Mr. Biden scheduled a breakfast with six senators on January 29, 2015.¹¹⁸⁵ Colin Kahl, Mr. Biden's National Security Advisor, e-mailed staff on January 24, 2015, stating that the "VP wants to do a breakfast next week" with the aforementioned senators "to discuss Iran sanctions." ¹¹⁸⁶ Kahl noted, "this is the group that travelled together to Israel and other spots in the Middle East – and many came back in support of the Corker-Graham Iran legislation we oppose." ¹¹⁸⁷

The day before the breakfast, Mr. Biden's national security staff gave him a briefing memo stating that the six invited Senators "returned from their recent trip to Israel more skeptical of imposing new sanctions on Iran (along the lines of the Kirk-Menendez legislation) but more sympathetic to Corker-Graham legislation that would give Congress [an] up-or-down vote on a final nuclear deal." The memo also stated that "[a]dditional classified paper will be provided separately." Soon after

 $^{^{1184}}$ Legislative Affairs Staff 2 Tr. at 7-11; Legislative Affairs Staff 1 Tr. at 12-13; OVP NSA Staffer 1 Tr. at 44-45.

^{1185 1/29/15} Schedule for Vice President Joe Biden, NARAWH_00000571.

^{1186 1/24/15} e-mail from Kahl, 1B001_02612074. Senator McCain was on the initial list of Senators proposed by Mr. Biden, but not the final list of Senators invited to the breakfast because he had a conflict on his schedule. See 1/27/15 e-mail from Mr. Biden's Director of Legislative Affairs, 1B001_02611625.

¹¹⁸⁷ 1/24/15 e-mail from Kahl, 1B001 02255821.

 $^{^{1188}}$ 1/28/15 Briefing Memo from OVP-NSA, Background and Points for Breakfast with Senators on Iran Legislation, $1B001_02256623$. 1189 Id

e-mailing the memo, a staff member sent another message stating, "[t]here'll be more classified material later." 1190

The evening before the breakfast with Senators, the White House and intelligence community staff prepared a set of classified intelligence products for Mr. Biden—documents designated A3 through A6 by the FBI—which was delivered to him the next morning in an envelope marked for his eyes only. That night, Mr. Biden's deputy national security advisor Jeff Prescott e-mailed Mr. Biden's staff:

There are IC products that are being generated per high side traffic for the VP in advance of his breakfast tomorrow. VP has indicated that he would like them delivered to him as soon as possible anytime after 6:30am tomorrow morning so that he can absorb before the breakfast meeting. 1191

An NSC staff member responded in the e-mail's reply thread: "Just to clarify, these are compartmented materials that can only be delivered in hardcopy." The NSC staffer said she had "connected our CIA briefing team" with the person who delivered Mr. Biden's copy of the President's Daily Brief every morning—his briefer—"so hopefully she can facilitate the physical transfer to the appropriate folks." Mr. Biden's briefer replied, "I will drop everything at NavObs by 0630." Mr. Biden's briefer stated it was possible she packaged the documents in an envelope marked "EYES"

 $^{^{1190}}$ 1/28/15 e-mail from OVP NSA Staffer 1, 1B001_02122583; 1/28/15 e-mail from OVP NSA Staffer 1, 1B001_02256622; 1/28/15 Briefing Memo from OVP-NSA, Background and Points for Breakfast with Senators on Iran Legislation, 1B001_02256623.

¹¹⁹¹ 1/28/15 e-mail from Prescott, 1B001 02973019.

 $^{^{1192}}$ *Id*.

^{1193 1/28/15} e-mail from PDB Briefer 2, 1B001 02973019.

ONLY' because such envelopes might have been the only ones available in her office at the time. 1194

Prescott responded, asking Mr. Biden's briefer, "can you please specifically indicate the products that are responsive to this request and highlight them separately for Milaide to deliver to VP?"¹¹⁹⁵ The briefer responded she would do so. ¹¹⁹⁶ Prescott replied telling her to "[p]lease bring one for VP and a separate copy for [Kahl] both to NavObs."¹¹⁹⁷ Mr. Biden's on-duty military aide responded on the thread, "I will be in the kitchen at 0630 to take delivery. I will hold [Kahl]'s with me and send the VP's up with the morning traffic."¹¹⁹⁸

At 6:28 a.m. the next morning, the military aide notified the recipients of the e-mail thread that he had the sensitive materials:

I have the PDBs and the other document for the VP and [Kahl] that [the briefer] dropped off. The VP's will be delivered with his morning traffic unless he contacts me or any of you and wants them earlier. I will hold [Kahl]'s until he arrives. 1199

Mr. Biden's executive assistant asked, "can you pls put note on the docs he was asking about to highlight it." 1200 The military aide replied, "they just went up and the document said for VP eyes only." 1201 A National Security Council staffer replied in the e-mail chain that afternoon: "Hope the VP was satisfied with the materials/found

¹¹⁹⁴ PDB Briefer 2 Tr. at 72.

¹¹⁹⁵ 1/28/15 e-mail from Prescott, 1B001_02973019.

¹¹⁹⁶ 1/28/15 e-mail from PDB Briefer 2, 1B001_02973019.

¹¹⁹⁷ 1/28/15 e-mail from Prescott, 1B001 02973019.

¹¹⁹⁸ 1/28/15 e-mail from Military Aide 6, 1B001_02973019.

¹¹⁹⁹ *Id*.

¹²⁰⁰ 1/29/15 e-mail from Executive Assistant, 1B001 02973019.

¹²⁰¹ 1/29/15 e-mail from Military Aide 6, 1B001_02973019.

them helpful prior to the breakfast – it was a solid compilation."¹²⁰² Classified e-mails within the intelligence community confirmed that the documents provided to Mr. Biden were those recovered from the Penn Biden Center and designated by the FBI as documents A3 though A6.¹²⁰³

Mr. Biden hosted the breakfast with senators the morning of January 29, 2015, as shown in the photograph below:



Mr. Biden's breakfast with senators (Jan. 29, 2015)1204

As shown in the photographs below, Mr. Biden had a manila envelope with him at the breakfast.

^{1202 1/29/15} e-mail from National Security Council Staffer, 1B001_03963559.

¹²⁰³ An Intelligence Community agency provided responsive documents pursuant to a prudential search request from the Special Counsel's Office. Investigators reviewed documents responsive to that request on July 24, 2023 at the agency.

¹²⁰⁴ 1B001_01223086.





Mr. Biden with a manila envelope at the breakfast with senators (Jan. 29, 2015)¹²⁰⁵

4. Origin of the handwritten notes in the EYES ONLY envelope

The handwritten notes in the EYES ONLY envelope recovered from the Penn Biden Center appear to be Mr. Biden's own handwritten notes that he created in preparation for his breakfast with senators. Many of the notes are repetitive and appear to be from the same day: January 28, 2015, the day before the breakfast. The notes all appear to be written in the same hand and a former executive assistant to Mr. Biden identified the handwriting throughout as Mr. Biden's. 1206 And the photograph below shows Mr. Biden at the January 29 breakfast with one of the pages of handwritten notes later found in the EYES ONLY envelope in front of him, in one of his notebooks. The title of the page is, "Basic Premise JRB Operating From."

^{1205 1}B001_01223072; 1B001_01223164.

¹²⁰⁶ Executive Assistant 9/28/23 Tr. at 129-30.



Mr. Biden at the January 29, 2015 breakfast with a page of the handwritten notes (A7) found in the EYES ONLY envelope¹²⁰⁷

A former executive assistant to Mr. Biden confirmed that at times Mr. Biden committed talking points to memory by writing them down, sometimes multiple times. 1208

We considered but ultimately rejected the possibility that Mr. Biden or his staff collected the handwritten notes designated A7 from different people after a meeting involving discussions and notetaking about the highly compartmented information also found in the EYES ONLY envelope. The handwritten notes did not address the same information as the other documents. No witness recalled an instance or practice

¹²⁰⁷ SCOH-000776.

¹²⁰⁸ Executive Assistant 9/28/23 Tr. at 130-32.

of collecting participants' notes after a sensitive meeting in the White House. 1209 And that theory is inconsistent with the evidence that the relevant handwriting in A7 appears to be a single person's: Mr. Biden's.

The special counsel asked Mr. Biden about the January 29, 2015 breakfast with Senators and the handwritten notes in the EYES ONLY envelope during Mr. Biden's interview. 1210 Mr. Biden had no recollection of the breakfast or the handwritten notes. 1211

5. Mr. Biden's continuing interest in the Iran deal after receiving the EYES ONLY envelope

Mr. Biden's efforts to persuade members of Congress continued after the breakfast with Senators. Other examples included:

- a telephone call with a senator on February 4, 2015, 1212
- a telephone call with a representative on April 11, 2015, 1213
- a telephone call with a representative on April 14, 2015, 1214
- a meeting with Senate Foreign Relations Committee Democrats on July 16, 2015, 1215
- a telephone call with a senator on July 29, 2015, 1216

¹²⁰⁹ See, e.g., Kahl Class. Tr. at 27-28; Executive Secretary Staffer 4 Tr. at 30; Legislative Affairs Staff 2 Tr. at 22-23.

¹²¹⁰ Biden 10/9/23 Tr. at 85-86.

¹²¹¹ Biden 10/9/23 Tr. at 85-86.

¹²¹² 2/3/15-2/4/15 -e-mail thread re Call Request, 1B001_02039129

 $^{^{1213}}$ 4/11/15-4/12/15 $\,$ e-mail thread among staff re Readout of VP Calls, $1B001_03791348.$

¹²¹⁴ 4/14/16 e-mail among staff re call with Congress rep., 1B001_03464705.

¹²¹⁵ 7/16/15 Event Memo from Staff, Meeting with Senate Foreign Relations Committee Democrats to Discuss Joint Comprehensive Plan of Action (JCPOA), 1B001_00009537.

¹²¹⁶ 7/29/15 Telephone Call Sheet, Telephone Call with Senator Regarding Iran Nuclear Deal, 1B001_02227386.

- breakfast with members of the House Democratic members on July 30, 2015, 1217 and
- a meeting with House Democrats on July 15, 2015. 1218

Mr. Biden's interest in the Iran deal potentially extended beyond his official duties and his time serving as vice president. In May 2016, Zwonitzer, the ghostwriter for *Promise Me*, *Dad*—then in the planning phase—e-mailed Mr. Biden and his staff a "one-page description of the book we have been talking about." 1219 The description proposed a "recounting of a small window of time . . . in the spring and summer of 2015," which "may be the most momentous epoch of the eight-year administration."1220 The description listed a number of administration activities during that time, starting with the "negotiation of the framework of the Iran nuclear deal and the effort to convince Congress to sign off on the pact."1221 Ultimately, however, Promise Me, Dad did not recount the negotiation of the Iran deal or Mr. Biden's role in it. The book's sole mention of the Iran deal is in a brief description of a call with a senator in early 2015, whom Mr. Biden called "to touch base with him on the Iran deal and on the Northern Triangle, and to bring him up to date on the effort to get money set aside for the Army Corps of Engineers to deepen the Delaware River channel."1222

 $^{^{1217}}$ 7/29/15 Event Memo, Breakfast with House Democratic Members on Iran Nuclear Deal, 1B001_00009428.

¹²¹⁸ 7/15/15 Event Memo, Meeting with House Democrats to Discuss the Joint Comprehensive Plan of Action (JCPOA), 1B001_00009547; 7/15/2015 Schedule for Vice President Joe Biden, 1B001_00014068.

¹²¹⁹ 5/21/16 e-mail from Zwonitzer, Zwonitzer-00007399; 5/23/16 e-mail from Personal Aide, 1B001 02171054.

¹²²⁰ JRB-Book-Idea.doc, 1B001_02171055.

 $^{^{1221}}$ Id.

¹²²² Biden, PROMISE ME, DAD 86.

Mr. Biden and his advisors—several of whom were affiliated with the Penn Biden Center and were former senior officials in the Obama administration¹²²³—had a continuing interest in the Iran deal as a matter of foreign policy after his time as vice president. In October 2017, for example, his Penn Biden Center team provided him seven notecards' worth of updates on the "Iran Nuclear Deal" and the Trump administration's stance on it. ¹²²⁴ His staff also prepared remarks for him to give at the Brzezinski Annual Prize Lecture at the Center for Strategic and International Studies; ¹²²⁵ roughly a full page of the remarks defended the Iran deal and criticized the Trump administration's threats to pull out of it. ¹²²⁶ His staff later drafted a "Decision Memo" with the subject "Statement Should President Trump Announce that He is Decertifying Iran's Compliance with the [Iran deal]. ¹¹²²⁷ The decision memo set forth a proposed statement for staff to post to Mr. Biden's Facebook account shortly after then-President Trump's expected announcement that he would not recertify the Iran deal. ¹²²⁸

In February 2018, Kahl sent Mr. Biden an Event Memo for a "Meeting with Israeli Leaders." 1229 Kahl described actions taken by the Trump administration on

¹²²³ See, e.g., Penn Biden Center-Affiliated University Employees – Preliminary List, SCOH-000779; 3/19/17 e-mail from PBC Employee 2, SCOH-000780.

 $^{^{1224}}$ 10/6/17 e-mail to Staff re 10-06 Foreign Policy Cards, SCOH-000351, Key Facts, Iran Nuclear Deal - 10/5/17, SCOH-000352 (attachment 3 of 3).

¹²²⁵ 10/1/17 Draft, Remarks for Vice President Joe Biden, Brzezinski Annual Prize Lecture at CSIS, SCOH-000341.

¹²²⁶ *Id.* at 6.

¹²²⁷ 10/12/17 Decision Memo, Statement Should President Trump Announce that He is Decertifying Iran's Compliance with the JCPOA, SCOH-000359.

 $^{^{1228}} Id.$

¹²²⁹ 2/28/18 Event Memo, Meeting with Israeli Leaders, SCOH-000361.

the Iran deal and set forth talking points for Mr. Biden to advocate for the deal with Israeli leaders, including Prime Minister Netanyahu. 1230 And a Penn Biden Center staffer proposed "Iran deal post UNGA and fight with allies" as one of several topics for members of his team—including Kahl and Blinken—to brief Mr. Biden on in October 2018. 1231

II. Analysis

A. Insufficient evidence exists to prove Mr. Biden willfully retained the classified information in the EYES ONLY envelope

There is insufficient evidence to prove beyond a reasonable doubt that Mr. Biden intentionally retained the classified documents in the EYES ONLY envelope after his term as vice president or caused his staff to do so. Instead, the evidence supports an innocent explanation for the unauthorized retention of those documents. Mr. Biden may have expected to need the material for further discussions with members of Congress about the Iran deal, which he continued to have after his breakfast with Senators on January 29, 2015. Given his practice of having his front office staff store files he wanted to keep close at hand, Mr. Biden likely gave the EYES ONLY envelope to his executive assistant to keep within reach for future engagement with members of Congress. He and his staff appear to have eventually forgotten about it—along with other older files in the front-office collection—and staff members unwittingly moved it out of the West Wing at the end of the administration.

¹²³⁰ *Id.* at 1, 10-13.

¹²³¹ 10/1/18 e-mail from PBC Staffer, SCOH-000001; FBI Serial 344 1A415.

Mr. Biden's front office staff kept files in the front office that he wanted to keep close at hand for reference. 1232 The files recovered from the Penn Biden Center—including those in the EYES ONLY envelope—were files his executive assistant kept in the front office and eventually moved to the Penn Biden Center. 1233 One member of the front office staff periodically went through her files to identify material Mr. Biden no longer needed, 1234 but the executive assistant does not appear to have done the same. 1235 The age of many of the files recovered from the Penn Biden Center—some of which dated back to Mr. Biden's first term as vice president—is consistent with the possibility that the executive assistant and Mr. Biden simply forgot about them, having never purged or archived them. Some files remained in the front office in January 2017 that Mr. Biden likely no longer needed, wanted, or remembered.

Moreover, the EYES ONLY materials were stored in an envelope that was not marked classified; Mr. Biden's executive assistant said the "EYES ONLY" designation did not necessarily signify classified contents. 1236 She typically identified classified material by the cover sheets, which she said were "usually always" included. 1237 She also said she would have respected the instruction that it was for Mr. Biden's eyes only and would not have looked inside. 1238 When interviewed, the executive assistant did not recall seeing the EYES ONLY envelope while packing up

¹²³² Executive Assistant 1/4/23 Tr. at 78-81, 85-86; Staff Assistant 3 12/21/22, FBI Serial 36 at 2-3; Executive Assistant 9/28/2023 Tr. at 133-34.

¹²³³ Executive Assistant 9/28/23 Tr. at 7-10.

¹²³⁴ FBI Serial 36 at 2-3.

¹²³⁵ Executive Assistant 1/4/23 Tr. at 39, 187-188.

¹²³⁶ Executive Assistant 1/4/23 Tr. at 147-48, 156-64.

¹²³⁷ Executive Assistant 1/4/23 Tr. at 35.

¹²³⁸ Executive Assistant 1/4/23 Tr. at 168-69.

the West Wing Office or unpacking at the Penn Biden Center. 1239 Even if she had seen the envelope, it is reasonable to believe she did not know the contents were classified and would not have looked inside to check because of the EYES ONLY stamp.

Some evidence suggests Mr. Biden had a motive to retain the documents in the EYES ONLY envelope after he left office, but that evidence is weak. He did have a continuing interest in the Iran deal, both as a matter of foreign policy and as a potential topic Zwonitzer considered for Mr. Biden's book. But there is no evidence that he ever accessed or requested the EYES ONLY envelope after leaving office, or that he knew his staff had moved it to the Penn Biden Center. None of his advisors at the Penn Biden Center remembered the documents. The materials they prepared for Mr. Biden on the Iran deal do not reference the type of classified information in the EYES ONLY envelope. The executive assistant stated she had no knowledge of the envelope's contents and no memory of him ever asking about it. And Mr. Biden did not appear to recognize the documents during his interview with the special counsel. He barely mentioned his role with the Iran deal in Promise Me, Dad and does not appear to have thought it an important part of his legacy. Some former advisors stated Mr. Biden was pessimistic about negotiating with Iran but supported the negotiations anyway in support of the president. 1240

¹²³⁹ Executive Assistant 1/4/23 Tr. at 159, 173-74; Executive Assistant 9/28/23 Tr. at 120, 135-36.

¹²⁴⁰ Kahl Class. Tr. at 3-6; Donilon Tr. at 30.

Finally, several of the files in the box where the EYES ONLY envelope was found appear to have been forgotten files of little value to Mr. Biden, such as the file about a 2011 ski trip. The files, therefore, do not appear to be a set that Mr. Biden personally curated. Nor do they appear to be the type of files people keep close as a matter of course in their everyday lives.

In summary, the innocent explanation for the retention of the classified documents in the EYES ONLY envelope at the Penn Biden Center is not only plausible, it is a better explanation than one of willful retention. There is thus insufficient evidence to support charging Mr. Biden or anyone else with willful retention of the documents in the EYES ONLY envelope at the Penn Biden Center.

- B. There is insufficient evidence to support charging Mr. Biden for the retention of the other marked classified documents recovered from the Penn Biden Center
 - 1. There is insufficient evidence to charge Mr. Biden with willful retention of marked classified documents A1 and A2

The evidence does not suggest that Mr. Biden willfully retained documents A1 or A2, which related to engagement with China in President Obama's second term and a summary of meetings with foreign leaders during a United Nations General Assembly Week. The FBI found these documents among unclassified documents in folders that Mr. Biden's executive assistant maintained for him. Mr. Biden occasionally asked his executive assistant to retrieve material for him from the files she maintained, but she did not remember Mr. Biden ever going through the files himself to retrieve documents. And Mr. Biden did not move the files himself at the end of the Obama administration.

The more plausible explanation for the unauthorized retention of documents A1 and A2 is that the executive assistant stored and moved documents A1 and A2 to the Penn Biden Center unwittingly. In her interview with the Special Counsel's Office, she credibly stated that she did not know the files she maintained included marked classified documents. Documents A1 and A2 did not have classified cover sheets intended to draw attention to the classified nature of the contents, nor were the folders containing the documents marked to designate classified contents.

The evidence also suggests the executive assistant was not familiar with the contents of the folders because she likely did not create them. The handwritten label on the "Filing 10-10-16" folder (containing document A2) does not appear to be the executive assistant's handwriting. And the printed label on the "Second Term" folder (containing document A1) is large and on the cover of the folder, unlike most of the other printed labels, which appear on the file-folder tabs.

It is also unlikely a jury would find that, after the end of the Obama administration, documents A1 and A2 contained national defense information. Document A1 is a memorandum to Mr. Biden from his then-deputy national security advisor, Jeff Prescott, discussing general, high-level suggestions for the administration's engagement with China in the second term. Document A2 is a memo from Mr. Biden to President Obama describing meetings he had with foreign leaders during General Assembly Week at the United Nations. Unauthorized disclosure of

¹²⁴¹ Compare 1B004-MARK Z 2-16-17-000002 (handwriting sample); Executive Assistant 9/28/23 Tr. at 84 (identifying handwriting) with NARA_SCAN_00000097, FBI Serial 3 ("Filing 10-10-16" folder).

such material could have revealed private, sensitive diplomatic considerations and discussions within the Obama administration. But any prosecution involving those documents would have to meet the defense that the Obama administration's foreign-policy and diplomatic considerations, while historically important, had become far less sensitive by the time the documents were moved to the Penn Biden Center.

There are reasons why Obama-era diplomatic and foreign policy information, such as that in documents A1 and A2, should retain its classification status after the administration ends. But those reasons are nuanced compared to the large-scale and well-known changes to policy, governance, and leadership style that occurred in the White House from the Obama administration to the Trump administration. It is unlikely a jury would conclude that, upon the onset of the Trump administration, the foreign-policy views of the Obama-era vice president and his advisors expressed in documents A1 and A2 remained information relating to the national defense that would warrant a felony criminal charge.

2. There is insufficient evidence to charge Mr. Biden with retention of marked classified document A8

There is insufficient evidence to show Mr. Biden willfully retained document A8 for many of the same reasons as documents A1 and A2. Document A8 is a background memo for a meeting with a foreign leader. The FBI found document A8 among unclassified documents in a folder that Mr. Biden's executive assistant maintained for him and that he did not go through or move himself.

For many of the same reasons as stated for documents A1 and A2, the more plausible explanation for the unauthorized retention of document A8 is that the executive assistant stored and moved it to the Penn Biden Center unwittingly. The executive assistant did not intend to store classified documents in the files she maintained. And the document and folder did not contain the cover sheets she relied on to flag the presence of classified information.

3. There is insufficient evidence to charge Mr. Biden with retention of marked classified documents A9 and A10

Recovered document A9 is a telephone call sheet setting forth the purpose of a call between the Ukrainian Prime Minister and Mr. Biden and talking points for the call, which occurred on December 11, 2015. It is marked "SECRET." A handwritten note dated December 12, 2015, from Mr. Biden in the upper-right corner of the sheet asks his executive assistant to "[g]et copy of this conversation from Sit Rm for my Records please." Document A10 documents the substance of that call in the format of a non-verbatim transcript. It is labeled "CONFIDENTIAL" and "EYES ONLY DO NOT COPY."

Given Mr. Biden's handwritten note, documents A9 and A10 have additional indicia of willful retention by Mr. Biden as compared to the other marked classified documents recovered from the Penn Biden Center. On a document bearing "SECRET" classification markings with talking points for a call, Mr. Biden asked his executive assistant to get a copy of the transcript of the actual call from the Situation Room for "my [r]ecords." The executive assistant stored both the call sheet and the transcript in a folder labeled "VP Personal." And a witness familiar with foreign-leader calls stated that the content of such calls is typically classified by default. 1242

¹²⁴² McKeon Tr. at 98-99.

Nonetheless, there is reasonable doubt that Mr. Biden willfully retained documents A9 and A10. Mr. Biden's handwritten note does not request that his executive assistant save the classified call sheet containing talking points for the call (A9) in his records; rather, he only requested the transcript of the phone call itself. And no jury could reasonably find that the substance of the call between Mr. Biden and the Ukrainian Prime Minister was national defense information. The two exchanged pleasantries and the Prime Minister heaped praise upon Mr. Biden for his December 9, 2015 speech to Ukraine's parliament. They did not engage in a substantive policy discussion. There may be technical or nuanced reasons to maintain the classification of the call, but no reasonable jury could conclude the call or its contents were national defense information after the end of the Obama administration, or that by asking for a transcript of the call Mr. Biden intended to retain national defense information.

The evidence suggests that the marked classified documents found at the Penn Biden Center were sent and kept there by mistake. Therefore, we decline any criminal charges related to those documents.

CHAPTER FIFTEEN

CLASSIFIED DOCUMENTS FOUND AT THE UNIVERSITY OF DELAWARE

In January, February, and June 2023, FBI agents identified and recovered just over a dozen marked classified documents in Mr. Biden's Senate-era papers housed at the University of Delaware. Almost all of these documents predate the Senate's establishment of rules for the tracking and handling of classified information. The evidence does not suggest that Mr. Biden willfully retained these documents. Rather, they appear to have been included in his large collection of Senate papers by mistake.

I. FACTS

A. Mr. Biden donated hundreds of boxes of senatorial records to the University of Delaware library

As a senator, Mr. Biden accumulated hundreds of bankers boxes of records. During his time as vice president, his staff shipped these records on a rolling basis to the National Archives storage facility in Maryland, where they were stored for Mr. Biden as a courtesy. The Senate records consisted of his personal senatorial files, those of his staffers, and campaign materials. While the records were not supposed to include committee records, which belong to the Senate, senators' staff commonly intermingled committee documents with their senators' personal papers. 1244 By the time Mr. Biden became vice president, the National Archives had over 2,000 boxes and 415 gigabytes of electronic data in courtesy storage for him. 1245

¹²⁴³ 3/10/10 Memo from OVP Counsel, 1B001_00038717.

¹²⁴⁴ Id. at 4; Senate Staffer 1 Tr. at 25-26, 43.

¹²⁴⁵ 3/10/10 Memo from OVP Counsel, 1B001_00038717.

Within the first year of his vice presidency, Mr. Biden's staff began preparations to donate his senatorial papers to the University of Delaware. ¹²⁴⁶ In spring 2011, Mr. Biden asked two of his former longtime Senate staffers to review his boxes in courtesy storage. ¹²⁴⁷ These former staffers reviewed and catalogued the boxes and recommended to him which papers to donate. ¹²⁴⁸ During the review, neither staffer expected to or did find any marked classified documents. ¹²⁴⁹

In fall 2011, Mr. Biden formally agreed to donate his Senate papers and other records to the University of Delaware. 1250 Between 2012 and 2015, the University's Morris Library received over 2,000 boxes of Mr. Biden's senatorial papers shipped from the National Archives, the Russell Senate Office Building, and Mr. Biden's Delaware home. 1251 Upon their arrival at the University of Delaware, the boxes were

¹²⁴⁶ FBI Serial 349 1A420; *See, e.g.*, July 2009 e-mails between University of Delaware general counsel and Mr. Biden's Chief of Staff, SCOH-000712.

 $^{^{1247}}$ Senate Staffer 1 Tr. at 30-31. Senate Staffer 2 3/14/23 Tr. at 25. The staffers were paid by the University of Delaware to perform the pre-gift review. Senate Staffer 2 3/14/23 Tr. at 65.

¹²⁴⁸ Senate Staffer 1 Tr. at 35. Senate Staffer 2 3/14/23 Tr. at 25-26.

¹²⁴⁹ Senate Staffer 1 Tr. at 43; Senate Staffer 2 11/3/23 Tr. at 13, 26.

¹²⁵⁰ FBI Serials 282 1A302, 349 1A420; See 2/12/14 Letter from Mr. Biden to the National Archives, SCOH-000011. The "Ceremonial Agreement to Gift" was signed in a ceremony at the University of Delaware on September 16, 2011, while the actual deed of gift was not fully executed until July 2016. See, e.g., July 2011 and September 2011 e-mails amongst University of Delaware staff, OVP Counsel, and personal counsel to the Vice President, SCOH-000783, SCOH-000706; 7/15/16 Deed of gift, SCOH-000578.

¹²⁵¹ FBI Serials 79 1A89, 282 1A301, 349 1A420; 5/30/12-6/5/12 e-mails between former Senate staffer, current Senate staffer, and the University of Delaware, SCOH-000005, SCOH-000007, SCOH-000008, SCOH-000010; 10/23/11 e-mail from former Senate staffer to Mr. Biden, 1B001_02683701 ("However, I have not forgotten about the boxes and files at your house. I am looking to start on those just after Thanksgiving. However, I know that you want to get them out of there sooner rather than later."); 1/31/13 e-mail from Archivist to UDel Morris Librarian and UDel library employee, SCOH-000714 (former Senate staffer was "looking though about 20-25 boxes in the garage From that group, he has about 2 boxes of Senate material so far.") When interviewed, the former Senate staffer did not recall

placed in a secure storage area, and the materials were reviewed over time by archivists and other university staff. 1252

B. Marked classified documents discovered at the Morris Library

In fall 2014, the Morris Library hired an intern to organize the Biden Senate papers, separate out documents belonging to the Foreign Relations Committee, and re-file the remainder. 1253 In late 2015 or early 2016, the intern discovered, among committee records, one document that was marked classified. 1254 She placed a sticky note on the document indicating the number of the box in which she found it and the fact it was marked "Secret." 1255

In February 2023, an archivist reviewed the box the intern had flagged, discovered the marked classified document within the box, secured the document in a vault, and reported it to the FBI. 1256 Agents retrieved the document that same day. 1257 The classified document is a two-page State Department cable from 1987, marked Secret concerning the NATO alliance. 1258 A classification review by the State Department determined that the document was declassified in 2012. 1259

reviewing Senate-era boxes at Mr. Biden's Delaware residence and transporting them to the University of Delaware. Senate Staffer 2 11/3/23 Tr. at 9-10, 18-20.

¹²⁵² Archivist Tr. 2/27/23 at 32.

¹²⁵³ Intern Tr. at 6-9.

¹²⁵⁴ *Id.* at 10, 12-13.

 $^{^{1255}}$ Id. at 21-22. The intern expressed confidence that she advised her supervisor of this discovery. Id. at 16-18. We were unable to determine why this issue went unaddressed at that time.

¹²⁵⁶ Archivist Tr. at 84; Report of Archivist interview, FBI Serial 79.

¹²⁵⁷ FBI Serials 79, 71.

¹²⁵⁸ Recovered document F1.

¹²⁵⁹ FBI Serial 676.

After this discovery, and with Mr. Biden's consent, in June 2023, the FBI searched the contents of approximately 105 boxes at the Morris Library, the subset of boxes that contained Senate Foreign Relations Committee materials. Two of those boxes contained the following five marked classified documents:

- 1. Two-page letter to Richard G. Lugar, Committee on Foreign Relations, regarding Conventional Armed Forces in Europe Treaty, dated November 20, 1991 (signature block missing), marked Secret.¹²⁶¹ According to a classification review, this document is currently classified as Secret.¹²⁶²
- 2. Three-page document titled "Summary of March 11, 1977 Executive Meeting of Full Committee," dated Mar. 11, 1977, marked Secret and "CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE." 1263 A classification review of this document is pending. 1264
- 3. Five-page document titled "Mutual Balanced Force Reductions (MBFR)," dated July 1977, and marked Confidential. According to a classification review, this document is currently classified as Confidential. 1266
- 4. Six-page Staff Memorandum titled, "National Security Interests in a Law of the Sea Treaty, March 6, 1979 Hearings," dated March 2, 1979, marked Confidential and "For Committee Use Only." According to a classification review, this document is currently classified as Confidential. 1268
- 5. Three-page Action Memorandum from Senate Staffer 3 to nine senators, including Mr. Biden, with subject, "Proposed 1980 Committee Budget For Discussion During Meeting of Democrats in S-201 at 2:00 p.m., Wednesday, January 23," dated January 23, 1980,

¹²⁶⁰ FBI Serials 290, 292.

¹²⁶¹ Recovered document G5.

¹²⁶² FBI Serial 676.

¹²⁶³ Recovered document G1.

¹²⁶⁴ FBI Serial 676.

¹²⁶⁵ Recovered document G2.

¹²⁶⁶ FBI Serial 676.

¹²⁶⁷ Recovered document G3.

¹²⁶⁸ FBI Serial 676.

marked Confidential. 1269 The State Department did not provide a classification determination for this document. 1270

C. Marked classified documents at the Biden Institute

1. Storage of Mr. Biden's records at the Biden Institute

In addition to the thousands of boxes of Senate papers Mr. Biden donated to the University of Delaware, there was a smaller collection of mostly Senate-era material that remained stored at the Russell Senate Office Building and the National Archives. During the vice presidency, Mr. Biden's former Senate staffers reviewed the material to help him decide what, if any, he might donate to the University of Delaware. Mr. Biden wanted to identify and keep materials that may be "politically sensitive," speeches (from both the Senate era and vice presidency), photographs, contact information, and personal (and campaign) materials. 1271 The staffers found no marked classified documents during this review.

Several months after the vice presidency, in July 2017, these materials, which filled about 263 boxes, were shipped to the Biden Institute at the University of Delaware, a domestic policy think tank established in 2017. The Biden Institute

¹²⁶⁹ Recovered document G4. This document is a duplicate of Recovered document E1, a document recovered from the Biden Institute, discussed later in this section.

¹²⁷⁰ FBI Serial 676. See also Section C.3 below.

¹²⁷¹ May 2017 e-mails between transition staffer and Executive Director, SCOH-000697, SCOH-000014; 12/15/16 meeting notes belonging to Senate Staffer 1, SCOH-000012; May 2017 e-mails between transition staffer and Senate Staffer 1, SCOH-000027, SCOH-000015.

¹²⁷² 7/7/17 e-mail between transition staffer and Executive Director, SCOH-000701; see also 7/7/17-7/14/17 e-mails between transition staffer and Executive Director, SCOH-000703.

was a space that Mr. Biden could use for free, where someone could continue to sort through the materials. 1273

2. Biden Institute reviews the boxes

In late 2018 or early 2019, the Biden Institute hired the daughter of one of Mr. Biden's personal attorneys as a part-time employee to review Mr. Biden's boxes. 1274 Over several months, she conducted what she described as a cursory review of the boxes and inventoried their contents. 1275 She did not alert anyone to the presence of classified information. 1276 When interviewed, she stated that she never saw any documents with classification markings. 1277

Several others also reviewed these materials. Former Senator and Mr. Biden's Senate Chief of Staff Ted Kaufman reviewed several boxes in 2019 to determine whether they contained any of his own papers. 1278 Mr. Biden's sister, Valerie Biden Owens, also reviewed some of these boxes and recalled seeing speeches and

¹²⁷³ 5/10/17 e-mail from transition staffer to Biden Owens and Senate Staffer 1, SCOH-000014; 5/17/17 e-mail from transition staffer to Senate Staffer 1 SCOH-000015.

¹²⁷⁴ June 2017 and January 2019 e-mails between Executive Director and employee, SCOH-000693, SCOH-000696.

¹²⁷⁵ Inventory attachment, SCOH-000677; FBI Serial 110.

¹²⁷⁶ FBI Serials 89, 110.

¹²⁷⁷ Id.

Director Serial 74 at 3-4; Biden Owens Tr. at 58. In January 2009, Mr. Kaufman was appointed to serve the remainder of Mr. Biden's term as Senator when Mr. Biden resigned from the Senate to become vice president. Edward E. (Ted) Kaufman: United States Senator from Delaware and Chief of Staff to Senator Joe Biden, 1973-2010, Oral History Interviews, August 17 to September 27, 2012, Senate Historical Office, Washington, D.C., https://www.senate.gov/about/oral-history/kaufman-edward-e-oral-history.htm (last visited Jan. 31, 2024).

schedules.¹²⁷⁹ One Institute staff member recalled looking in some of these boxes and seeing framed photographs and gifts.¹²⁸⁰

3. Discovery of marked classified documents at the Biden Institute

After the discovery of classified information at the Penn Biden Center in November 2022, the Biden Institute's Executive Director notified Mr. Biden's personal counsel, Bob Bauer, that the institute had done its own inventory of the boxes in its possession and believed that four contained "VP Speeches & Transcripts." 1281

In January and February 2023, FBI agents searched all 263 boxes stored at the institute and determined that one contained seven marked classified documents dated between November 1979 and June 1980. 1282 Mr. Biden's former Senate staffers had reviewed this box before it was sent to the Biden Institute and omitted it from the gift to the University of Delaware because the box contained campaign materials from 1978. 1283

¹²⁷⁹ Executive Director FBI Serial 74 at 4; Biden Owens Tr. at 59-60.

¹²⁸⁰ OVP Intern Tr. at 33-34.

¹²⁸¹ 1/19/23 e-mail from Executive Director to Bauer with attached inventory, SCOH-000661, SCOH-000662. See also 5/18/17 e-mail from OVP Purchase Manager to Senate Staffer 1 regarding Senate Records, SCOH-000027.

¹²⁸² FBI Serials 66, 67; Recovered documents E1-E7.

¹²⁸³ Senate Staffer 1 spreadsheet, SCOH-000056; June 2017, SCOH-000041 (listing boxes to send to the Biden Institute from the National Archives). The four documents were found in a box with the requisition number 329-94-341, #58. The Biden Institute employee had performed a review of the box and added her own number, 252, to the box. The employee inventorying the box had described it as containing "misc. news clips – some correspondence" from "c. mid-1970s." Inventory attachment, SCOH-000677.

Two documents were marked Secret and five documents were marked Confidential. The two Secret documents and one Confidential document were found in a folder labeled "Foreign Relations Committee." The other four Confidential documents were in a folder labeled "Europe."

Below is a description of the documents recovered from the Biden Institute:

- Three-page Action Memorandum from Senate Staffer 3 to nine senators, including Mr. Biden, with subject, "Proposed 1980 Committee Budget – For Discussion During Meeting of Democrats in S-201 at 2:00 p.m., Wednesday, January 23," dated January 23, 1980, marked Confidential.¹²⁸⁴
- 2. Two-page letter to Edmund S. Muskie, Secretary of State, from Ted Kaufman/Senator Biden, dated June 4, 1980, marked Confidential. 1285
- 3. One page Action Memorandum, addressed to Senators Church, Pell, and Biden, with subject "Letter to Secretary Muskie on Consultations with the Allies on SALT and TNF," dated May 29, 1980, marked Confidential. 1286
- 4. One page Action Memorandum, addressed to Senator Biden, with subject "Re: Letter to Secretary Muskie on Consultations with the Allies on SALT and TNF," dated May 29, 1980, marked Confidential. 1287
- Three page letter from Edmund S. Muskie, Secretary of State, to Senators Church, Pell, and Biden, dated May 30, 1980, marked Confidential.¹²⁸⁸
- 6. One page Action Memorandum, addressed to Senator Biden ("The attached memo from Senate Staffer 4 on TNF Modernization is both

¹²⁸⁴ Recovered document E1. This document is a duplicate of Document #5 (G4) discussed above in Section 1B.

¹²⁸⁵ Recovered document E2.

¹²⁸⁶ Recovered document E3.

¹²⁸⁷ Recovered document E4.

¹²⁸⁸ Recovered document E5.

- interesting and disturbing") from Senate Staffer 3 through Ted Kaufman, dated November 28, 1979, marked Secret. 1289
- 7. Two page Information Memorandum, addressed to Senate Staffer 3 from Senate Staffer 4, titled "TNF Modernization and Arms Control," dated November 26, 1979, marked Secret.¹²⁹⁰

For Documents 1 through 5, the State Department could not provide a classification level in response to our request, though it noted that "[t]he details contained in some of these documents appear to have been highly sensitive at the time that these documents were created and included information that appeared to originate at executive branch federal agencies." According to the State Department, these documents may or may not still be sensitive today. 1292 The State Department was unable to render an opinion as to Document 6.1293 The State Department could not provide a classification level for Document 7 but advised that certain pages of this document may be classified if they had been included in an executive branch document, as the legislative branch does not have the authority to classify documents. 1294

4. U.S. Senate rules on handling of classified information during the timeframe of the recovered documents

The documents recovered at the University of Delaware all appear to have

¹²⁸⁹ Recovered document E6.

¹²⁹⁰ Recovered document E7.

¹²⁹¹ U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

¹²⁹² U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

¹²⁹³ U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

¹²⁹⁴ U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

originated from Mr. Biden's service on the Senate Foreign Relations Committee. Mr. Biden served on the Committee from 1975 to 2009. 1295 He became Ranking Minority Member in 1997 and chaired the Committee in January 2001, from June 2001 to 2003, and again from 2007 to 2009. 1296 As a Committee member, Mr. Biden had access to classified information relating to diplomatic nominees, treaties, and oversight responsibilities for the Department of State.

In the mid- to late-1980s, several factors led to growing concern within the Senate about the handling of classified information. Among other things, each Senate office handled classified information differently. Also, there was no central recordkeeping system to track which Senate employees held a security clearance. As a result, then-Minority Leader Robert Dole described the Senate's handling of classified information as "a disaster, waiting to happen." 1300

In response, in 1987, the Senate established the Office of Senate Security and charged it with protecting classified information in Senate offices and committees. ¹³⁰¹ The Office's Senate Security Manual established rules for the handling of classified

¹²⁹⁵ COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE, MILLENIUM EDITION 1816-2000, S Rep. No. 105-

^{28,} at 101, www.foreign.senate.gov/imo/media/doc/CDOC-105sdoc281.pdf (senate.gov) (last visited Jan. 23, 2024).

 $^{^{1296}\,\}mathrm{Garrison}$ Nelson and Charles Stewart III, COMMITTEES IN THE U.S. CONGRESS 1993-2010 585 (CQ Press 2010).

¹²⁹⁷ 133 CONG. REC. 9371 (Apr. 23, 1987) (statement of Sen. Dole).

 $^{^{1298}}$ Id.

 $^{^{1299}}$ Id.

¹³⁰⁰ *Id*.

¹³⁰¹ S. RES. 243 (100th Congress, 1st Session, July 1, 1987) (on file with Office of Special Counsel); see also Offices of the Secretary, United States Senate, https://www.senate.gov/about/officers-staff/secretary-of-the-senate/offices-of-the-secretary.htm#:~:text=The%20Office%20of%20Senate%20Security,in%20Senate%20offices%20and%20committees (last visited Jan. 18, 2024).

information.¹³⁰² Senators could not store Top Secret or Special Access material in their personal offices.¹³⁰³ Information at lower classification levels could be stored in a senator's personal office, but only in an appropriate storage facility that the Office of Senate Security had certified.¹³⁰⁴ And senators could not remove classified information from approved spaces or take it home with them.¹³⁰⁵

In 1997—after all of the documents recovered at the University of Delaware were created—the Office of Senate Security began tracking classified information using a computerized system. ¹³⁰⁶ Under this system, which exists to this day, each copy of a classified document coming into the Office is logged and given a unique, physical barcode. ¹³⁰⁷ The system catalogues each document with an unclassified title, subject, page count, document origin, document destination, and any codewords. ¹³⁰⁸ This way, if a classified document was found in an unauthorized location, the Office of Senate Security could identify the person who is responsible for that document.

¹³⁰² *Id*. 3(a).

¹³⁰³ Security Manual, Office of Senate Security, Section II.A.7(a) note (Apr. 2007). The manual's discussion of "Special Access" appears to be a shorthand reference to Special Access Programs, a term defined in its glossary as "[a]ny program imposing need-to-know access controls beyond those normally prescribed for access to Confidential[,] Secret, or Top Secret information." *Id.* Special access programs are a subset of Sensitive Compartmented Information. *See* Executive Order 13526 § 4.3.

¹³⁰⁴ Security Manual, Office of Senate Security, Section II.A.7 (Apr. 2007).

¹³⁰⁵ *Id.*, Section II.A.12.

¹³⁰⁶ See Senate Employee 1 Tr. at 29.

¹³⁰⁷ Senate Employee 2 Tr. at 29. While these records are stored electronically, records of a senator's physical access to classified document at the Office, as well as most other types of records maintained by the Office, were kept manually using handwritten logs. Senate Employee 1 Tr. at 35.

¹³⁰⁸ Senate Employee 1 Tr. at 33-34.

II. ANALYSIS

The evidence does not establish that Mr. Biden or anyone else knowingly removed or retained the classified documents found at the University of Delaware.

These documents appear to have been included in his Senate papers by mistake.

First, Mr. Biden depended on staffers to maintain his Senate files, organize and pack them, transport them to the proper place of storage, and review them before they were sent to the University of Delaware. No evidence suggests he knew these classified documents were within his massive collection of Senate papers. Further, given the age of the documents, we found no evidence that Mr. Biden personally viewed any of them while he was a member of the Senate. Mr. Biden sat on the committee that generated these documents, but it is entirely plausible they were handled by a staff member and that Mr. Biden never handled the documents himself before they were filed among his papers. 1309 There is also no record of Mr. Biden's review of the documents before or after he donated them to the University. As a matter of historical context, there have been numerous previous incidents in which marked classified documents have been discovered intermixed with the personal papers of former executive branch officials and members of Congress. 1310

¹³⁰⁹ The 1991 letter addressed to Senator Lugar (then a Foreign Relations Committee member) found within Mr. Biden's papers does not contain a signature block. Therefore, we could not determine who sent the letter, or whether Mr. Biden ever viewed (or ever received) the letter.

¹³¹⁰ Joseph Weber, When state secrets land in the hands of university librarians, WASH. POST (Feb. 10, 2023, updated Feb. 19, 2023), https://www.washingtonpost.com/education/20 23/02/10/classified-documents-university-library-trump-biden-pence/ (last visited Jan. 31, 2024); Ronald G. Schafer, Presidential papers have long been turning up in unexpected places, WASH. POST (Feb. 4, 2023), https://www.washingtonpost.com/history/2023/02/04/presidentia

Second, before the Senate papers arrived at the University, Mr. Biden asked two experienced staffers to review them. The staffers knew to segregate documents that were appropriate for the Morris Library gift. They did not identify any classified documents within these materials.

The staffers' failure to do so is likely due, in part, to the small number of classified documents found within a large collection of the Senate papers. Another possible reason is that several of the documents use markings that do not clearly marked Some of the convey classified nature. documents "CONFIDENTIAL." While that is a valid marking for classified information, the term "CONFIDENTIAL" is also used in other contexts not involving classified information. Senate staffers could have understood these to be internal committee documents or simply sensitive documents created by authors who wanted to limit the number of people who viewed them.

Third, the classified documents were found in collections of papers Mr. Biden had either already donated or planned to donate after his staff removed personal and political materials. This suggests neither he nor his staff knew about or wanted to keep the small number of classified documents later found there.

l-papers-documents-misplaced/; Zeke Miller et al., Classified records pose conundrum stretching back to Carter, ASSOCIATED PRESS NEWS (Jan. 24, 2023), https://apnews.com/article/biden-trump-classified-documents-president-

³³df0355c72e9ae8fa4cb6ead13f6521; U.S. GEN. ACCOUNTING OFF., GAO/GDD-91-117, REPORT TO CONGRESSIONAL REQUESTORS: DOCUMENT REMOVAL BY AGENCY HEADS NEEDS INDEPENDENT OVERSIGHT 17-

^{23 (}Aug. 1991), https://www.gao.gov/assets/ggd-91-117.pdf (last visited Jan. 31, 2024).

Finally, none of these decades-old documents contains information so obviously sensitive that a jury would find it compelling enough to convict a former president and vice president of mishandling classified information.

For these reasons, it is likely that the few classified documents found in Mr. Biden's Senate papers were there by mistake. The documents found at the University of Delaware are not a basis for criminal charges.

CHAPTER SIXTEEN

OTHER CLASSIFIED DOCUMENTS FOUND IN MR. BIDEN'S DELAWARE HOME

I. MARKED CLASSIFIED DOCUMENTS IN NOTEBOOKS

As discussed in Chapters Two and Four, three notebooks found in Mr. Biden's Delaware home had marked classified documents placed inside them. One of these notebooks, labeled "Af/Pak 1," is discussed in Chapter Six. For the other two, the evidence does not suggest either that Mr. Biden retained the classified documents inside them willfully, or that the documents contain national defense information. Thus, these documents do not warrant criminal charges.

A. Documents found within notebook labeled "1/6/12 #2 Foreign Policy"

The notebook labeled "1/6/12 #2 Foreign Policy" recovered from Mr. Biden's basement den contained two marked classified documents. One was three pages of what appear to be PowerPoint slides, each of which was marked Secret/NOFORN/Pre-Decisional. The slides are dated May 22, 2013, and discuss various options for U.S. troop levels in Afghanistan after 2014.

The notebook contains a corresponding handwritten entry dated May 24, 2013, when Mr. Biden took notes during a National Security Council meeting that he attended through a secure video teleconference from his Delaware home. While we do not know exactly where inside the notebook the classified PowerPoint slides

¹³¹¹ Notebook 1B15.

¹³¹² Recovered documents C1, C2, C3.

¹³¹³ Id

¹³¹⁴ Notebook entry 1B15-0039; 5/24/13 Final Schedule for Vice President Joe Biden, NARAWH 00000422.

were located (because the slides were found by a member of the White House Counsel's Office rather than the FBI), 1315 it is likely that Mr. Biden had the slides at his home during the National Security Council meeting, then placed the slides in the notebook after the meeting, where they remained until discovered in 2023.

The second marked classified document in the notebook was a briefing memorandum for Mr. Biden from his National Security Affairs team dated November 1, 2013, and marked Top Secret/Sensitive Compartmented Information. The memorandum briefed Mr. Biden in advance of a meeting with the Prime Minister of Iraq. The document corresponds to an entry in the notebook where Mr. Biden made handwritten entries about the Prime Minister's visit, indicating that Mr. Biden placed the memorandum in his notebook during or soon after that event. The second secon

For both marked classified documents found in this notebook, we investigated whether Mr. Biden had reason to keep the documents, including by interviewing Mr. Biden and relevant staff members, reviewing Mr. Biden's notebook entries, and examining the public record. The evidence does not suggest that he intended to keep these documents, and it is possible he put them in his notebook after meetings and forgot about them. While one of the documents concerned troop levels in Afghanistan

¹³¹⁵ FBI Serial 44.

¹³¹⁶ Recovered document C4. The document was classified by OVP National Security Affairs as Top Secret//SCI. The intelligence community has indicated that was an invalid marking and should be marked TS//HCS-O/SI//ORCON/NOFORN; FBI Serial 676; Notebook 1B15.

¹³¹⁷ Recovered document C4.

¹³¹⁸ FBI Serial 44.

as of 2013,¹³¹⁹ an issue that remained of great interest to Mr. Biden,¹³²⁰ because it was a single document from years after the Afghanistan 2009 policy review, it is plausible that Mr. Biden left it in the notebook by mistake rather than storing it there intentionally.

We investigated whether Mr. Biden encountered these classified documents in his notebook after the vice presidency, but we did not find evidence that he did. There is no evidence he used this notebook when writing *Promise Me, Dad*, and the classified documents were not relevant to the book, and were not referenced in Mr. Biden's recorded conversations with Zwonitzer. While it is natural to assume Mr. Biden may have reviewed this notebook at some point after leaving office and found the classified documents inside, we did not find evidence to establish this.

B. Notebook labeled "DAILY/MEMO"

Mr. Biden's notebook labeled "DAILY/MEMO," which agents found in his office/library on the main floor of his Delaware home, contained one page of a PowerPoint slide marked Secret/NOFORN about national security priorities for the second term of the Obama administration.¹³²¹ The slide's subject matter suggests it may have been distributed at, or in preparation for, a National Security Council meeting. While the intelligence community has informed us that this document is properly marked, it does not appear to us to contain national defense information.¹³²² The investigation also did not reveal evidence that Mr. Biden intentionally kept the

¹³¹⁹ Recovered documents C1, C2, C3.

¹³²⁰ See Chapter Six.

¹³²¹ Notebook 1B25; Recovered document D21.

¹³²² Serial 676.

document after the Obama administration, or that he knew the document was in his home.

For each of the marked classified documents found in Mr. Biden's notebooks, we cannot prove that Mr. Biden knew about or intended to keep the document after he was vice president, or we cannot prove the document contains national defense information, or both. These documents do not support criminal charges against Mr. Biden.

II. "WEEKEND WITH CHARLIE ROSE" BINDERS

During their search of Mr. Biden's Delaware home in December 2022 and January 2023, FBI agents found two nearly identical binders containing marked classified documents: one in a box in the garage, and the other in a paper bag in the office next to Mr. Biden's primary bedroom. The evidence does not show that Mr. Biden knew the classified documents were in his home, and it is plausible that they were stored there by mistake.

Mr. Biden's staff assembled the binders to prepare him for an event in September 2014, entitled "Weekend With Charlie Rose" in Aspen, Colorado. 1324 He flew to Aspen on Friday, September 19, 2014, and back to Delaware the next day. 1325 The guest list included leaders in government and business. 1326

¹³²³ Evidence items 1B5, 1B31, 1B77.

^{1324 9/17/14} e-mails amongst OVP National Security Affairs staff, NARAWH_00011307 ("Poroshenko paper, including background (classified)").

^{1325 9/17/14} e-mail from Director of Programs, NARAWH_00010985 (attaching Mr. Biden's schedule from September 19, 2014); 9/18/14 e-mail from Director of Programs, NARAWH_00010943 (attaching Mr. Biden's schedule from September 20, 2014).

^{1326 9/18/14} Event Memo, Weekend with Charlie Rose Dinner, NARA_SCAN_00001636.

The binders included materials on foreign policy topics to prepare Mr. Biden for an interview with Charlie Rose on September 20, 2014.¹³²⁷ A staff member who compiled the binder e-mailed his colleagues proposing its contents, stating that one document would be classified and another might be.¹³²⁸ The recovered binders' contents generally track this e-mail.¹³²⁹ The marked classified documents in the binders include the following:

- An Event Memo, marked Secret, from a National Security Affairs advisor preparing Mr. Biden for a lunch on September 17, 2014 at the Naval Observatory with a foreign leader. This memo was in both the binder in the garage (as a two-page document) and the binder in the upstairs office (as a three-page document).
- A ten-page document labeled in part, "Background," marked Secret/NOFORN, which appears to be an attachment to the Event Memo referenced immediately above. This document also was in both recovered binders. 1332
- A five-page document titled in part, "Scenesetter for National Security Advisor Susan Rice." It lacks classified headers or footers but does have portion markings indicating it contains Secret information. This document was in both binders and corresponds to the staffer's e-mail describing one paper as potentially classified.

¹³²⁷ Communications Director Tr. at 16; 9/9/14 Interview Memo, 1B001_00034947 (memo preparing Mr. Biden with an "off-the-record interview with Charlie Rose" on September 20).

^{1328 9/17/14} e-mails amongst OVP National Security Affairs staff, NARAWH_00011307.

¹³²⁹ Compare 9/17/14 e-mails amongst OVP National Security Affairs staff, NARAWH 00011307, with 1B005-CHARLIE ROSE BACKGROUND MATERIAL.

¹³³⁰ Classified documents B1, D23; 9/18/14 White House Press Release, 1B001_02563406 (describing lunch with Mr. Biden and foreign leader at the Naval Observatory).

¹³³¹ Classified documents B2, D24.

¹³³² 9/17/14 e-mails amongst OVP National Security Affairs staff, NARAWH 00011307 ("Poroshenko paper, including background (classified)").

¹³³³ Classified documents B3, D25.

^{1334 9/17/14} e-mails amongst OVP National Security Affairs staff, NARAWH 00011307 ("Poroshenko paper, including background (classified)").

Mr. Biden's staff appear to have mislabeled one of the binders as unclassified despite its classified contents. The binder found in the garage had a cover page with the words "UNCLASSIFIED DOCUMENT" in all capital letters, while the binder from the second-floor bedroom office had no cover page: 1335



The Charlie Rose binder found in Garage Box 21336



The second version of the Charlie Rose binder 1337

¹³³⁵ Evidence items 1B5, 1B31.

¹³³⁶ FBI Serial 195 1A212, 20230103_DSC_0035. The FBI added the yellow Post-It note to track items that contain documents with classification markings.

¹³³⁷ FBI Serial 77 1A 86, 20230120_FBI_0243.

In one of the boxes recovered by the National Archives from the Penn Biden Center was a copy of one unclassified document that was in both of these binders—the dinner seating chart—in a folder labeled "Aspen, CO." 1338 This folder at the Penn Biden Center contained no marked classified documents. 1339

In searching the contents of the box in the garage where they found one of the "Weekend With Charlie Rose" binders, agents found binders from other trips Mr. Biden took as vice president in the same box. 1340 A naval enlisted aide recalled that Mr. Biden kept such binders after returning from his trips. 1341

Within the paper bag in the upstairs office adjoining Mr. Biden's primary bedroom, where agents found the other "Weekend With Charlie Rose" binder, they also found personal documents that predate January 2017, when Mr. Biden left the vice presidency. ¹³⁴² We could not determine when or how the bag—and the binder within it containing marked classified documents—arrived at the location where agents found it in January 2023.

These facts do not support a conclusion that Mr. Biden willfully retained the marked classified documents in these binders. The cover of one binder was marked unclassified, the other had no classification marking, and we cannot show that Mr.

¹³³⁸ FBI Serial 3; "Aspen CO" folder, NARA_SCAN_00001634, Seating Chart, NARA_SCAN_00001635, 9/18/14 Event Memo, Weekend with Charlie Rose Dinner, NARA SCAN 00001636.

¹³³⁹ FBI Serial 3.

¹³⁴⁰ FBI Serial 701.

¹³⁴¹ NEA 1 Tr. at 126-27.

¹³⁴² FBI Serial 518.

Biden reviewed the binders after his vice presidency or knew the classified documents were inside. It is plausible that he retained these documents by mistake.

III. MARKED CLASSIFIED DOCUMENT IN THIRD-LEVEL DEN

FBI agents found one document with classification markings in the third-level den area. Agents found the document inside a blue file folder with the handwritten label "AMPUTATIONS Feb '11," which was in a pile of miscellaneous materials on the bottom shelf of a bookcase. The document was marked Secret/NOFORN and related to events in Egypt. This document's subject matter does not relate to the label on the folder or the documents surrounding it. We cannot show that Mr. Biden knew this document was in his home, and the location of this document with unrelated materials makes it plausible that it was filed in error and that Mr. Biden kept this document by mistake.

¹³⁴³ Recovered document D22; FBI Serial 77.

 $^{^{1344}}$ Id.

CHAPTER SEVENTEEN

DELETION OF AUDIO RECORDINGS BY MARK ZWONITZER, Mr. Biden's Ghostwriter

At some point after learning of Special Counsel Hur's appointment, Mr. Biden's ghostwriter, Mark Zwonitzer, deleted digital audio recordings of his conversations with Mr. Biden during the writing of the book, *Promise Me*, *Dad*. ¹³⁴⁵ The recordings had significant evidentiary value. But Zwonitzer turned over his laptop computer and external hard drive and gave consent for investigators to search the devices. As a result, FBI technicians were able to recover deleted recordings relating to *Promise Me*, *Dad*. Zwonitzer kept, and did not delete or attempt to delete, near-verbatim transcripts he made of some of the recordings. ¹³⁴⁶ He also produced those detailed notes to investigators.

After reviewing available facts, analyzing governing law, and considering the Principles of Federal Prosecution, we decline to bring charges against Zwonitzer related to his deletion of the audio recordings. Charges against Zwonitzer are not appropriate both because the available evidence is insufficient to obtain and sustain a conviction, and because, even if the evidence were sufficient, the Principles of Federal Prosecution do not support any charge in these circumstances.

^{1345 &}quot;[T]o ensure a full and thorough investigation," the Attorney General's appointment order authorized us to investigate and prosecute "federal crimes committed in the course of, and with the intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses." 28 C.F.R. § 600.4(a).

¹³⁴⁶ Most of these files were essentially transcripts of the conversations, and Zwonitzer intended and viewed them as such. Zwonitzer 7/31/23 Tr. 74, 96. But in some instances, the files included portions that were more akin to Zwonitzer's notes of conversations rather than near-verbatim transcripts. For simplicity's sake, we refer to these files as transcripts.

I. FACTUAL BACKGROUND

FBI agents contacted Zwonitzer to request an interview and to seek records related to his work ghostwriting two of Mr. Biden's memoirs, *Promise Me, Dad* and *Promises to Keep*. Zwonitzer provided investigators records that included near-verbatim transcripts and some audio recordings. When reviewing these materials, investigators noticed that there were some transcripts for which there was no corresponding audio recording. They then learned from Zwonitzer's attorneys that, before the FBI contacted Zwonitzer, he deleted the recordings of his conversations with Mr. Biden. Zwonitzer then provided all electronic devices that contained or were used to create the recordings and transcripts related to *Promise Me, Dad*.

Zwonitzer stated that at some point he deleted the audio files subfolder from his laptop and external hard drive. ¹³⁴⁷ No relevant deleted files were recovered from the laptop. Deleted audio files were recovered from a subfolder on the external hard drive labeled "Audio." Based on the available evidence from the forensic review, we assess that all deleted audio files were recovered from that subfolder. ¹³⁴⁸ For three of the recovered files, portions of the audio appeared to be missing, and a fourth file appeared to have portions overwritten with a separate recording. ¹³⁴⁹ These results are possible when forensic tools are used to recover deleted files. ¹³⁵⁰ For each of these

¹³⁴⁷ Zwonitzer 7/31/23 Tr. 14-15.

¹³⁴⁸ FBI Operational Technology Division Report, FBI Serial 700.

¹³⁴⁹ FBI Serial 684.

¹³⁵⁰ File carving is a digital forensic process of extracting data from a storage device by scanning the entire storage device at the byte level, including areas not assigned to the file system. Carving can retrieve files that are no longer known to the file system, such as those a user has deleted.

four incomplete or overwritten files, Zwonitzer produced his corresponding transcripts to investigators. These notes summarized the content of the conversations, two of which were with Mr. Biden and two of which were with Beau Biden's doctor. 1352

After producing the materials to investigators, Zwonitzer gave two consensual interviews during which he provided relevant information without seeking immunity or any protections or assurances (such as a proffer agreement). Zwonitzer was forthright that he had deleted recordings. In his words, I simply took the audio files subfolder from both the G drive and my laptop and slid them into the trash. I saved all the transcripts... Is awonitzer believed he did this at some point during the period between the end of January 2023 and the end of February 2023. Is He took this action before the FBI contacted him about the investigation and requested that he produce evidence. Is Zwonitzer explained that at the time he did so, he was "aware" of the Department of Justice investigation of Mr. Biden's potential mishandling of classified materials. Is for why he deleted the audio recordings, Zwonitzer gave the following reasons:

• As a practice, while he saved transcripts of recorded conversations indefinitely, he deleted audio recordings after completing a written work to

 $^{^{1351}}$ FBI Serials 315, 336; JRB-07; JRB_02_16_2017; Doctor-02-16-2017; Doctor-03-16-2017.

 $^{^{1352}}$ FBI Serials 315, 336; JRB-07; JRB_02_16_2017; Doctor-02-16-2017; Doctor-03-16-2017.

¹³⁵³ Zwonitzer 7/31/23 Tr. at 14-15.

 $^{^{1354}}$ Id.

¹³⁵⁵ *Id.* at 15.

¹³⁵⁶ *Id.* at 15-16.

¹³⁵⁷ *Id.* at 16.

protect his interviewee's privacy.¹³⁵⁸ Zwonitzer explained that he did not have an established practice as to when he deleted audio recordings; rather, he would do so at convenient points in time, such as when he moved to a new residence or when he happened to notice that he still had audio recordings from past interviews.¹³⁵⁹

- Zwonitzer had received vague but threatening e-mails from groups hostile to Mr. Biden, and private conversations that included Zwonitzer had been published on the Internet. Accordingly, Zwonitzer was concerned that his computer could be hacked and the audio recordings of his conversations with Mr. Biden published online. Those recordings contained personal information, including Mr. Biden's reflections on the death of his son Beau. Sec. 1362
- In January 2023, Zwonitzer had finished working on a book about the capabilities of a cyber-surveillance system called Pegasus. Zwonitzer stated that he had a "heightened sense of awareness" of the capabilities of Pegasus, which he described as "the most . . . frightful cybersurveillance tool . . . on the market out there right now." The book discussed how Pegasus was used to spy on people around the world—including heads of state, diplomats, and journalists. The Pegasus tool could be used to "capture all videos, photos, emails, texts, and passwords encrypted or not." 1366

Investigators asked Zwonitzer if he had deleted the recordings because of the special counsel's investigation. Zwonitzer replied that he "was aware that there was an investigation" when he deleted the recordings and continued, "I'm not going to say

¹³⁵⁸ *Id.* at 15.

¹³⁵⁹ Zwonitzer 7/31/23 Tr. at 22.

¹³⁶⁰ *Id.* at 14.

¹³⁶¹ Id.

¹³⁶² *Id*.

¹³⁶³ Zwonitzer 1/4/24 Tr. at 77; Laurent Richard & Sandrine Rigaud, PEGASUS: THE STORY OF THE WORLD'S MOST DANGEROUS SPYWARE (2023) (e-book), https://us.macmillan.com/books/9781250858696/pegasus (last visited Jan. 31, 2024).

¹³⁶⁴ Zwonitzer 1/4/24 Tr. at 77.

¹³⁶⁵ Laurent Richard & Sandrine Rigaud, PEGASUS: THE STORY OF THE WORLD'S MOST DANGEROUS SPYWARE (2023) (e-book),

https://us.macmillan.com/books/9781250858696/pegasus (last visited Jan. 31, 2024). $^{1366}\ Id.$

how much of the percentage it was of my motivation." ¹³⁶⁷ When asked whether he deleted the recordings to try and prevent investigators from obtaining them, Zwonitzer said that he did not and further explained, "when I got the subpoena and when I realized that I still had audio that I did not know I had on the laptop, I made sure to preserve that for this investigation." ¹³⁶⁸ Zwonitzer also explained that at the time he deleted the recordings, he did not expect the investigation to involve him ¹³⁶⁹ and that he did not think the audio recordings contained information relevant to classified information. ¹³⁷⁰

According to Zwonitzer, he decided to delete the recordings on his own; no one told him to do so. 1371 Nor had he been in contact with anyone from Mr. Biden's circle of staff, friends, and confidants about his participation in an interview with the Special Counsel's Office. 1372 Our investigation—which included witness interviews and review of phone and e-mail records—did not uncover any evidence that Zwonitzer had been in contact with anyone about his decision to delete the recordings.

II. THE EVIDENCE IS INSUFFICIENT TO OBTAIN A CONVICTION FOR OBSTRUCTION OF JUSTICE

A. Legal Standard

The two relevant statutory provisions that criminalize the destruction of evidence are 18 U.S.C. § 1512(c)(1) and 18 U.S.C. § 1519. While in practice the proof

¹³⁶⁷ Zwonitzer 7/31/23 Tr. at 17.

¹³⁶⁸ Zwonitzer 1/4/24 Tr. at 68.

¹³⁶⁹ Zwonitzer 7/31/23 Tr. at 16.

¹³⁷⁰ Zwonitzer 1/4/24 Tr. at 66.

¹³⁷¹ Zwonitzer 7/31/23 Tr. at 17-22.

 $^{^{1372}}$ Id.

needed to sustain a conviction under either statute is often very similar, the two provisions differ in their elements. 1373

Section 1512(c)(1), like most federal obstruction statutes, requires proof of a "nexus" or "link" to a specified pending or foreseeable official proceeding. 1374 What constitutes an "official proceeding" is enumerated in a statutory list and includes proceedings before (1) a federal judge or federal court, (2) a federal grand jury, or (3) the United States Congress. 1375 Section 1512(c)(1) also requires proof that the defendant acted "corruptly." And while courts have given slightly different definitions to that term, it generally requires proof that the defendant acted with the purpose of wrongfully impeding the due administration of justice. 1376 Under any formulation, "corruptly" is a heightened mens rea. 1377

¹³⁷³ Compare 18 U.S.C. § 1512(c)(1); with 18 U.S.C. § 1519.

¹³⁷⁴ United States v. White Horse, 35 F.4th 1119, 1121-23 (8th Cir. 2022) ("§ 1512(c)(1) requires proof of a nexus between the defendant's action and an official proceeding"); United States v. Matthews, 505 F.3d 698, 707-08 (7th Cir. 2007) (applying the nexus requirement to § 1512(c)(1)).

¹³⁷⁵ 18 U.S.C. § 1515(a)(1); see, e.g., United States v. Young, 916 F.3d 368, 384-85 (4th Cir. 2019) (applying § 1512(c)(1) to federal grand jury proceeding).

¹³⁷⁶ See United States v. Akiti, 701 F.3d 883, 887-88 (8th Cir. 2012); Matthews, 505 F.3d at 704-06; Leonard B. Sand & John S. Siffert, MODERN FEDERAL JURY INSTRUCTIONS - CRIMINAL ¶ 46.10 (Matthew Bender & Company, Inc., Release No. 83B 2023).

¹³⁷⁷ The Supreme Court has held that the word is "normally associated with wrongful, immoral, depraved, or evil." Arthur Andersen LLP v. United States, 544 U.S. 696, 705 (2005). The various formulations of corruptly amount to the same general requirement of proving a bad purpose. See, e.g., United States v. Robertson, 86 F.4th 355, 359-63 (D.C. Cir. 2023) (affirming jury instruction for § 1512(c)(2) charge that defined corruptly as requiring "unlawful means, or act[ing] with an unlawful purpose, or both" and "consciousness of wrongdoing"); Matthews, 505 F.3d at 704-06 (purposefully and wrongfully impeding the due administration of justice); United States v. Delgado, 984 F.3d 435, 452 (5th Cir. 2021) ("knowingly and dishonestly, with specific intent to subvert or undermine the due administration of justice"); United States v. Gordon, 710 F.3d 1124, 1151 (10th Cir. 2013) ("with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct").

By contrast, Section 1519 permits prosecutions in broader circumstances. For a Section 1519 prosecution, the government need not show a link to a specified proceeding, it need only show the commission of an obstructive act with the intent to impede, obstruct, or influence an investigation that is within the federal government's jurisdiction. Additionally, Section 1519 does not require proof of corrupt intent, and instead requires proving that the defendant acted "knowingly... with the intent to impede, obstruct, or influence." While a defendant must commit the obstructive act knowingly, the defendant does not need to know whether the investigation he intends to obstruct falls under the jurisdiction of the federal government. 1379

Thus, Section 1519 criminalizes (1) knowingly; (2) altering, falsifying, destroying, mutilating, concealing, covering up, or making a false entry in any record, document, or tangible object; (3) with the intent to impede, obstruct, or influence the investigation or the proper administration of any matter within the jurisdiction of a department or agency of the United States. 1380

required to prove an intent to impede an investigation into "any matter" that is "ultimately proven to be within the federal government's jurisdiction"); *United States v. Gray*, 692 F.3d 514, 519 (6th Cir. 2012) ("[T]he plain language of the statute only requires the Government to prove that [the defendant] intended to obstruct the investigation of *any* matter that happens to be within the federal government's jurisdiction." (alteration in original)); *United States v. Gray*, 642 F.3d 371, 376-377 (2d Cir. 2011) ("[I]n enacting § 1519, Congress rejected any requirement that the government prove a link between a defendant's conduct and an imminent or pending official proceeding.").

¹³⁷⁹ United States v. Hassler, 992 F.3d 243, 246-47 (4th Cir. 2021) (so holding and collecting cases).

¹³⁸⁰ See Hassler, 992 F.3d at 246-47; United States v. Hunt, 526 F.3d 739, 743 (11th Cir. 2008); United States v. Kernell, 667 F.3d 746, 756-57 (6th Cir. 2012); Sand & Siffert, above, at ¶ 46.13.

Given that Section 1519 is less burdensome because it does not require proving a nexus requirement or a corrupt intent, we evaluated Zwonitzer's conduct under that provision. A prosecution under Section 1512(c)(1) would fail for the same reasons.

B. The evidence does not support a charge under Section 1519

Zwonitzer admitted, in a consensual, recorded interview, "I simply took the audio files subfolder from both the [external hard] drive and my laptop and slid them into the trash." ¹³⁸¹ Therefore, Zwonitzer knowingly deleted audio files, ¹³⁸² but the available evidence cannot establish beyond a reasonable doubt that Zwonitzer did so with the intent to impede, obstruct, or influence this federal investigation.

In his interviews, Zwonitzer offered plausible, innocent reasons for why he deleted the recordings. First, out of concern for privacy, he had a practice of deleting all audio recordings of interviewees in his possession and had done so previously. Second, Zwonitzer was concerned that the materials could be hacked and published online. This concern was increased by his recent work on a book discussing a powerful cyber-surveillance system known to target journalists, among other groups. While Zwonitzer admitted to being aware of the special counsel investigation, he did not say that his goal was to keep evidence from being uncovered by that investigation. Instead, Zwonitzer explained that "when I got the subpoena and when I realized that

¹³⁸¹ Zwonitzer 7/31/23 Tr. at 14-15.

¹³⁸² See Kernell, 667 F.3d at 756-57 (affirming sufficiency of evidence in Section 1519 conviction where defendant deleted files from his computer and ran a defragmentation program); United States v. Wortman, 488 F.3d 752, 753-55 (7th Cir. 2007) (affirming sufficiency of evidence in Section 1519 conviction where woman destroyed a CD containing child pornography that belonged to her boyfriend).

I still had audio that I did not know I had on the laptop, I made sure to preserve that for this investigation." 1383

Zwonitzer's later actions—including the production to the special counsel of transcripts that mention classified information—suggest that his decision to delete the recordings was not aimed at concealing those materials from investigators. Significantly, Zwonitzer voluntarily consented to two interviews and could have, but did not, invoke the Fifth Amendment to decline to produce the transcripts, his laptop, and the external hard drive. And when FBI agents contacted Zwonitzer, they were unaware that audio recordings existed or where Zwonitzer's electronic devices were located.

Therefore, agents did not have probable cause for a warrant to search those devices and recover the recordings. Investigators only learned of the evidence because Zwonitzer was forthright, explained his actions, produced the relevant electronic devices, and consented to the search of those devices. Zwonitzer's own consensual statement is the only evidence of when he deleted the recordings; without it, investigators would not have learned whether he did so before or after learning of the special counsel's appointment and federal criminal investigation. And while Zwonitzer admitted to being aware of the investigation at the time he deleted the files, the context in which this statement was made—during a consensual and voluntary interview—supports the conclusion that Zwonitzer acted with good faith and did not intend to impede, obstruct, or influence this investigation.

¹³⁸³ Zwonitzer 1/4/24 Tr. at 68.

Perhaps most significantly, Zwonitzer preserved near-verbatim transcripts that contain incriminating information about Mr. Biden, including transcripts of the February 16, 2017 conversation where Mr. Biden said he "just found all the classified stuff downstairs." Preserving these transcripts was inconsistent with a motive aimed at impeding the investigation. While there is unique evidentiary value in a subject's own voice as captured on an audio recording, we would expect a person intending to obstruct justice to also conceal or delete the notes that memorialized the same probative information. Zwonitzer could have just as easily "slid" the files containing the notes into the trash as he had done with the audio recordings. Instead, he preserved the transcripts and produced them to investigators. And he later produced the devices on which the recordings had been stored and consented to a search of those devices. None of this is consistent with intent to obstruct justice or the investigation.

For these reasons, we believe that the admissible evidence would not suffice to obtain and sustain a conviction of Mark Zwonitzer for obstruction of justice.

III. DECLINATION IS ALSO APPROPRIATE BECAUSE ON BALANCE, RELEVANT AGGRAVATING AND MITIGATING FACTORS DO NOT SUPPORT ZWONITZER'S PROSECUTION

Even if the evidence available were sufficient to obtain and sustain Zwonitzer's conviction for obstruction of justice, we would decline prosecution because on balance, relevant aggravating and mitigating factors do not support his prosecution. ¹³⁸⁴ Zwonitzer willingly provided significant cooperation to the investigation without

¹³⁸⁴ U.S. Dep't of Just., Just. Manual § 9-27.230 (2023).

seeking or receiving any protections or assurances. He was forthright in describing his conduct and working with investigators to obtain all relevant evidence in his possession. And his cooperation was uniquely valuable as the evidence that he provided was highly probative and not otherwise obtainable. Finally, prosecuting Zwonitzer under these circumstances would deter others from cooperating as he did.

CONCLUSION

For the foregoing reasons, we conclude that no criminal charges are warranted in this matter.

Appendix A: Recovered Documents¹

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
A1	"Second Term" file folder	3/8/13	4	A Memorandum for the Vice President from Jeff Prescott with the subject "China Engagement in the Second Term."	SECRET	Declassification date has passed, declassification review required before public release.
A2	"Filing 10-10-16" file folder	9/26/16	7	A Memorandum for the President from the Vice President with the subject "Leader Meetings and Events During UN General Assembly (UNGA) Week."	TOP SECRET/SCI	TOP SECRET//SCI**
A3	VPOTUS EYES ONLY envelope	1/16/15	2	A Memorandum for the National Security Advisor to the Vice President.	TOP SECRET//SPECIAL HANDLING REQUIRED	TOP SECRET// [3 SCI Control System Markings]// ORCON/NOFORN
A4	VPOTUS EYES ONLY envelope	January 2015 (est.)	2	Classified information in the form of a table.	TOP SECRET// [5 SCI Control System Markings]// [1 SCI Control System Marking]// ORCON/NOFORN	TOP SECRET// [5 SCI Control System Markings]/ [1 SCI Control System Marking]// ORCON/NOFORN
A5	VPOTUS EYES ONLY envelope	6/23/14	11	An Intelligence Assessment from the CIA's Directorate of Intelligence.	TOP SECRET// [8 SCI Control System Markings]/ [2 SCI Control System Markings]// ORCON/NOFORN and a SENSITIVE stripe across the top right-hand corner of each page	TOP SECRET// [8 SCI Control System Markings]/ [2 SCI Control System Marking]// ORCON/NOFORN
A6	VPOTUS EYES ONLY envelope	8/8/12	5	An Intelligence Memorandum from the CIA's Directorate of Intelligence.	TOP SECRET// [4 SCI Control System Markings]// ORCON/NOFORN and a SENSITIVE stripe across the top right-hand corner of each page	TOP SECRET// [4 SCI Control System Markings]// ORCON/NOFORN

¹ FBI Serial 676.

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^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
A7	VPOTUS EYES ONLY envelope	1/28/15	10	Handwritten notes, all but one page of which relate to the Obama Administration's efforts to negotiate the Joint Comprehensive Plan of Action ("JCPOA").	None	SECRET//ORCON/NOFORN
A8	"Ukraine 02/09/15" file folder	3/9/15	7	A memorandum titled "Background for Meeting with President Tusk." There is no indication of an author, but the classification-authority block states that Jeff Prescott classified the document.	SECRET and TOP SECRET	TOP SECRET
A9	"VP Personal" file folder	12/12/15 (est.)	1	A Telephone Call Sheet setting forth the purpose of and talking points for a call with Ukrainian Prime Minister Yatsenyuk. There is a handwritten note addressed to Mr. Biden's executive assistant: "Get copy of this conversation from Sit Rm for my Records please" that is signed "Joe." Document A10 is attached to the document.	SECRET	SECRET**
A10	"VP Personal" file folder	12/11/15	5	A document in the format of a transcript documenting the substance of a December 11, 2015 call between Mr. Biden and Ukrainian Prime Minister Yatsenyuk. The document is attached to document A9.	CONFIDENTIAL and EYES ONLY DO NOT COPY	CONFIDENTIAL**
B1	"Weekend With Charlie Rose" binder (in garage); behind "Russia" tab	9/17/14	2	An Event Memo from an OVP national security staffer titled "Lunch with Ukrainian President Poroshenko" for a lunch at the Naval Observatory on September 18, 2014. The memo describes the purpose of the lunch, the participants, the press plan, and the sequence of events.	SECRET	SECRET**

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
В2	"Weekend With Charlie Rose" binder (in garage); behind "Russia" tab	Undated	10	A paper attachment to B1 titled "Tab B – BACKGROUND" discussing issues related to Russian aggression toward Ukraine. There is no indication of an author.	SECRET/NOFORN	TOP SECRET//NOFORN
B2-1	"Weekend With Charlie Rose" binder (in garage); behind "Russia" tab	9/17/14	5	A Memorandum for the Vice President from staff members, with subject "U.S. Energy Assistance to Ukraine."	None	CONFIDENTIAL*
ВЗ	"Weekend With Charlie Rose" binder (in garage); behind "Russia" tab	8/29/14	5	A paper with subject "Scenesetter for National Security Advisor Susan Rice's Visit to China." There is no indication of an author.	No classification header or footer; portion markings indicate an overall classification of SECRET.	SECRET**
B4	"Foreign Policy: 2nd Term" file folder	Undated	1	A paper titled "Second Term National Security Narrative" describing goals the Obama Administration could seek to achieve in its second term. There is no indication of an author.	SECRET/NOFORN	SECRET//NOFORN**
B4-1	"Foreign Policy: 2nd Term" file folder	Undated	1	A Memorandum for the President from The Vice President with the subject "Engagement with China in the Second Term." The paper suggests activities Vice President Biden could do in his second term to "build on my work last year by engaging with China's leaders in the second term."	No Classification Marking	CONFIDENTIAL**
B4-2	"Foreign Policy: 2nd Term" file folder	Undated	1	A document containing three lists: "Foreign Policy Must Do," "Foreign Policy – Want to Do," and "Management Administrative." There is no indication of an author.	No Classification Marking	CONFIDENTIAL**

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
В5	"Foreign Policy: 2nd Term" file folder	Undated	9	A PowerPoint presentation with "National Security Council Meeting: Defining a Second Term Agenda" and "Prepared by National Security Staff," on the title slide.	TOP SECRET//NOFORN//Pre- decisional (first and second slides only)	CONFIDENTIAL**
В6	"FACTS FIRST" file folder	9/29/09	5	A Memorandum for the President from the National Security Advisor with the subject "Meeting on Afghanistan and Pakistan." The memo states its purpose as to prepare President Obama for "a meeting with [his] senior national security team on September 30, 2009."	TOP SECRET WITH TOP SECRET/NOFORN/CODEWORD ATTACHMENTS	TOP SECRET//NOFORN*
В7	"FACTS FIRST" file folder	9/27/09	4	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	TOP SECRET// HUMINT/COMINT//ORCON/NOF ORN//FISA	TOP SECRET//HCS- P/SI//ORCON/NOFORN//FISA*
B8	"FACTS FIRST" file folder	Undated	1	A photocopy of an infographic related to Afghanistan and Al-Qa'ida that is partially cut off on the top, bottom, and right-hand side. The original and complete infographic—obtained from the National Archives—is labeled as a product of the National Counterterrorism Center. The original infographic was an attachment to B6.	No marking in the header or footer of the photocopy, but the original document—obtained from the National Archives—was marked TOP SECRET// HCS/SI//FGI//ORCON/NOFORN	SECRET//NOFORN
В9	"FACTS FIRST" file folder	9/27/09	2	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	TOP SECRET// HCS/SI/ORCON/NOFORN	TOP SECRET//HCS- P/SI//ORCON/NOFORN
B10	"FACTS FIRST" file folder	9/27/09	4	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	SECRET//NOFORN	SECRET//NOFORN

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B11	"FACTS FIRST" file folder	9/27/09	2	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	SECRET//NOFORN	SECRET//NOFORN
B12	"FACTS FIRST" file folder	9/23/09	3	A State Department cable from Ambassador Anne Patterson at the U.S. Embassy in Islamabad, Pakistan, with the subject "Reviewing Our Afghanistan – Pakistan Strategy." The cable is an attachment to B6.	SECRET//NOFORN	SECRET**
B13	"FACTS FIRST" file folder	Undated	4	A paper titled "Afghanistan/Pakistan Minimal Conditions Necessary to Achieve Our Core Goal." The State Department authored the document. The paper is an attachment to B6.	SECRET//REL TO USA, GBR	SECRET**
B13-1	"FACTS FIRST" file folder	9/22/09	2	A letter from the president of a foreign country to President Obama that addresses "the ongoing situation in Afghanistan" and sets forth the foreign country's views on the war. The document does not include classification markings, but states in the header that it is "Confidential For President Obama." Document B15 references the letter as an attachment.	None	CONFIDENTIAL**
B13-2	"FACTS FIRST" file folder	9/29/09	1	A quarter-page of typewritten text titled "Notes from Meeting on September 29, 2009: 1:30-3:30 "Small Group Meeting: Afghanistan/Pakistan." The text quotes a question asked by then-Director of the Central Intelligence Agency Leon Panetta of then-Secretary of Defense Robert Gates and provides the yes-or-no answer to that question given by "Intelligence, State and Defense."	None	SECRET//NOFORN**

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B14	"FACTS FIRST" file folder	9/25/09	3	An e-mail copying the text of a September 25, 2009, State Department cable from the U.S. Embassy in Kabul, Afghanistan, authored by Ambassador Karl Eikenberry with the subject "KARZAI: MY OBSERVATIONS." The subject of the email and text of the cable include a designation and each paragraph is portion-marked "(S)," which stands for Secret.	SECRET	SECRET
B14-1	"FACTS FIRST" file folder	Undated	4	A paper titled "Counterinsurgency (COIN) vs. Counterterrorism (CT) Strategies" that has no indications of author.	None	TOP SECRET//NOFORN*
B15	"FACTS FIRST" file folder	Undated	2	A paper titled "Some Facts and Considerations" that addresses topics related to al-Qa'ida, the Taliban, and Intelligence Community resources. The document appears to have been authored within the White House because it is critical of Intelligence Community assessments. The document references Document B13-1 as an attachment.	TOP SECRET//HSC//NOFORN	TOP SECRET//HCS-O// [4 SCI CONTROL SYSTEM MARKINGS]// ORCON/NOFORN*
B16	"FACTS FIRST" file folder	Undated	1	A PowerPoint slide titled "Pathway to COMISAF Initial Assessment" that does not indicate an author.	SECRET/NOFORN	SECRET//NOFORN
B17	"FACTS FIRST" file folder	10/13/09	1	A Power Point slide with the partial title "CJCS Update."	SECRET	SECRET
B18	"FACTS FIRST" file folder	Undated ²	1	A large-format infographic in the form of a table. The table addresses the capabilities of the Afghan government.	SECRET//NOFORN	SECRET//NOFORN

² Investigators located the document on the conference table in the Situation Room in White House photographs dated October 14, 2009.

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B18-1	"FACTS FIRST" file folder	10/18/09	3	An unsigned, handwritten letter with the salutation "Mr. President." The letter appears to be in draft format and discusses COIN strategy in Afghanistan.	None	SECRET//NOFORN
B19	"FACTS FIRST" file folder	9/13/09	7	A PowerPoint presentation regarding Afghanistan titled "Sunday Small Group."	SECRET//NOFORN	SECRET//NOFORN
B20	"FACTS FIRST" file folder	8/31/09	3	A Memorandum for the President from the National Security Advisor with the subject "Weekly Update on Afghanistan and Pakistan." The memo included two attachments, labeled "Tab 1" and "Tab 2," that are documents B21 and B22, respectively.	TOP SECRET/SCI	TOP SECRET//HCS-O-P//ORCON/NOFORN*
B21	"FACTS FIRST" file folder	8/26/09	8	A one-page Memorandum for the President from then-Secretary of State Hillary Rodham Clinton dated August 26, 2009, attaching a seven-page Memorandum to the President from Special Representative Holbrooke dated August 28, 2009, with subject "Afghanistan/Pakistan Weekly Report – August 22-August 28, 2009."	Cover memo: SECRET//NOFORN//NODIS (UNCLASSIFIED when separate from attachment) Holbrooke Memo: SECRET/NOFORN/NODIS	SECRET/NOFORN/NODIS

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B22	"FACTS FIRST" file folder	8/24/09	18^3	A one-page, unclassified Memorandum for Assistant to the President and National Security Advisor from then-Defense Secretary Robert Gates attaching a five-page Central Command ("CENTCOM") weekly update for August 17-23, 2009, from General David Petraeus. The Gates memo also attaches a six-page Multi-National Force — Iraq ("MNF-I") weekly update for the same week from General Raymond Odierno. There are two copies of the cover memo from Gates and the CENTCOM update. The CENTCOM update includes an update on Afghanistan.	CENTCOM Update: SECRET//NOFORN MNF-I Update: SECRET // NOFORN // 2001190221	SECRET//NOFORN

³ B22 also includes a copy of the last eight pages of the first copy of General McChrystal's assessment, otherwise designated as part of Document B23. Those pages are not counted in this entry.

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B23	"FACTS FIRST" file folder	8/30/09	1264	A one-page, unclassified letter from General Stanley McChrystal, Commander, United States Forces – Afghanistan / International Security Assistance Force, Afghanistan, attaching a document titled "Commander's Initial Assessment" dated August 30, 2009, and authored by General McChrystal (only the first 58 pages included in B23). B23 then includes another copy of the letter from McChrystal, with the full 66-page assessment attached. The second copy of the assessment contains handwritten markings and notes.	CONFIDENTIAL REL NATO/ISAF	CONFIDENTIAL//REL TO USA, ISAF, NATO
B24	"FACTS FIRST" file folder	9/10/09	9	A one-page Memorandum for the President from the Vice President with the subject "Afghanistan" with "DRAFT" handwritten at the top. The memo attaches a nine-page paper titled "Afghanistan Discussion Paper: A 'Counter Terrorism Plus' Strategy." The paper does not specify an author, but the classification-authority block indicates it was classified by Antony Blinken. The last two pages of B23 are a printout of an article in Newsweek titled "The Geopolitics of Golf," by Richard N. Haass published on September 3, 2009.	TOP SECRET	TOP SECRET//NOFORN*

⁴ The last three pages of B23 are a printout of an opinion piece from the *New York Times* dated August 20, 2009, titled "In Afghanistan, the Choice is Ours" by Richard N. Haass. Those pages are not counted in this entry.

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B25	"AFGANASTAN 2009" file folder	11/25/09	3	A Memorandum for the President from the Vice President that includes handwritten notes, edits, and markings. It also includes partially cut-off fax-machine markings for November 25, 2009, at around 2:43 pm. The memo begins, "[h]ere are some final thoughts on Afghanistan and Pakistan, which may help shape the argument you make to the American people." The memo supports Mr. Biden's belief "that we should not increase our forces" in Afghanistan. Mr. Biden sought to "relay the highlights of a conversation with Karl Eikenberry and recommend that you call him." A handwritten note next to that sentence states, "[h]e is a stand up guy will take risks."	TOP SECRET	SECRET**
B25-1	"AFGANASTAN 2009" file folder	11/27/09	27	Handwritten Letter to President Obama and Drafts. See full description in text of report.	None	TOP SECRET//NOFORN*
B26	"AFGANASTAN 2009" file folder	11/12/08	5	A Memorandum for Principals from the National Security Advisor with subject "Afghanistan-Pakistan: Following up on November 11 Meeting." The memo begins: "Based on our meeting with the President on November 11, we have developed revised implementation guidance to achieve our national core goal in Afghanistan and frame a variant of Force Option 2A." There are handwritten notes and markings on the first and last page of the memo. The memo includes a list of six questions on pages 3 through 4.	SECRET/NOFORN	Declassification date passed on 11/9/2019; handle as marked until official declassification review.**

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B27	"AFGANASTAN 2009" file folder	11/13/09	5	A memorandum that is nearly identical to the memo designated as B26, except that this memo is dated November 13, 2009, includes a red "TOP SECRET" stamp at the top and bottom of each page (in addition to the "SECRET/NOFORN" marking), and has a list of seven questions.	TOP SECRET and SECRET/NOFORN	Declassification date passed on 11/9/2019; handle as marked until official declassification review.**
B28	"AFGANASTAN 2009" file folder	11/15/09	4	A Memorandum for the National Security Advisor from the Vice President. The memo begins: "Jim — You requested comments on a proposed paper to the President, following up on our November 11 meeting on Afghanistan-Pakistan, with a focus on the Afghanistan strategy. Here are mine:"	TOP SECRET	Declassification date passed on 11/15/2019; handle as marked until official declassification review.**
B29	"AFGANASTAN 2009" file folder	11/11/09	3	A document titled "Talking Points" with the handwritten date "11/11/09" in the upper-right corner of the first page. The talking points appear to be for Mr. Biden to deliver to President Obama on the topic of the Afghanistan Strategic Review.	TOP SECRET	Declassification date passed on 11/11/2019; handle as marked until official declassification review.**
B30	"AFGANASTAN 2009" file folder	10/29/09	3	A paper titled "Alternative Mission for Afghanistan" with no author indicated and the handwritten date "Oct 29" in the upperright corner. It "describes an alternative mission to properly resourced counterinsurgency in Afghanistan."	SECRET	SECRET
B31	"AFGANASTAN 2009" file folder	Undated	1	A document titled "Talking Points for call to Secretary Gates" addressing the strategic review in Afghanistan	CONFIDENTIAL and SECRET	SECRET
B31-1	"AFGANASTAN 2009" file folder	Undated	1	A typewritten portion of the draft memo included as part of documents B25 and B25-1.	None	TOP SECRET//NOFORN*

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B32	"AFGANASTAN 2009" file folder	11/11/09	12	A PowerPoint Presentation titled "CJCS Brief to the President." Among other topics, the slides describe and assess three different force options for Afghanistan.	SECRET//REL USA, ISAF, NATO	SECRET//NOFORN
B33	"AFGANASTAN 2009" file folder	11/11/09 (est.)	3	PowerPoint slides numbered 13-15 that are likely part of the same presentation as B32. The first slide is titled "Progression of Full-Spectrum COIN." The second slide is titled "Importance of Full-Spectrum COIN." The third slide includes a chart and is titled "Force Level Decision Points."	Slides labeled 13, 14: CONFIDENTIAL REL/NATO/ISAF Slide labeled 15: SECRET//REL USA, ISAF, NATO	CONFIDENTIAL//REL TO USA, ISAF, NATO
B34	"AFGANASTAN 2009" file folder	11/11/09 (est.)	5	Five PowerPoint slides numbered 16-20 that are likely part of the same presentation as B32 and B33. The first slide is a chart titled "Alternative Mission in Afghanistan." The last slide is titled "Projected ANSF Growth Decision Points."	Slides labeled 16: SECRET Slides labeled 17-19: SECRET//REL USA, ISAF, NATO Slide labeled 20: None	SECRET
B35	"AFGANASTAN 2009" file folder	Undated	1	A PowerPoint slide titled "Securing Additional Allied/Partner Contributions."	SECRET//NOFORN	Agency could not determine classification.
B36	"AFGANASTAN 2009" file folder	10/30/09	1	A Memorandum for the President from then-Defense Secretary Robert Gates, responding to a request from the National Security Council. The memo attaches the document designated as B37.	SECRET//NOFORN	SECRET//NOFORN
B37	"AFGANASTAN 2009" file folder	Undated	11	A Memorandum for Principals from the National Security Advisor with the handwritten date "11-8" in the upper right corner regarding the strategy for Afghanistan. The attachments are listed as: (1) Tab A: Secretary Gates's Memorandum and "Alternative Mission for Afghanistan" Paper and (2) Tab B Ambassador Eikenberry's Cable, "COIN Strategy: Civilian Concerns."	SECRET WITH SECRET/NOFORN ATTACHMENT	SECRET//NOFORN*

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B38	"AFGANASTAN 2009" file folder	11/6/09	4	A State Department cable from the U.S. Embassy in Kabul, Afghanistan authored by Ambassador Karl Eikenberry with subject "COIN STRATEGY: CIVILIAN CONCERNS."	SECRET with a NODIS banner	SECRET**
C1	"1/6/12 #2 Foreign Policy" Notebook	5/22/13	1	A PowerPoint slide describing an "Option C" for the distribution and composition of U.S. forces in Afghanistan after 2014. There is no indication of an author.	SECRET//NOFORN//PRE- DECISIONAL	SECRET//NOFORN
C2	"1/6/12 #2 Foreign Policy" Notebook	5/22/13	1	A PowerPoint slide describing an "Option D" for the distribution and composition of U.S. forces in Afghanistan after 2014. There is no indication of an author.	SECRET//NOFORN//PRE- DECISIONAL	SECRET//NOFORN
СЗ	"1/6/12 #2 Foreign Policy" Notebook	5/22/13	1	A PowerPoint slide describing an "Option C+" for the distribution and composition of U.S. forces in Afghanistan after 2014. There is no indication of an author.	SECRET//NOFORN//PRE- DECISIONAL	SECRET//NOFORN
C4	"1/6/12 #2 Foreign Policy" Notebook	11/1/13	3	A Memorandum for the Vice President from the Office of the Vice President National Security Affairs regarding a meeting with Iraqi Prime Minister Maliki. The memo sets forth "[a] few things to note in advance of your Maliki meeting" and provides "a concise distillation of the issues with Iraq that may be helpful."	TOP SECRET//SCI	TOP SECRET//HCS- O/SI//ORCON/NOFORN*
D1	"[INT'L] TERRORISM" file folder	6/30/76	5	A Staff Memorandum to Members of the Committee on Foreign Relations on "Terrorism: Protection and Policy" that "discusses the security of American emhassies and diplomats abroad in the wake of the killing of Ambassador Meloy and Mr. Waring in Beirut."	CONFIDENTIAL with red tag stapled to the cover memo CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE	Undetermined: Legislative Branch document without indications of information derived from classified Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D2	"Biden Meeting w/Chancellor Schmidt 6/10/80- 6/12/80" file folder	6/13/80	6	A Memorandum for the Record from a Senate staffer with subject "Senator Biden's Meeting with Helmut Schmidt" that recounts the discussion at a meeting between Mr. Biden and German Chancellor Helmut Schmidt on June 11, 1980.	CONFIDENTIAL with tag stapled to the cover memo CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE	Undetermined: Legislative Branch document without indications of information derived from classified Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
D3	"GREECE" file folder	3/1/80	Total: 9 Marked: 2	Three separate memoranda: • a 2-page memo titled "US-GREEK RELATIONS" marked "LIMITED OFFICIAL USE" • a 2-page memo titled "STATUS OF NEGOTIATIONS ON CYPRUS" marked "CONFIDENTIAL" on the first page • a 5-page memo titled "REINTEGRATION OF GREEK FORCES INTO MATO MILITARY COMMAND STRUCTURE" marked "CONFIDENTIAL" on the second page	CONFIDENTIAL	Undetermined: Legislative Branch document without indications of information derived from classified Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
D4	"YUGOSLAVIA" file folder	7/13/78	Total: 6 Marked: 1	A 5-page State Department memo with subject "Visit to the United States by Dragoslav MARKOVIC, President of the Assembly of the Socialist Federal Republic of Yugoslavia, and delegation." The memo attaches "[b]iographic information on Markovic and other members of the delegation." Page 6 is a one-page biography of Markovic marked "CONFIDENTIAL." There are two copies of the memo and attachment, which FBI separately designated D4 and D5.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.

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^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D5	"YUGOSLAVIA" file folder	7/13/78	Total: 6 Marked: 1	A 5-page State Department memo with subject "Visit to the United States by Dragoslav MARKOVIC, President of the Assembly of the Socialist Federal Republic of Yugoslavia, and delegation." The memo attaches "[b]iographic information on Markovic and other members of the delegation." Page 6 is a one-page biography of Markovic marked "CONFIDENTIAL." There are two copies of the memo and attachment, which FBI separately designated D4 and D5.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D6	"YUGOSLAVIA" file folder	Undated	5	A memorandum titled "EDVARD KARDELJ: A PRIMER ON HIS THINKING."	SECRET	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D7	"SALT III" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	3	A memorandum titled "SALT III" that discusses predictions regarding negotiations for a Strategic Arms Limitations Talk III.	CONFIDENTIAL	Likely UNCLASSIFIED, subject to formal declassification review.**
D8	"Other Arms Control" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	Total: 6 Marked: 4	A 6-page memorandum titled "MBFR" that discusses the "Mutual and Balanced Force Reduction negotiations" that "began in November 1973 in Vienna." The last two pages are not marked Confidential and set out "Anticipated Soviet Points" and "Suggested US Points."	CONFIDENTIAL	CONFIDENTIAL//FORMERLY RESTRICTED DATA

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D9	"Other Arms Control" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	2	A memorandum titled "Comprehensive Test Ban" that discusses issues expected to arise upon the resumption of the "trilateral CTB talks in Geneva" that "recessed in late July and are expected to resume again in September."	CONFIDENTIAL	Likely UNCLASSIFIED, subject to formal declassification review.**
D10	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	2	A memorandum titled "CODEL BIDEN" that sets forth "a tentative draft outline of the manner in which the delegation might want to make its first presentation on SALT at the Plenary session with the Supreme Soviet."	CONFIDENTIAL	Likely UNCLASSIFIED, subject to formal declassification review.**
D11	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	5/25/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D12	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/16/79	2	A biography of a member of a foreign delegation.	NOFORN at the top (confidential marking appears cut off) and CONFIDENTIAL at the bottom	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D13	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/10/79	2	A biography of a member of a foreign delegation.	CONFIDENTIAL NOFORN	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D14	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/10/79	2	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D15	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	5/29/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D16	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D17	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	3/22/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D17-1	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	7/23/79	1	A biography of a member of a foreign delegation.	None	SECRET//NOFORN

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D18	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	5/29/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D19	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/13/79	1	A biography of a member of a foreign delegation. CONFIDENTIAL NOFORN		SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D20	"Af/Pak 1" Notebook	11/21/09	5	A State Department cable from the U.S. Embassy in Kabul with subject "HELMAND VIEWS ON U.S. TROOP LEVELS IN AFGHANISTAN." The cable "was drafted by the State Representative to the 2d Marine Expeditionary Brigade, and its Commanding General, Brigadier General Lawrence Nicholson reviewed [the] cable."	CONFIDENTIAL	Declassification date passed on 11/11/2019; handle as marked until official declassification review.**
D21	"DAILY/MEMO" Notebook	Undated	2	Two PowerPoint slides. The first slide is titled "Scoping Key Priorities for the Second Term" and sets outs "Key Products to Prepare for the January NSC meeting on Priorities." The slide is marked "SECRET//NOFORN." The second slide is unmarked and depicts a flow chart for a National Security Council process.	SECRET//NOFORN (first slide only)	SECRET//NOFORN** State Department noted that the document may be overclassified.
D22	"APUTATIONS Feb '11" file folder	2/11/11 (est.)	1	A document titled "CJCS 12-Hour Egypt Update for 11 Feb 0600" that provides an update on events related to the 2011 revolution in Egypt and the resignation of Hosni Mubarak from the presidency in Egypt.	SECRET//NOFORN	SECRET//NOFORN

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D 2 3	"Weekend With Charlie Rose" binder (in bedroom office); behind "Russia" tab	9/17/14	3	An Event Memo from an OVP national security staffer titled "Lunch with Ukrainian President Poroshenko" for a lunch at the Naval Observatory on September 18, 2014. The memo describes the purpose of the lunch, the participants, the press plan, and the sequence of events.	SECRET	SECRET**
D24	"Weekend With Charlie Rose" binder (in bedroom office); behind "Russia" tab	9/17/15 (est.)	10	A paper attachment to D23 titled "Tab B – BACKGROUND" discussing issues related to Russian aggression toward Ukraine. There is no indication of an author.	SECRET//NOFORN	TOP SECRET//NOFORN*
D25	"Weekend With Charlie Rose" binder (in bedroom office); behind "Russia" tab	8/29/14	5	A Paper titled "Scenesetter for National Security Advisor Susan Rice's Visit to China" with no indication of an author.	No classification header or footer; portion markings indicate an overall classification of SECRET.	SECRET**
E1	"FOREIGN RELATIONS COMMITTEE" file folder	1/23/80	3	An Action Memorandum from a Senate staffer to nine Senators, including Mr. Biden, with subject "Proposed 1980 Committee Budget For Discussion During Meeting of Democrats in S-201 at 2:00 p.m., Wednesday, January 23." The document is identical to G4.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
E2	"EUROPE" file folder	6/4/80	2	A letter from three Senators on the Committee on Foreign Relations, including Mr. Biden, to Secretary of State Edmund S. Muskie intended to express concerns about delays in SALT and TNF arms negotiations. There are stapled unclassified notes and correspondence attached to the letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
Е3	"EUROPE" file folder	5/29/80	2	An Action Memorandum addressed to Senators three Senators including Mr. Biden regarding the letter to Secretary of State Edmund S. Muskie recommending "[t]hat you each sign the attached letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
E4	"EUROPE" file folder	5/29/80	2	Another copy of the Action Memorandum designated E3 with an unclassified note from Senate Staffer 3 to Mr. Biden attached to the front of memo recommending Mr. Biden sign the letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
E 5	"EUROPE" file folder	5/3 0 /8 0	2	An earlier version of the letter from three Senators on the Committee on Foreign Relations, including Mr. Biden, to Secretary of State Edmund S. Muskie intended to express concerns about delays in SALT and TNF arms negotiations. There are stapled unclassified notes and correspondence attached to the letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.***
E6	"FOREIGN RELATIONS COMMITTEE" file folder	11/28/79	2	Two copies of a one-page Action Memorandum from a Senate staffer, thru Ted Kaufman, to Mr. Biden attaching a memo from another Senate staffer (designated by FBI as E7) on TNF modernization.	SECRET	UNCLASSIFIED**

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
E7	"FOREIGN RELATIONS COMMITTEE" file folder	11/26/79	2	An Information Memorandum from a Senate Staffer to another Senate staffer regarding "TNF Modernization and Arms Control." SECRET		Undetermined: Legislative Branch document that may contain sensitive Executive Branch information, which may have been declassified given age of the document. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
F1	"With the Compliments of the American Embassy, Bonn" and "Senator Joseph R. Biden, Jr." file folder	12/17/87	2	A State Department cable from Ambassador Burt at the American Embassy in Bonn with subject "Proposal for a NATO Wise Men's Study." SECRET with a brown strip around document labeled "Restricted"		Cable automatically declassified on December 31, 2012**
G1	"GREECE" file folder	3/11/17	3	A Senate Committee on Foreign Relations "SUMMARY OF MARCH 11, 1977 EXECUTIVE MEETING OF FULL COMMITTEE (Closed S-116, 10:30 - 12:15pm) regarding the testimony of Ambassador Clark M. Clifford.	SECRET with a cover sheet labeled CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE	Undetermined: Legislative Branch document that may contain sensitive Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.** Includes Foreign Government Information
G2	"MUTUAL BALANCED FORCE REDUCTION MBFR" file folder	July 1977	5	A paper titled "Mutual and Balanced Force Reduction (MBFR)."	CONFIDENTIAL	CONFIDENTIAL//FORMERLY RESTRICTED DATA

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
G3	"FOREIGN RELATIONS COMMITTEE" file folder	3/2/79	8	A Senate Committee on Foreign Relations Staff Memorandum titled "National Security Interests in a Law of the Sea Treaty March 6, 1979 Hearings."	CONFIDENTIAL	Undetermined: Legislative Branch document that may contain sensitive Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
G4	"FOREIGN RELATIONS COMMITTEE" file folder	1/23/80	3	An Action Memorandum to nine Senators, including Mr. Biden, with subject "Proposed 1980 Committee Budget For Discussion During Meeting of Democrats in S-201 at 2:00p.m., Wednesday, January 23." The document is identical to E1.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
G5	"CFE briefing book material" file folder	11/20/91	2	A letter to Richard G. Lugar, Chairman of the Committee on Foreign Relations, from an unspecified sender regarding foreign compliance with the CFE Treaty.	SECRET NOFORN	Undetermined

A-22

^{*} Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material 1

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
Unlabeled notebook (entries from 11/27/2008 - 7/15/2009)			TOP SECRET**	
Unlabeled notebook (entries from 11/27/2008 - 7/15/2009)	Undated (likely 6/17/09 or 6/18/09)	$1~ m page^3$	Pakistan	CONFIDENTIAL**
"Af/Pak 1" notebook	11/28/09	20 loose pages inserted in notebook ⁴ Handwritten memorandum regarding the Afghanistan str		SECRET**
"Af/Pak 1" notebook	11/7/09	5 pages ⁵ Afghanistan / Pakistan		TOP SECRET//HCS-O// [4 SCI Control System Markings]// ORCON/NOFORN
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	4/16/10	$2~ m pages^6$	Afghanistan / Pakistan	TOP SECRET//SI//NOFORN**
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	Undated	2 pages ⁷	Pakistan	SECRET**
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	4/29/10	2 pages ⁸	Foreign adversary	TOP SECRET//HCS-O// [3 SCI Control System Markings]// [2 SCI Control System Markings]// ORCON/NOFORN

¹ FBI Serial 676.

² 1B64-0056.

³ 1B64-0065.

^{4 1}B66-0003-22.

⁵ 1B66-0082-84.

^{6 1}B51-0073.

^{7 1}B51-0074.

^{8 1}B51-0080-81.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	11/29/11	2 loose pages inserted in notebook ⁹	Foreign adversary	SECRET**
Unlabeled notebook (entries from 4/20/2009 - 12/4/2009)	Undated (likely 1/10/11)	1 page ¹⁰	Briefing on sensitive topics	TOP SECRET//HCS-O//ORCON/NOFORN**
Unlabeled notebook (entries from 4/20/2009 - 12/4/2009)	1/27/11	1 page ¹¹	Situation Room meeting with POTUS regarding Afghanistan and Pakistan	SECRET//HCS-O//ORCON/NOFORN
Unlabeled notebook (entries from 4/20/2009 - 12/4/2009)	4/25/11	6 pages ¹²	National Security Council meeting regarding Afghanistan and Pakistan	TOP SECRET//NOFORN**
"1-7-10 → 8-3-14" notebook	5/28/11	7 pages ¹³	Recollection of raid on Osama Bin Laden	TOP SECRET//HCS-O// [4 SCI Control System Markings]// ACCM [Program Name]// ORCON/NOFORN
"1-7-10 → 8-3-14" notebook	10/9/13	1 page ¹⁴	Notes from the President's Daily Brief	SECRET//NOFORN
"1-7-10 → 8-3-14" notebook	Undated	$2~ m pages^{15}$	Notes from the President's Daily Brief	SECRET**
"Miscellaneous 1/9/10 - 1/17/12" notebook	6/19/13	1 page ¹⁶	Brief from the National Security Agency	SECRET//REL

⁹ 1B51-0121-0122.

B-2

¹⁰ 1B63-0012.

¹¹ 1B63-0016.

¹² 1B63-0026-29.

¹³ 1B30-0030-33.

¹⁴ 1B30-0065.

^{15 1}B30-0093-94.

¹⁶ 1B52-0091.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
"1/6/12 #2 Foreign Policy" notebook	2/22/12	2 pages ¹⁷	Situation Room meeting with POTUS	TOP SECRET**
"Foreign Policy 11/2013 - 2014" notebook	1/1/14	1 page ¹⁸	Accumulated questions from President's Daily Briefs	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	1/7/14	2 pages ¹⁹	Meeting in the Oval Office with national security advisors	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	1/10/14	$3~{ m pages}^{20}$	Meeting in the Situation Room with POTUS regarding a foreign adversary	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	5/19/14	$2~ m pages^{21}$	Notes regarding Unmanned Aerial Systems with POTUS	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	11/26/14	4 pages ²²	National Security Council meeting in the Situation Room	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	3/11/15	$1~ m page^{23}$	A meeting with John Kerry regarding a foreign adversary	SECRET//NOFORN
"Foreign Policy 11/2013 - 2014" notebook	4/1/15	1 page ²⁴	Notes from the President's Daily Brief	TOP SECRET**
Notecards Seized from Hearth Railing	9/17/13	1 notecard (front only) ²⁵	Notes from the President's Daily Brief	TOP SECRET**

¹⁷ 1B15-0012-13.

¹⁸ 1B67-0012.

¹⁹ 1B67-0013.

²⁰ 1B67-0019-20.

²¹ 1B67-0038.

^{1007-0000.}

²² 1B67-0063-65.

²³ 1B67-0075.

²⁴ 1B67-0076.

²⁵ 1B23-0012.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
Notecards Seized from Hearth Railing	10/15/13	1 notecard (front only) ²⁶	Notes from the President's Daily Brief	TOP SECRET**
Notecards Seized from Hearth Railing	8/19/14	1 notecard (front and back) ²⁷	Notes from the President's Daily Brief	SECRET**
"Foreign Policy" notebook	10/28/14	5 pages ²⁸	Situation Room Meeting with POTUS and the Joint Chiefs regarding military readiness	SECRET
"Foreign Policy" notebook	11/4/14	2 pages ²⁹	Meeting with POTUS, the Secretary of Defense, the Chairman of the Joint Chiefs, and other advisors	SECRET**
"Foreign Policy" notebook	12/14/15	7 pages ³⁰	Meeting with "POTUS+Brass+NSC" regarding Counter ISIL Strategy Review	SECRET//NOFORN
"Foreign Policy" notebook	11/24/16	1 page ³¹	Secure Video Teleconference regarding homeland threats	SECRET//NOFORN
"Daily AUGUST 2014 - SEPTEMBER 2016" notebook	Undated	2 pages ³²	Foreign policy meeting notes	SECRET//NOFORN
" Daily AUGUST 2014 - SEPTEMBER 2016" notebook	Undated (likely 6/18/15)	7 pages ³³	Meeting with POTUS and national security leaders	SECRET//HCS-O//ORCON/NOFORN

²⁶ 1B23-0015.

²⁷ 1B23-0006-7.

²⁸ 1B58-0029-31.

²⁹ 1B58-0033.

³⁰ 1B58-0079-82.

³¹ 1B58-0094.

^{32 1}B57-0014.

^{33 1}B57-0061-65.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
"FOREIGN POLICY 6/10/15" notebook	9/3/15 (first two pages undated)	5 nages ³⁴ Foreign adversaries		CONFIDENTIAL**
"FOREIGN POLICY 6/10/15" notebook	5/14/16	$2~{ m pages}^{35}$	Counterterrorism discussions, including on "Acela North Bound"	SECRET**
"FOREIGN POLICY 6/10/15" notebook	6/3/16	$2~ m pages^{36}$	Situation Room meeting with POTUS regarding Afghanistan	SECRET//NOFORN
"FOREIGN POLICY 6/10/15" notebook	1/5/17	2 pages ³⁷	Sensitive Topic	TOP SECRET//HCS-O//ORCON/NOFORN
"DAILY 12/15/15 2026-2017-2018 " notebook	6/13/16	1 page ³⁸	National security meeting	SECRET//NOFORN

³⁴ 1B22-0013-15.

^{35 1}B22-0023.

³⁶ 1B22-0024.

 $^{^{37}}$ 1B22-0026

³⁸ 1B20-0034.

^{**} Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

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Evidence Item#	Date Seized	Location Seized or Producing Party	Decarintion		Notes
1B 0 1 ¹	11/28/22	PBC	Hard drive found in box labeled: VP Records		
$1\mathrm{B}04^2$	12/21/22	Wilmington Residence	Box containing miscellaneous documents with classifications up to TOP SECRET. Collected from the garage.	classifications up to TOP SECRET. Collected B4-5, B25-38	
$1\mathrm{B}44^3$	12/21/22	Wilmington Residence	Red Folder with handwritten "Facts First" containing documents with classifications up to TOP SECRET//HCS//NOFORN.	B6-B24	Originally contained within 1B4.
1B05 ⁴	12/21/22	Wilmington Residence	Box containing binders with classified documents up to SECRET//NOFORN. Collected from the garage.	B1-B3	
1B13 ⁵	1/12/23	Wilmington Residence	Three (3) pages with classification markings SECRET//NOFORN//Pre-decisional.	C1-C3	Documents were originally contained within notebook (1B15).
1B14 ⁶	1/12/23	Wilmington Residence	Three (3) pages with classification markings TS/SCI	C4	Documents were originally contained within notebook (1B15).
1B15 ⁷	1/14/23	Wilmington Residence	Black spiral notebook labeled: "1/6/12 #2 Foreign Policy"		

¹ FBI Serials 12, 14, 23.

² FBI Serials 29, 35, 134, 181, 195, 284, 322, 443, 512.

³ FBI Serials 29, 35, 195, 440, 443, 510, 512.

⁴ FBI Serials 29, 35, 195, 270, 284, 701.

⁵ FBI Serials 43, 44, 160, 682.

⁶ FBI Serials 43, 44, 160, 682.

⁷ FBI Serials 44, 46, 47, 134, 322, 682.

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Evidence Item#	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B178	1/20/23	Wilmington Residence	Box labeled: Save the Attic; Foreign Travel. Contained miscellaneous documents with classification markings up to CONFIDENTIAL.	D1-D3	
1B18 ⁹	1/20/23	Wilmington Residence	Box labeled: International Travel 1973-1979. Contained miscellaneous documents with classification markings up to SECRET	D4-D19	
1B20 ¹⁰	1/20/23	Wilmington Residence	Black spiral notebook labeled: "DAILY 12/15/15 and 2026-2017-2018."		
1B22 ¹¹	1/20/23	Wilmington Residence	Black spiral notebook labeled: "FOREIGN POLICY 6/10/15"		At the time of the search, three notebooks were found in the same location, seized and entered into evidence, collectively designated as 1B22. For evidence handling and review purposes, each notebook was given its own FBI evidentiary number: 1B22, 1B67 and 1B68.
1B67 ¹²	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Foreign Policy 11/2013-2014"		Initially collected with 1B22.
1B68 ¹³	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Obama/Biden 7-15-13 → 10-10-16"		Initially collected with 1B22.
1B23 ¹⁴	1/20/23	Wilmington Residence	Loose, miscellaneous papers with handwritten notes (notecards).		

⁸ FBI Serials 49, 77, 270, 284, 639.

⁹ FBI Serials 49, 77, 270, 284, 639.

¹⁰ FBI Serials 49, 77, 248, 322.

¹¹ FBI Serials 49, 77, 322.

¹² FBI Serials 49, 77, 322.

¹³ FBI Serials 49, 77, 322.

¹⁴ FBI Serials 49, 77, 322, 664.

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Evidence Item#	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B25 ¹⁵	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Daily/Memo"	D21	At the time of the search, eight notebooks were found in the same location, seized and entered into evidence, collectively, designated as 1B25. For evidence handling and review purposes, each notebook was given its own FBI evidentiary number: 1B25, 1B51, 1B52, 1B62, 1B63, 1B64, 1B65, and 1B66.
1B51 ¹⁶	1/20/23	Wilmington Residence	Black spiral notebook labeled: "FOREIGN POLICY 10/13/09 - 1/17/12"		Initially collected with 1B25.
1B52 ¹⁷	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Miscellaneous from 1/9/10 - 1/17/12"		Initially collected with 1B25.
1B62 ¹⁸	1/20/23	Wilmington Residence	Black spiral unlabeled notebook with first interior page stating: "12-2-09, 11-15-10"		Initially collected with 1B25.
1B63 ¹⁹	1/20/23	Wilmington Residence	Black spiral unlabeled notebook with first interior page stating: "Afghanistan - Pakistan Review December 2010 Review"		Initially collected with 1B25.
$1\mathrm{B}64^{20}$	1/20/23	Wilmington Residence	Black spiral unlabeled notebook with entry dates 11/27/08 to 7/15/09		lnitially collected with 1B25.
$1B65^{21}$	1/20/23	Wilmington Residence	Black spiral notebook labeled: "POST ELECTION"		Initially collected with 1B25.

¹⁵ FBI Serials 49, 77, 134, 322, 682.

¹⁶ FBI Serials 49, 77, 322, 682.

¹⁷ FBI Serials 49, 77, 322.

¹⁸ FBI Serials 49, 77, 322.

¹⁹ FBI Serials 49, 77, 322.

²⁰ FBI Serials 49, 77, 322.

²¹ FBI Serials 49, 77, 322.

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Evidence Item#	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
$1B66^{22}$	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Af/Pak 1"	D20	Initially collected with 1B25.
1B27 ²³	1/20/23	Wilmington Residence	Various documents in blue file folder labeled Amputations Feb '11. Contained document with classification markings up to SECRET//NOFORN.	D22	
$1B30^{24}$	1/20/23	Wilmington Residence	Black notebook labeled: "1/7/10 → 8/3/14"		At the time of the search, four notebooks were found in the same location, seized and entered into evidence, collectively designated as 1B30. For evidence handling and review purposes, each notebook was given its own FBI evidentiary number: 1B30, 1B57, 1B58, and 1B59.
1B57 ²⁵	1/20/23	Wilmington Residence	Black notebook labeled: "Daily AUGUST 2014 - SEPTEMBER 2016"		Initially collected with 1B30.
$1B58^{26}$	1/20/23	Wilmington Residence	Black notebook labeled: "Foreign Policy"		Initially collected with 1B30.
1B59 ²⁷	1/20/23	Wilmington Residence	Black notebook labeled: "DAILY 2016"		Initially collected with 1B30.
1B31 ²⁸	1/20/23	Wilmington Residence	Blue unlabeled binder contained documents with classification markings up to SECRET//NOFORN.	D23-D25	•

²² FBI Serials 49, 77, 322, 682.

²³ FBI Serials 49, 77, 270, 284.

²⁴ FBI Serials 49, 77, 248, 322.

²⁵ FBI Serials 49, 77, 322.

²⁶ FBI Serials 49, 77, 322.

²⁷ FBI Serials 49, 77, 322.

²⁸ FBI Serials 49, 77, 270, 284, 701.

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Evidence Item#	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B35 ²⁹	1/27/23	University of Delaware	Unmarked Box - 329-94-341 containing documents with classification markings up to SECRET.	E1-E7	
1B37 ³⁰	2/3/23	University of Delaware	Manila folder labeled: With the Compliments of the American Embassy, Bonn, Senator Joseph R. Biden, Jr. Contained documents with classification marking up to SECRET.	F1	
1B43 ³¹	3/3/23	PBC Scheduler	One laptop, with charging cable.		
1B48 ³²	4/13/23	NARA	Manila envelope labeled: Iran 1/30/15, Eyes Only VPOTUS. From Box 3 stored at NARA. The envelope contained documents with classification markings up to TS/SCI and handwritten notes.	A3-A7	
1B49 ³³	4/13/23	NARA	Documents from Box 1 stored at NARA with classification markings up to TS/SCI. Documents from Box 3 stored at NARA with classification markings up to TOP SECRET	A1-A2 (Box 1); A8-A10 (Box 3)	
1B77 ³⁴	5/23/23	Wilmington Residence	Brown paper bag labeled: Balducci's, containing various items.		1B31 was originally located inside this Balducci bag.
1B69 ³⁵	6/6/23	University of Delaware	Legal sized brown folder labeled: CFE Briefing Book Material, containing documents with classification marking up to SECRET//NOFORN.	G5	

²⁹ FBI Serials 67, 270, 284, 466.

³⁰ FBI Serials 71, 270, 284.

³¹ FBI Serial 108.

³² FBI Serial 173.

³³ FBI Serial 173.

³⁴ FBI Serials 287, 294, 591.

³⁵ FBI Serials 292, 441.

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Evidence Item#	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B70 ³⁶	6/7/23	University of Delaware	Legal sized brown folder labeled: Foreign Relations Committee, containing documents with classification markings up to CONFIDENTIAL.	G3-G4	
1B71 ³⁷	6/7/23	University of Delaware	Legal sized brown folder labeled: Mutual Balanced Force Reduction MBFR, containing documents with classification marking up to CONFIDENTIAL.	G2	
1B72 ³⁸	6/7/23	University of Delaware	Legal sized brown folder labeled: Greece, containing documents with classification markings up to SECRET.	G1	
1B78 ³⁹	6/29/23	Zwonitzer	Silver Laptop (with power charging cord included)		
1B79 ⁴⁰	6/29/23	Zwonitzer	Silver G Drive (with USB connection cord and device case included)		
1B80 ⁴¹	7/5/23	Zwonitzer	Derivative Evidence – Digital copy that contains audio files and documents from 1B78 and 1B79		Derived from 1B78 and 1B79.
1B81 ⁴²	7/6/23	Zwonitzer	One (1) DVD containing digital copies of full length carved audio files from 1B79.		Derived from 1B79.

³⁶ FBI Serials 292, 441.

³⁷ FBI Serials 292, 441.

³⁸ FBI Serials 292, 441.

³⁹ FBI Serial 315.

⁴⁰ FBI Serial 315.

⁴¹ FBI Serial 320.

⁴² FBI Serial 320.

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Evidence Item#	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B87 ⁴³	1/22/24	Wilmington Residence	Empty, ripped cardboard box. One top flap labeled "Desk File" and the opposite flap labeled "Cabinet".		Original container of all 1B04 items which were repackaged as described in Chapter 7 Section II.

⁴³ FBI Serials 680, 681.



February 5, 2024

Special Counsel Robert K. Hur Deputy Special Counsel Marc Krickbaum Department of Justice 145 N Street Northeast Washington, D.C. 20503

Dear Special Counsel Hur and Deputy Special Counsel Krickbaum:

We are pleased to see that, after more than a year of investigating, you have determined that no criminal charges are warranted in this matter. Though we wholeheartedly agree with your conclusion, we are taking this opportunity, pursuant to our agreement, to address specific issues that we have identified in the report. We do so in the interest—which we believe that the Office of Special Counsel shares—of a final report that is both accurate and consistent with Department of Justice policy and practice.

We have been selective in the choice of issues for your consideration. We believe that each one presented below merits your careful review before finalizing your report.

1. We do not believe that the report's treatment of President Biden's memory is accurate or appropriate. The report uses highly prejudicial language to describe a commonplace occurrence among witnesses: a lack of recall of years-old events. Such comments have no place in a Department of Justice report, particularly one that in the first paragraph announces that no criminal charges are "warranted" and that "the *evidence* does not establish Mr. Biden's guilt." If the evidence does not establish guilt, then discussing the jury impact of President Biden's hypothetical testimony at a trial that will never occur is entirely superfluous.

In fact, there is ample evidence from your interview that the President did well in answering your questions about years-old events over the course of five hours. This is especially true under the circumstances, which you do not mention in your report, that his interview began the day after the October 7 attacks on Israel. In the lead up to the interview, the President was conducting calls with heads of state, Cabinet members, members of Congress, and meeting repeatedly with his national security team.

The Special Counsel recognized the extraordinary juxtaposition of these events when he "thank[ed]" the President "for being here and making this time for us" given that there were "a lot of other things in the world going on that demand your attention." Interview Transcript ("Tr."), Day I, at 3. Subsequently, far from being "hazy," Report at 208, the President proceeded to provide often detailed recollections across a wide range of questions, from staff management of paper flow in the West Wing to the events surrounding the creation of the 2009 memorandum on the Afghanistan surge. He engaged at length on theories you offered about the way materials

were packed and moved during the transition out of the vice presidency and between residences. He pointed to flaws in the assumptions behind specific lines of questioning.

At the outset of the interview, you recognized that the questions you planned to ask "relate to events that happened years ago," but nonetheless expressed your hope that the President would "put forth [his] best efforts and really try to get [his] best recollection in response to the questions we ask." Tr., Day I, at 4. It is hardly fair to concede that the President would be asked about events years in the past, press him to give his "best" recollections, and then fault him for his limited memory.

The President's inability to recall dates or details of events that happened years ago is neither surprising nor unusual, especially given that many questions asked him to recall the particulars of staff work to pack, ship, and store materials and furniture in the course of moves between residences. The same predictable memory loss occurred with other witnesses in this investigation. Yet, unlike your treatment of President Biden, your report accepts other witnesses' memory loss as completely understandable given the passage of time. For example, you accepted without denigrating John McGrail's failure to remember certain events while he served as then-Vice President Biden's counsel: "McGrail's memory of these events could well have faded over the course of more than 6 years." Report at 238 n.923; see also id. at 67, 69 (noting Mr. McGrail's failure to recall events despite emails that place him in the center of various discussions). So, too, you accept the memory lapse of one of the President's personal lawyers who testified that in his initial search of the Penn Biden offices certain boxes were stored in a locked closet, noting only that "his memory was fuzzy on that point." Id. at 265. And the events on which you found the lawyer's memory to be "fuzzy" occurred only a few months before his interview. *Id.*; see also id. at 64, 66 (noting without comment the failures of recollection by numerous staffers).

Your treatment of President Biden stands in marked contrast to the lack of pejorative comments about other individuals. It is also in contrast to your own description of the President's responses on other subjects as "clear forceful testimony" that would be "compelling" to a jury. *Id.* at 233.

Not only do you treat the President differently from other witnesses when discussing his limited recall of certain years-ago events, but you also do so on occasions in prejudicial and inflammatory terms. You refer to President Biden's memory on at least nine occasions—a number that is itself gratuitous. But, even among those nine instances, your report varies. It is one thing to observe President Biden's memory as being "significantly limited" on certain subjects. *Id.* at 5. It is quite another to use the more sweeping and highly prejudicial language employed later in the report. This language is not supported by the facts, nor is it appropriately used by a federal prosecutor in this context.

We request that you revisit your descriptions of President Biden's memory and revise them so that they are stated in a manner that is within the bounds of your expertise and remit.

2. Your report criticizes President Biden's "decision to keep his notebooks at home in unlocked and unauthorized containers" as "totally irresponsible," applying to him the same criticism, in the same words, he had directed at former President Trump for keeping marked

2

classified documents. *Id.* at 228. Setting aside the significant difference of law and facts between the two cases (which the report recognizes), this kind of criticism of an uncharged party violates "long-standing Department practice and protocol." *See* Office of the Inspector General, U.S. Department of Justice, A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election (June 2018) (finding that former FBI Director James Comey violated this practice and protocol when criticizing as "extremely careless" former Secretary of State Hillary Clinton's use of unclassified systems to transmit classified material). Using President Biden's own words does not make the criticism compliant with Department practice.

- 3. In an audio recording with Mr. Zwonitzer, the President said: "I just found all the classified stuff downstairs. I wrote the President a handwritten forty-page memorandum arguing against deploying additional troops to Afghanistan on the grounds that it would not matter." Yet your report appears to conclude that the President was referring to marked classified Afghanistan documents, rather than the precise document referred to in the actual recording: the President's handwritten letter to President Obama about Afghanistan, which the President viewed as a sensitive and private communication. Indeed, the President testified in his interview that, although he didn't remember the comment to Mr. Zwonitzer, the "only thing that [he] can think of" was this handwritten letter to President Obama. Tr., Day II, at 38. We believe that an accurate recitation of the evidence on this point would recognize the strong likelihood that the President was referring in the recording to his private handwritten letter to President Obama—the one mentioned on this recording immediately after the eight words that you are focused on—rather than the marked classified Afghanistan documents discovered in the Wilmington garage.
- 4. Your report erroneously (and repeatedly) makes statements about the value of the marked classified Afghanistan documents to President Biden, such as President Biden had a "strong motive" to keep them and they were an "irreplaceable contemporaneous record." like the notebooks. Report at 203, 231. These statements are contrary to the evidence and the documents themselves. First, the President forcefully testified that he "never thought about" writing a book about the 2009 Afghanistan policy review. Tr., Day II, at 22. Thus, the President had no need to retain the documents for that purpose. Second, the 2009 Afghanistan policy review was one of the most widely covered foreign policy decisions in history, documented in near real-time by public releases of government documents, leaks to newspapers, and publications by writers like Bob Woodward. The idea that the President needed to keep any classified documents related to these events, let alone the particular ones found in his garage, is implausible. This is particularly true given that the documents at issue primarily consist of drafts, duplicates, and a disorganized and incomplete assortment of briefing materials and presentations—nothing remotely resembling a consciously selected set of documents kept for historical value. Indeed, your report acknowledges that certain "important" documents are not in the folders, including documents that—if President Biden had sought to keep documents for history's sake (which he did not)—one would expect to be included. However, your report fails to describe the haphazard and essentially random nature of the documents discovered. We believe that a fair and more accurate recitation of the evidence on this point would include a description of the documents that makes clear they do not appear to have been intentionally selected for retention.

3

- 5. Your characterization of the box in the garage as containing only matters of "great personal significance" to the President is inconsistent with the facts. The evidence shows that this tattered box contained a random assortment of documents, including plainly unimportant ones such as: a short-term vacation lease; a VP-era memorandum on furniture at the Naval Observatory for purchase; talking points from speeches; campaign material; empty folders; a 1995 document commemorating Syracuse Law's 100-year anniversary; and other random materials. In his interview, President Biden commented regarding one of the folders, which read "Pete Rouse": "Christ, that goes back a way," confirming that he had not encountered that material in recent years. Tr., Day I, at 144. When asked how things like a binder labeled "Beau" Iowa" got into the "beat-up" box, the President responded "Somebody must've, packing this up, just picked up all the stuff and put it in a box, because I didn't." Id. at 146. When asked about the later-dated material, the President responded: "[s]ee, that's what makes me think just people gathered up whatever they found, and whenever the last thing was being moved. So the stuff moving out of the Vice President's residence, at the end of the day, whatever they found, they put - they didn't separate it out, you know, Speakers Bureau and Penn or whatever the hell it is, or Beau. They just put it in a single box. That's the only thing I can think of." Id. at 147. Some of the documents in the box contain what appears to be staff handwriting—including a D.C. tax return and a W2—further indicating that the box was likely filled by staff. We believe that an accurate recitation of the evidence on this point would include a description of these facts.
- <u>6.</u> In the course of his recorded conversations with his writing assistant, the President makes a comment—"they didn't even know I have these." Your report repeatedly cites the comment (e.g., Report at 8, 64, 65, 230, 242) and, from these six words, asks the reader to conclude that President Biden was "distinguish[ing] between his notecards, which his staff was in the process of implementing protocols to safeguard, and his notebooks, which 'they didn't even know I have.'" *Id.* at 65. The President's comment does not support this unfounded conclusion. It is unclear who the President was referring to as "they" or what he was referring to as "these," let alone that he was somehow distinguishing between his notecards and his notebooks. We believe the report should not make such unsupported assumptions—or leave the erroneous impression that the fact of President Biden's notebooks was unknown, when the report itself shows that it was well known and even documented in photographs.
- 7. There are a number of inaccuracies and misleading statements that could be corrected with minor changes:
 - o "We considered the possibility that Mr. Biden alerted his counsel that classified documents were in the garage but our investigation revealed no evidence of such a discussion because if it happened, it would be protected by the attorney-client privilege." Report at 22. In fact, your investigation revealed no evidence of such a discussion because it did not happen—not because of any privilege. The President testified he was unaware that there were any classified documents in his possession. Tr., Day II, at 2, 41-42. You did not ask him in his interview or in the additional written questions if he had "alerted his counsel" about classified documents; if you had, he would have forcefully told you that he did not.
 - The report states that the President Biden's book, Promise Me, Dad, "is not known to" contain classified information. Report at 97. The book does not

- contain classified information and there has never been any suggestion to the contrary.
- o "While it is natural to assume that JRB put the documents in the box on purpose and knew they were there, in fact there is a shortage of evidence on these points." Id. at 215 (emphasis added). We do not understand the basis for claiming this is a "natural" assumption.
- o In connection with its discussion of the Reagan diaries, the report states that the Special Counsel's Office "viewed the materials that were deemed to be classified at the Top Secret/SCI" level from the Reagan diaries, citing a December 1, 2023 production from the National Security Council. *Id.* at 199-200. This is not accurate; as was stated in the production letter, you viewed only a sample of such material. We offered to make the full volumes available for your review.
- o The report claims that the Archives staff asked to see President Biden's notes from one of his visits to the Archives in 2017, *id.* at 231, citing an earlier chapter, but such a proposition is not made in the earlier chapter, leaving us to raise the question of whether it is accurate.
- o The header on page 333 refers to the discovery of a document in President Biden's home in the second-floor office, but the text asserts that the document was found in the third-floor den. The header appears to be inaccurate.

We respectfully request your close attention to these issues before finalizing your report.

Respectfully,

Richard Sauber

Special Counsel to the President

3.67, an

Bob Bauer

Personal Counsel to Joseph R. Biden, Jr.

EXHIBIT 4

HEARING ON THE REPORT OF SPECIAL COUNSEL ROBERT K. HUR

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

TUESDAY, MARCH 12, 2024

Serial No. 118-67

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Tuesday, March 12, 2024

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HEARING ON THE REPORT OF SPECIAL COUNSEL ROBERT K. HUR

Tuesday, March 12, 2024

House of Representatives

COMMITTEE ON THE JUDICIARY
Washington, DC

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, the Hon. Jim Jordan [Chair of the Committee] presiding.

Members present: Representatives Jordan, Issa, Buck, Gaetz, Biggs, McClintock, Tiffany, Massie, Roy, Bishop, Spartz, Fitzgerald, Bentz, Cline, Armstrong, Van Drew, Nehls, Moore, Kiley, Hageman, Moran, Lee, Fry, Nadler, Lofgren, Jackson Lee, Cohen, Johnson, Schiff, Correa, Swalwell, Lieu, Jayapal, Scanlon, Neguse, McBath, Dean, Escobar, Ross, Bush, Ivey, and Balint.

Also present: Representatives Comer and Raskin.

Chair JORDAN. This hearing will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone to today's Hearing on the Report of Special Counsel Robert Hur.

The Chair now recognizes the gentleman from the State of Wisconsin for purpose of leading us in the Pledge.

ALL. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.

Chair JORDAN. Pursuant to an agreement with the Ranking Member Nadler and without objection, Chair Comer and Ranking Member Raskin will be permitted to participate in today's hearing for the purposes of making opening statements and asking questions of the witness. Each will receive three minutes for an opening statement and five minutes to question the witness.

The Chair now recognizes himself for an opening statement. Robert Hur was appointed Special Counsel on January 12, 2023. He had a fundamental question to address. Did Joe Biden unlawfully retain classified information? The answer: Yes, he did.

Page one of Mr. Hur's report, he said this.

Our investigation uncovered evidence that President Biden willfully retained and disclosed classified materials after his Vice Presidency when he was a private citizen.

He further writes,

Mr. Biden willfully retained marked classified documents about Afghanistan and handwritten notes in his notebooks which he stored in unsecured

Joe Biden kept classified information and Joe Biden failed to store classified information properly.

Mr. Hur made these determinations after interviewing 147 witnesses. He examined seven million documents including emails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources. There is more.

He not only—Joe Biden not only kept information he wasn't allowed to keep, and he not only failed to secure that information properly, but he also shared it with people he wasn't allowed to who weren't allowed to see it. He shared that information with his ghostwriter. Remember, this is information that only individuals with a security clearance are supposed to see.

Mr. Hur told us on page 200 of his report that it is the kind of information that "risks serious damage to America's national security." What did Joe Biden have to say about all this? What was his explanation? On page 94 of Mr. Hur's report, Joe Biden said he took his notebooks with him after his Vice Presidency because, "They are mine. And every President before me has done the same exact thing." Nevermind the fact that he had never been President when he took this information, but what comes through is Joe Biden felt he was entitled. You can almost hear it. You can feel the arrogance in the statement "They are mine."

Even with all that, Mr. Hur chose not to bring charges because,

Mr. Biden would like to present himself to a jury, as he did in our interview of him, as a sympathetic, well meaning, elderly man with a poor memory.

A forgetful old man who Mr. Hur said, "did not remember when he was Vice President," forgetting on the first day of the interview when his term ended, and forgetting on the second day of the interview when his term as Vice President began.

Mr. Hur produced a 345-page report, but in the end, it boils down to a few key facts. Joe Biden kept classified information. Joe Biden failed to properly secure classified information and Joe Biden shared classified information with people he wasn't supposed to. Joe Biden broke the law, but because he is a forgetful, old man, who would appear sympathetic to a jury, Mr. Hur chose not to bring charges.

Mr. Hur, we think it is important that you be able to respond to President Biden's response to your report. So, we are going to play a short video of Mr. Biden's press conference-President Biden's press conference after your report was released because there are things in this press conference that the President of the United States says that are directly contradicted by what you found in your report. So, if we could play that video.

[Video played.] Chair JORDAN. The Chair now recognizes the Ranking Member,

Mr. Nadler, for an opening statement.

Mr. NADLER. Mr. Chair, I am glad you have such admiration for the President that you allowed him to take the first 10 minutes of this hearing.

Mr. Chair, House Republicans may be desperate to convince America that White, conservative men are on the losing end of a two tiered justice system, a theory that appeals to the MAGA crowd, but has no basis in reality. Your comments today make me wonder if you have read the Special Counsel's report at all. The Hur Report does help us draw a distinction between President Biden and Donald Trump, just not the one you want. Two distinctions, actually. First, the report is clear that,

At no point did the Special Counsel find evidence that Mr. Biden intended or had reason to believe the information would be used to injure the United States or to benefit a foreign nation.

With respect to the classified documents found in President Biden's possession, "A decision to decline criminal charges was straight forward." With respect to the Special Counsel's investigation,

Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations including his homes, sat for a voluntary interview, and in other ways cooperated with the investigation.

President Biden acted responsibly, cooperated completely, and the decision to decline criminal charges was relatively straight forward.

In short, to borrow a phrase from the last administration, the Hur Report represents the complete and total exoneration of President Biden.

How does that record contrast with President Trump, the documents he retained, and the criminal charges pending against him in Florida? We know that Trump deliberately took large amounts of classified information from the White House. He was admitted as much, occasionally pretending that he classified this information without telling anyone on his way out the door. We know that he stored that information around Mar-a-Lago in the craziest of places, on the ballroom stage, spilled across the floor of an unlocked closet next to the toilet. We know that he classified military plans to an author interviewing him at Bedminster. "As President, I could have declassified it," Trump says on an audio recording. "Now, I can't, but this is still a secret, still a secret." So, much for the declassification theory.

We know from the indictment that Trump has alleged to have shared these classified documents with many other visitors to Mara-Lago. We know that despite this outrageous conduct, the Department of Justice gave Trump every opportunity to avoid criminal charges. Again, in the Special Counsel's words,

After being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite. He not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it.

Why did the President [sic] charge former President Trump, but not President Biden? Not because of some vast conspiracy, not because of so-called deepstate was out to get him, but because former President Trump was fundamentally incapable of taking advantage of even one of the many, many chances he was given to avoid those charges.

Which brings me to the second distinction this report helps us draw between President Biden and Donald Trump. Simply put, President Biden had the mental acuity to navigate the situation. Donald Trump did not. Much has been made of the Special Counsel's gratuitous comments about President Biden's age, but let's set the context. After returning every classified document, after opening his home to Federal investigators while simultaneously managing the first hours of the crisis in Israel, President Biden volunteered to sit through a five-hour interview with the Special Counsel. I believe, as is his habit, that President Biden probably committed a verbal slip or two during the interview and I am not sure any of that matters because when the interview was over, Mr. Hur completely exonerated President Biden.

Then there is Donald Trump. What kind of man bungles not one, but dozens of opportunities to avoid criminal liability? What does that say about his mental state? He had two, the record speaks for itself.

[Video played.]

Mr. NADLER. That is a man who is incapable of avoiding criminal liability, a man who is wholly unfit for office, and a man who at the very least ought to think twice before accusing others of cognitive decline.

Thank you for being here today, Mr. Hur. Thank you for illuminating a stark choice to this country in the months to come. I look forward to your testimony and I yield back.

Chair JORDAN. The gentleman yields back. The Chair now recognizes the Chair of the Oversight Committee, Mr. Comer, for an

opening statement.

Mr. Comer. Thank you. In August 2022, President Biden questioned in a 60 Minutes interview how anyone can be that irresponsible when asked about classified documents in the possession of former President Trump? When President Biden said this, he knew that he had stashed classified materials in several unsecured locations for years, dating back to his time as Vice President and even as a U.S. Senator. President Biden, the White House, and his personal attorneys have not been honest with the American people about his willful retention of classified material and continued to hide information from Congress. President Biden's attorneys claimed to have first discovered classified material at Penn Biden Center on November 2, 2022. However, President Biden and his lawyers kept it secret from the American people before the midterm elections.

CBS News broke the story in January 2023, leaving Americans to wonder if the White House had any intention of ever disclosing that President Biden hoarded classified documents for years. One of my first actions after becoming Chair of the House Oversight Committee was to launch an investigation into President Biden's mishandling of classified documents. This investigation started before Special Counsel Hur was named. What we found is alarming. Information obtained through multiple transcribed interviews conducted by the Oversight Committee contradict the White House's and President Biden's personal attorneys' narrative about the discovery of classified documents at the Penn Biden Center. In fact, the real timeline began in the Spring 2021, not November 2022, as the White House claims. Additionally, the classified documents were not kept in a locked closet as asserted by the White House.

We have also learned that five White House employees and a Department of Defense employee were involved in the early stages of coordinating the organizing, moving, and removing of boxes that were later found to contain classified materials. There is no reasonable explanation as to why so many White House employees were concerned with retrieving boxes they believed only contained personal documents and materials. Why did President Biden keep these specific documents in an unsecured location for years? Many questions remain. Now, the White House is obstructing Congress as we seek the truth for the American people.

We have subpoenaed former White House counsel Dana Remus to appear for a deposition to provide information to our Committee, but the White House is seeking to block the testimony. We have also subpoenaed the Department of Justice for audio recordings and transcripts of President Biden's interview with Special Counsel Hur. These were viewed the morning of the State of the Union. Only this morning, a couple of hours before today's hearing, the Department of Justice finally provided the transcript of President Biden's interview with Special Counsel Hur. The timing is not coincidental. Although we have had little time to review the transcripts, from what we have seen, it is clear that the White House did not want Special Counsel Hur's final report to be released. The White House has refused to be transparent with the American people about the President's mishandling of classified documents. Worse, they have appeared to have lied about the timeline, about who handled the documents, and even about the contents of President Biden's interview with Special Counsel Hur. That is why today's hearing is important. Transparency is what we seek today, and we look forward to Special Counsel Hur's testimony. I yield

Chair JORDAN. The gentleman yields back. The Chair now recognizes the Ranking Member of the Oversight Committee, Mr.

Raskin for his opening statement.

Mr. RASKIN. I thank Chair Jordan. There are just three basic points that all Americans need to understand about Mr. Hur's re-

First, the Special Counsel exonerates President Biden. The very first line of the report says it all,

We conclude that no criminal charges are warranted in this matter. We would reach the same conclusion even if Department of Justice policy did not foreclose criminal charges against a sitting President.

Second, the report establishes that President Biden offered complete and unhesitating cooperation with the Special Counsel's investigation. The Justice Department and the National Archives were proactively notified of the classified documents, and they were turned over. The President allowed the FBI to search his homes, and he sat for a voluntary interview for more than five hours on October 8th and October 9th, even as he was busy responding to Hamas' vicious terrorist attack in Israel. The report, thus, demonstrates President Biden's complete devotion to the rule of law and his respect for a fair and independent Department of Justice. President Biden did not assert Executive Privilege or claim absolute immunity from Presidential crimes. He did not hide boxes of documents under his bed or in a bathtub. He did not fight investigators, nor did he seek to redact a single word of Mr. Hur's report. He consented to the search of numerous locations, including his homes and he did everything he could to cooperate, not obstruct.

Third, Special Counsel Hur repeatedly emphasizes that President Biden's conduct contrasts sharply with that of former President Trump. Hur observes that unlike President Biden,

The allegations set forth in the indictment of Mr. Trump, if proven, would clearly establish not only Mr. Trump's willfulness, but also serious aggravating factors.

He sets forth these points of different in detail.

Most notably after being given multiple chances to return classified documents and avoid prosecution, Trump allegedly did the opposite. According to the indictment, he not only refused to return the documents for months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it.

He returned only a portion of subpoenaed documents and deliberately withheld the rest.

Unlike President Biden, Trump did not alert the National Archives or DOJ of the documents, nor did he turn over all the classified materials in his possession. He did not agree to sit down for a voluntary interview with the Special Counsel. He never consented to a search of his home. On the contrary, Trump suggested that his attorney hide or destroy evidence requested by the FBI and the Grand Jury. Trump carefully instructed the day to move boxes of classified documents to hide them from the FBI. Trump tried to delete incrimination security tape footage from Mar-a-Lago, and he got his attorney to provide a false certification, the FBI saying he had produced all the documents in his possession. He did not.

Given that this report is so damning and the contrast between Biden and Trump, it is hard for me to see why our colleagues think that this hearing advances their flailing and embarrassing quest to impeach the President of the United States. What America sees today is evidence of one President who believes in the rule of law and works to protect it and one who has nothing, but contempt for the rule of law and acts solely in pursuit of his own constantly multiplying corrupt schemes. I yield back.

Chair JORDAN. The gentleman yields back. Without objection, all

other opening statements will be included in the record.

We will introduce today's witness. The Honorable Robert Hur was appointed as a Special Counsel in January 2023 to investigate the removal and retention of classified documents discovered at the Penn Biden Center for Diplomacy and Global Engagement. He previously served as the Principal Associate Deputy Attorney General at the Department of Justice and as the United States Attorney for the District of Maryland. He was a law clerk for Chief Justice William Rehnquist and clerked for Judge Alex Kozinski on the Ninth Circuit Court of Appeals. We welcome our witness and thank him for appearing today.

We will begin by swearing you in. Mr. Hur, would you please stand, raise your right hand. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief so help you God?

Let the record reflect that the witness has answered in the affirmative. Thank you, you can be seated. Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony.

Mr. Hur, you may begin with your opening statement. Make sure

you have that mic on, if you could, Mr. Hur.

STATEMENT OF THE HON. ROBERT K. HUR

Mr. Hur. Thank you, Chair. Chair Jordan, Ranking Member Nadler, Chair Comer, Ranking Member Raskin, and Members of

the Committee, good morning.

I am privileged to have served our country for the majority of my career, a decade and a half, most of those years with the Department of Justice. I have served as a line prosecutor, a supervisor, the Principal Associate Deputy Attorney General, a United States Attorney, and as Special Counsel. I have served in these roles with gratitude as the son of immigrants to this country, the first member of my family to be born here.

My parents grew up in Korea and were young children during the Korean War. My father remembers being hungry and grateful for the food that American GIs shared with him and his siblings. My mother fled what is now North Korea in her own mother's arms heading South to safety. My parents eventually met, married, and came to the U.S. seeking a better life for themselves and for their children. Their lives and mine would have been very different were it not for this country.

No matter the role, no matter the administration, I have applied the same standards and the same impartiality. My respect for the Justice Department, and my commitment to this country are why I agreed to serve as Special Counsel when asked by the Attorney General. I resolved to do the work as I did all my work for the Department, fairly, thoroughly, and professionally with close attention to the policies and practices that govern Department prosecutors.

My team and I conducted a thorough independent investigation. We identified evidence that the President willfully retained classified materials after the end of his Vice Presidency when he was a private citizen. This evidence included an audio-recorded conversation during which Mr. Biden told his ghostwriter that he had, "just found all the classified stuff downstairs." When Mr. Biden said this, he was a private citizen speaking to his ghostwriter in his private rental home in Virginia. We also identified other recorded conversations during which Mr. Biden read classified information aloud to his ghostwriter. We did not, however, identify evidence that rose to the level of proof beyond a reasonable doubt. Because the evidence fell short of that standard, I declined to recommend criminal charges against Mr. Biden.

The Department's regulations required me to write a confidential report explaining my decision to the Attorney General. I understood that my explanation about this case had to include rigorous, detailed, and thorough analysis. In other words, I needed to show my work, just as I would expect any prosecutor to show his or her work explaining the decision to prosecute or not. The need to show

my work was especially strong here. The Attorney General had appointed me to investigate the actions of the Attorney General's boss, the sitting President of the United States. I knew that for my decision to be credible, I could not simply announce that I recommended no criminal charges and leave it at that. I needed to ex-

plain why.

My report reflects my best effort to explain why I declined to recommend charging President Biden. I analyzed the evidence as prosecutors routinely do, by assessing its strengths and weaknesses, including by anticipating the ways in which the President's defense lawyers might poke holes in the government's case if there were a trial and seek to persuade jurors that the government could not

prove his guilt beyond a reasonable doubt.

There has been a lot of attention paid to language in the report about the President's memory, so let me say a few words about that. My task was to determine whether the President retained or disclosed national defense information willfully. That means knowingly and with the intent to do something the law forbids. I could not make that determination without assessing the President's state of mind. For that reason, I had to consider the President's memory and overall mental state and how a jury likely would perceive his memory and mental state in a criminal trial. These are the types of issues that prosecutors analyze every day and because these issues were important to my ultimate decision, I had to include a discussion of them in my report to the Attorney General.

The evidence and the President himself put his memory squarely at issue. We interviewed the President and asked him about his recorded statement "I just found all the classified stuff downstairs." He told us that he didn't remember saying that to his ghostwriter. He also said he didn't remember finding any classified material in his home after his Vice Presidency. He didn't remember anything about how classified documents about Afghanistan made their way into his garage.

My assessment in the report about the relevance of the President's memory was necessary, accurate, and fair. Most importantly, what I wrote is what I believe the evidence shows and what I expect jurors would perceive and believe. I did not sanitize my explanation, nor did I disparage the President unfairly. I explained to the Attorney General my decision and the reasons for it. That is what I was required to do.

I took the same approach when I compared the evidence regarding President Biden to the Department's allegations against former President Trump. There, too, I called it like I saw it. As a prosecutor, I had to consider relevant precedence and to explain why different facts justified different outcomes. That is what I did in my

Confident the analysis set forth in Chapters 11–13 of my report provided the thorough evaluation and explanation of the evidence and I encourage everyone to read it when forming their opinions

of the report.

Prosecutors rarely write public reports or testify about their investigations. That is the Justice Department's long-standing policy, and it protects important interests. My team and I prepared the report for the Attorney General with care and the report stands as the primary source of information.

My responses today will be limited to clarifying information for the Committee. I will refrain from speculating or commenting on areas outside the scope of the investigation, nor will I discuss what investigative steps we did or did not take beyond what is in the report.

In conclusion, I want to express my heartfelt thanks to the attorneys, agents, analysts, and professional staff who helped us do our work fairly, thoroughly, and independently. I am grateful and privileged to have served with them. I single out for particular thanks Deputy Special Counsel Marc Krickbaum, a former United States Attorney himself, who brought great wisdom, skill, and judgment to our task. Thank you. I welcome your questions.

[The prepared statement of the Hon. Hur follows:]

STATEMENT OF THE HON. ROBERT K. HUR

OPENING STATEMENT

Chairman Jordan, Ranking Member Nadler, Chairman Comer, Ranking Member Raskin, members of the Committee. Good morning.

I'm privileged to have served our country for the majority of my career—a decade and a half—most of those years with the Department of Justice. I have served as a line prosecutor, a supervisor, the Principal Associate Deputy Attorney General, a United States Attorney, and a Special Counsel.

I have served in these roles with gratitude as the son of immigrants to this country, the first member of my family to be born here. My parents grew up in Korea and were young children during the Korean War. My father remembers being hungry and grateful for the food that American GIs shared with him and his siblings. My mother fled what is now North Korea in her own mother's arms, heading south to safety. My parents eventually met, married, and came to the U.S., seeking a better life for themselves and for their children. Their lives, and mine, would have been very different were it not for this country.

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I'm confident the analysis set forth in Chapters 11, 12, and 13 of my report provides a thorough evaluation and explanation of the evidence, and I encourage everyone to read it to inform their opinions of the report.

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Prosecutors rarely write public reports or testify about their investigations. That is the Justice Department's longstanding policy, and it protects important interests. My team and I prepared the report to the Attorney General with care and the report stands as the primary source of information. My responses today will be limited to clarifying information for the committee. I will refrain from speculating or commenting on areas outside the scope of the investigation. Nor will I discuss what investigative steps we did or did not take, beyond what's in the report.

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Thank you. I welcome your questions.

Chair JORDAN. Thank you, Mr. Hur.

The Chair now recognizes the gentleman from North Dakota for five minutes.

Mr. ARMSTRONG. Thank you, Mr. Chair.

How could that possibly happen? How could anyone be that irresponsible? And I thought, what data was in there that could compromise sources, methods? And it's just totally irresponsible.

That is President Biden's statement about Donald Trump and the classified documents.

Mr. Hur, classified documents were found at the Penn Biden Center?

Mr. Hur. That's correct.

Mr. Armstrong. They were found in President Biden's garage?

Mr. Hur. In Wilmington, Delaware, yes.

Mr. Armstrong. In his basement den?

Mr. Hur. Also in the same home, yes.

Mr. ARMSTRONG. His main-floor office?

Mr. Hur. Correct.

Mr. Armstrong. His third-floor den?

Mr. Hur. Correct.

Mr. Armstrong. At the University of Delaware?

Mr. Hur. Correct.

Mr. Armstrong. At the Biden Institute?

Mr. Hur. Correct.

Mr. Armstrong. All right. The elements of the crime for this, we get into all of this, but the elements of the crime are pretty simple, right? The President, or President Biden had unauthorized possession of a document, writing, or note. That's correct?

Mr. Hur. Correct.

Mr. Armstrong. That the document, writing, or note related to national defense?

Mr. Hur. Correct.

Mr. Armstrong. That the defendant—and we may talk about the willfully part here in a second—retained the document, writing, or note and failed to deliver it to an employee or officer entitled to receive it?

Mr. Hur. Correct. There is a willfulness intent element, as you say.

Mr. Armstrong. Those are the elements of the crime?

Mr. Hur. Including the intent element, yes.

Mr. Armstrong. Yes. There are at least two different quotes, right, where he told his ghost writer—and this is in your report—in a matter of fact—and this is February 16, 2017—that he had, "just found all this classified stuff downstairs."?

Mr. Hur. He did make that statement. That was captured on an audio recording.

Mr. ARMSTRONG. On April 10, 2017, Biden read aloud a classified passage related to a 2015 meeting in the situation room?

Mr. Hur. That is in the report, yes.

Mr. ARMSTRONG. These are national security documents? Afghanistan has been mentioned, a whole bunch of those things, right?

Mr. Hur. Correct.

Mr. Armstrong. At one point in time, his personal attorneys and the DOJ attorneys argued about notes-taking, all of the different things, and compared it to Reagan?

Mr. Hur. I'm sorry, could you repeat that, Congressman?

Mr. Armstrong. President Biden's attorneys, personal attorneys, talked about the notes and why they didn't actually account for the Presidential Records Act, but you found that argument—in your report it seems a little persuasive, but you eventually said, "no, the Executive Order trumps," right?

Mr. Hur. We did conduct—we did set forth an analysis of the governing law, and ultimately, concluded that the Executive Order 13526 does apply, and did govern former Vice President Biden at

Mr. Armstrong. So, you have an audio recording from his ghost writer where the President acknowledges that the information he has is classified and he's sharing with his ghost writer?

Mr. Hur. We have an audio recording capturing a statement from Mr. Biden saying to his ghost writer, in February 2017, quote,

just found all the classified stuff downstairs."

Mr. Armstrong. Then, again, reciting passages from a meeting in the situation room?

Mr. Hur. Yes.

Mr. Armstrong. Those are in President Biden's own words?

Mr. Hur. Correct.

Mr. ARMSTRONG. Right? So, he's—and the ghost writer has no classified no—he has no clearance, no classified clearance to anything, correct?

Mr. Hur. That is our undersanding that Mr. Zwonitzer was not

authorized to receive classified information. Mr. Armstrong. OK. So, the elements are possessed documents;

the documents related to national defense, and willfully retained those documents, and in this case, shared them with somebody who was not allowed to receive them?

Mr. Hur. There are different Subsections of 18 U.S.C. 793. One Subsection relates to the willful retention, and another relates to

disclosure of national defense information.

Mr. Armstrong. Well, though, the willful retention, we've got the Penn Biden Center, the garage, the basement den, the main floor office, the third floor den, the University of Delaware, and the Biden Institute. We have a 50-year career of a person who has not been very great at dealing with classified documents throughout even prior to his time as Vice President, when he was in the U.S. Senate, right?

Mr. Hur. We do address each set of those documents in the re-

port, Congressman.

Mr. Armstrong. So, the difference—but I think this is really important because the difference is it appears, just from reading the report, he has—and we heard all about exonerated and all those different things. It appears from the report he met every actual element of the crime.

So, I want to talk about the Department principles on Federal prosecution. Because that actually has nothing to do with the underlying elements, correct? It's whether or not you can prove this at the trial?

Mr. Hur. Under the Department's Justice Manual and the Principles of Federal Prosecution, a prosecutor has to assess the evidence and determine whether, in his or her judgment, the probable outcome will be a conviction at trial.

Mr. Armstrong. So, whether or not you meet the elements of the crime, which I think it's clear that he does, the second part of this is that's where it gets into the "sympathetic, well-meaning, elderly man with a poor memory." You could have just said, "We don't prosecute sitting Presidents," but you did not. You entered this. That doesn't have anything to do with the actual elements of the crime. That has to do with getting a conviction at trial. Correct?

Mr. Hur. Well, Congressman, part and parcel of a prosecutor's judgment as to whether or not a conviction is the probable outcome of trial is assessing how the evidence identified during the investigation lines up with the elements, and what proof can be offered to a jury during a trial.

Mr. ARMSTRONG. Sure. His well-meaning, elderly, old man has

nothing to do with the underlying elements of the crime.

Mr. Hur. Well, it certainly has something—Mr. Armstrong. It's a presentation to the jury.

Mr. Hur. It's certainly having something—

Mr. Armstrong. I yield back.

Chair JORDAN. The gentleman can respond.

Mr. Hur. It certainly has something to do with the way that a jury is going to perceive, receive, consider, conclude, and make conclusions, based on evidence at trial, Congressman.

Chair JORDAN. The time of the gentleman has expired.

The Chair now recognizes the Ranking Member of the Judiciary Committee, Mr. Nadler.

Mr. NADLER. Thank you. Thank you, Mr. Chair.

Mr. Hur, in your written testimony, you say that you found some evidence that the President might have willfully retained classified materials at the end of his Vice Presidency, correct?

Mr. Hur. Correct.

Mr. Nadler. Ultimately, you concluded that you could not prove the charge in a court of law. In your words, you, quote, "did not identify evidence that rose to the level of proof beyond a reasonable." Correct?

Mr. Hur. That was my judgment.

Mr. Nadler. You have been a prosecutor for a long time, Mr. Hur. Would you agree that there's no such thing as being a little bit charged for a crime? You're either charging or you're not, correct?

Mr. Hur. Could you please repeat the question, Congressman?

Mr. NADLER. Would you agree that there is no such thing as being a little bit charged for a crime? You're either charged or you are not charged, correct?

Mr. Hur. Yes, it is binary, either one is not charged or charged. Mr. Nadler. Thank you. So, just to be clear, because so many people have taken your words out of context, your ultimate conclusion was that President Biden could not be charged with a crime because, even after your thorough investigation, you could not find sufficient evidence to charge him. Correct?

Mr. Hur. My conclusion was that, based on my evaluation of the evidence, as a prosecutor-

Mr. Nadler. Don't filibust. Correct?

Mr. Hur. I'm sorry, Congressman, I didn't hear your last question

Mr. NADLER. I said, based on your conclusion, your ultimate conclusion is that President Biden could not be charged with a crime because, even after your thorough investigation, you could not find sufficient evidence to charge him. Correct or not correct?

Mr. Hur. My ultimate conclusion was that criminal charges were

not warranted.

Mr. Nadler. Correct.

Now, let's talk about why—I have limited time. So, please, when I say, "Correct or not correct?" answer the question.

Let's talk about why, in sharp contrast to President Biden, President Trump faces 40 charges related to the unlawful retention of highly classified documents. That is, of course, apart from the additional 51 counts in cases alleging that he incited a rebellion and lied about his finances.

You found that President Biden reported the possible classified documents in his possession to the FBI as soon as he learned of them. Correct?

Mr. Hur. There was a voluntary disclosure by the President's counsel to authorities relating to the discovery of classified documents that had been identified-

Mr. Nadler. Let's contrast this with President Trump. Are you aware that the FBI only learned that Trump was in possession of classified material after the National Archives discovered them?

Mr. Hur. Congressman, I am not intimately familiar with the facts relating to former President Trump. I'm prepared to comment on them to the extent that I addressed them in the report.

Mr. NADLER. OK. You write in your report that President Biden, quote, "would not have handed the government classified docu-

ments from his own home on a silver platter if he had willfully retained those documents for years."

In other words, part of understanding President Biden's intent was that he quickly and voluntarily returned those documents to the government. Correct?

Mr. Hur. That was a factor in our analysis, yes.

Mr. Nadler. Thank you. By way of contrast, to the best of your knowledge, why did the Department of Justice seek a warrant to search Mar-a-Lago?

Mr. Hur. Congressman, I am not familiar with those delibera-

tions. That is a matter that I had no participation in.

Mr. Nadler. Well, I'll tell you it was because they were concerned that Trump had lied about possession of those documents

and might conceal or destroy them.

Special Counsel Smith found that President Trump obstructed his investigation by suggesting that his attorney falsely represent to the FBI and grand jury that Trump did not have the documents called for by the grand jury subpoena. At any point in your investigation, did you have any reason to believe that President Biden lied to you?

Mr. Hur. I do address in my report one response the President gave to a question that we had posed to him that we deemed to be not credible.

Mr. NADLER. Was it clear he didn't lie?

Mr. Hur. I'm sorry, Congressman?

Mr. NADLER. The report is clear that he didn't lie, or that he caused the staff to lie to you—and that he didn't cause the staff to lie to you? Your report is clear on that?

Mr. HUR. I did not—

Mr. NADLER. Do you agree that causing someone to lie to the FBI is a classic example of obstruction of justice?

Mr. Hur. It is an example of obstruction, yes.

Mr. Nadler. Thank you. Trump also obstructed the Smith investigation by directing one of his employees to move boxes of documents to conceal them from Trump's attorney, from the FBI, and from the grand jury. At any point in your investigation did you find that President Biden directed his staff to conceal documents from you or anyone else?

Mr. Hur. We did not reach that conclusion.

Mr. NADLER. OK. You would agree that hiding documents is a classic example of obstructing an investigation?

Mr. Hur. It is an example of obstructing—

Mr. Nadler. Thank you. Donald Trump instructed his staff to delete security footage, so that the FBI and Special Counsel could not see how he had tried to move and hide documents. Do you agree that attempting to delete video footage in this manner is plainly an attempt to obstruct an investigation?

Mr. Hur. Congressman, I don't want to characterize the evidence

in the case against former President—

Mr. NADLER. If that happened, would you agree that the deleting video footage is plainly an attempt to obstruct an investigation?

Mr. Hur. Congressman, it's the type of evidence that prosecutors would consider in—

Mr. NADLER. OK. To sum up, Donald Trump is charged with willfully retaining classified documents and conspiring to conceal those documents, and he's facing additional charges for lying to investigators, isn't that correct?

Mr. Hur. Those are allegations that are in a pending—

Mr. Nadler. It's a matter of public record.

Mr. Hur. —indictment against former President Trump.

Mr. Nadler. The reason why President Biden is not facing a single charge, Mr. Hur, is not because you went easy on him, but because, after reviewing seven million documents and interviewing nearly 150 witnesses, including the President himself, you could not prove that he had committed a crime.

I vield back

Chair JORDAN. The gentleman yields back.

The gentleman from—Mr. McČlintock, the gentleman from California, is recognized.

Mr. McClintock. Well, thank you.

Mr. Hur, I first want to get this straight. Is it now OK if I take home top-secret documents, store them in my garage, and read portions of them to friends or associates? Mr. Hur. Congressman, I wouldn't recommend it, but I don't want to entertain any hypotheticals at this point.

Mr. McClintock. Well, is it OK? I can do that now under this new doctrine?

Mr. Hur. Again, Congressman, I wouldn't recommend that you do that, but I don't want to—

Mr. McClintock. Well, you've essentially said so in your report. Certainly, it would be exculpatory if I simply told you, "Hey, I'm getting old, I don't remember stuff the way I used to."

Mr. Hur. Congressman, I'm not here to get into hypotheticals. I'm here to talk about the facts and the work that I did in the—

Mr. McClintock. Well, it's not a hypothetical. This is the issue at hand. You correctly noted in your report that former Presidents and other senior officials have been given wide latitude in their possession of classified information. I believe your decision not to prosecute Biden for the same offense is consistent with that precedent.

The problem is that precedent changed with the administration's decision to prosecute Donald Trump. The irony is that, as President, Trump had full discretion over handling classified material and full discretion in deciding which records to retain. As a Senator or Vice President, Joe Biden didn't have that.

So, now we get to this glaring double standard. I think it would be toxic to the rule of law on its face if it was just two ordinary citizens, but the fact that the only person being prosecuted for this offense happens to be the President's political opponent makes this an unprecedented assault on our democracy. This is the worst we could expect from a banana republic. I wonder how you square this.

Mr. Hur. Congressman, I do address, as I was required to as a prosecutor, a relevant precedent in the form of the alleged—the allegations in the indictment against former President Trump. I set forth my explanation and my assessment in comparison of those precedents in my report, and I am not here to comment any further beyond what's in my report.

Mr. McClintock. Well, you said, for example, "that there was no evidence beyond reasonable doubt." Well, you got the fact that he had classified material in his possession and control in multiple settings for multiple years; that he told others he was aware of this, and that he shared that material with others. The mind boggles at what "beyond reasonable doubt" would actually mean.

Mr. Hur. Well, as I set forth in, at length, in my explanations in Chapters 11 and 12 of the report, my assessment is that the evidence, if presented at trial alongside potential defense arguments, would not probably result in a conviction at trial

would not probably result in a conviction at trial.

Mr. McClintock. Well, that's one of the points you make, is that President Biden's likely to be an elderly, sympathetic figure with a poor memory. How does that bear on any individual's guilt or innocence? Isn't that, again, a question for a judge or a jury to decide after guilt or innocence is determined?

Mr. Hur. It is.

Mr. McClintock. Again, here's the problem: Donald Trump's being prosecuted for exactly the same act that you've documented that Joe Biden committed.

Mr. Hur. Congressman, if I understood your question correctly, you said, "Isn't that a question for a jury?" It most certainly through the lens of now-

Mr. McClintock. Well, my question is, does that bear on the

guilt or innocence of an individual?

Mr. Hur. It certainly bears on how a jury is going to receive and

perceive and make decisions on—

Mr. McClintock. So, the answer to my earlier question is correct. All I have to do when I'm caught taking home classified materials is to say, "I'm sorry, Mr. Hur, but I'm getting old. My memory's not so great"?

Mr. Hur. Congressman, I—

Mr. McClintock. This is the doctrine that you've established in

our laws now and it's frightening.

Mr. Hur. Congressman, my intent is certainly not to establish any sort of doctrine. I had a particular task. I have a particular set of evidence to consider and make a judgment with respect to one particular set of evidence. That is what I did.

Mr. McClintock. Well, Mr. Hur, here's the fine point of the matter: The foundation of our justice system is equal justice under law. That's what gives the law its respect and its legitimacy. Without it, the law is simply force, devoid of any moral authority. Justice is depicted as blindfolded for this very reason. It doesn't matter who comes before her; all are treated equally.

You've destroyed this foundation, and the rule of law becomes a sick mockery. It becomes a weapon to wield against political rivals and a tool of despotism. I am desperately afraid that this decision of the Department of Justice has now crossed a very bright line.

I yield back.

Chair JORDAN. The gentleman yields back.

Mr. Cohen. Mr. Chair, I ask for unanimous consent to introduce the State of the Union into the hearing.

Chair JORDAN. Without objection, that will be introduced.

Mr. COHEN. Thank you.

Chair JORDAN. The Ranking Member is recognized for an unanimous consent.

Mr. NADLER. Mr. Chair, Mr. Chair, I ask unanimous consent that a copy of an article in this morning's Washington Post entitled, "Full transcript of Biden's Special Counsel interview paints nuanced portrait." The President doesn't come across as absentminded as Hur has made him out to be.

Chair JORDAN. Without objection.

Mr. NADLER. Thank you.

Chair JORDAN. The Chair now recognizes the gentlelady from California for five minutes.

Ms. LOFGREN. Thank you, Mr. Chair.

Thank you, Mr. Hur, for being here today. I found your report very interesting, and I learned some things about it, the law and the precedents. There are clear differences between the cases of, and precedents set by, Presidents Reagan, Trump, and Biden.

Now, it was widely known that President Reagan kept diaries form his Presidency that included classified information. What I didn't know, and learned in your report, was that the Department of Justice, quote, "repeatedly described the diaries in public court filings as Mr. Reagan's personal records," and that, "no agency ever attempted to remove his diaries." That's on page 195 of your report.

Very interesting.

So, the investigation found that President Biden believed that his notebooks were his personal property, including work and political notes, reflections, to-do lists, and more, that he was entitled to take home. You found that on page 232.

So, while much of his notebook was work-related, he still had some purely personal subjects, again, I quote, "gut-wrenching entries about the illness and death of his son Beau." That's on pages 82 and 253 of your report.

So, it's clear, based on the Reagan precedent, that no criminal charges were warranted in this matter relative to personal notebooks.

Now, I want to be clear that, although the notebooks contain some very personal information, and President Biden considered them his personal property, the President allowed your team to seize and review all the notebooks you found. Is that correct?

Mr. Hur. That is correct.

Ms. LOFGREN. Now, that's in stark contrast to ex-President Trump's case. He obstructed and diverted all the investigations.

Now, you also interviewed President Biden about other classified documents you found outside his notebooks, didn't you?

Mr. Hur. Yes, Congresswoman.

Ms. LOFGREN. So, did the President tell you that he believed any documents other than his own handwritten work were his personal property? Yes or no?

Mr. Hur. We did not hear that from the President during his interview.

Ms. LOFGREN. So, again, it's very different from ex-President Trump. Ex-President Trump said, "all of the documents marked Classified were his personal property." President Biden did not consider documents that were produced by other entities with classification markings as his personal records.

Now, since the majority has tried to assert that there is disparity based on politics in the differences in the prosecution, it's worth quoting page 11 of the report, which says, and I quote,

Several material distinctions between Mr. Trump's case and Mr. Biden's case are clear... Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite. According to the indictment, he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it.

That's on page 11. Quote,

In contrast, Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations, including his homes, sat for a voluntary interview, and in other ways cooperated with the investigation.

It's clear that these cases are not the same. Frankly, I was surprised to learn that some of the classified documents were actually personal diaries that many Executive officials have, have taken home with them because it was in their own handwriting; it was what they produced.

Based on the Department of Justice public statements during the Reagan Administration, it is understandable that a person could believe that their personal diaries that they produced were not to be turned over, just as President Reagan did not turn them over.

So, I appreciate your report. I appreciate your being here, Mr.

Hur.

I would also like to ask, Mr. Chair, a unanimous request to include in the record a September 11th letter from the Special Counsel to the President to Special Counsel Hur, and also, a letter to Merrick Garland.

Chair JORDAN. Without objection.
Ms. LOFGREN. With that, Mr. Chair, I see my time has expired, and I yield back.

Chair JORDAN. The gentlelady yields back. The Chair is recog-

Mr. Hur, why did he do it? Why did Joe Biden, in your words, "willfully retain and disclose classified materials"? He knew the law. He'd been in office 50 years. Five decades in the U.S. Senate, Chair of the Senate Foreign Relations Committee, eight years as Vice President. He got briefed every day as Vice President. He's been in the situation room.

In fact, he knew the rules because you said so on page 226, "President Biden was deeply familiar with the measures taken to

safeguard classified documents."

Joe Biden told us he knew the rules. Mr. Armstrong said this earlier. Joe Biden was deeply familiar with it, you're exactly right, because he told us. When Jack Smith goes after President Trump, Joe Biden says, "How could this happen? What data was in those documents that could compromise sources and methods? It's irre-

So, Joe Biden knew the rules. You know he knew the rules, and Joe Biden told us he knew the rules. So, Mr. Hur, why did he

break them?

Mr. Hur. Congressman, the conclusion as to exactly why the President did what he did is not one that we explicitly address in the report. The report explains my decision to the Attorney General

that no criminal charges were warranted in this matter.

Chair JORDAN. I think you did tell us. I think you told us, Mr. Hur on page 231 you said this: "President Biden had strong motivations." That is a key word. We are getting the motive now. "President Biden had strong motivations to ignore the proper procedures for safeguarding the classified information in his notebooks." Why did he have strong motivations? Because—next words, "because he decided months before leaving office to write a book." To write a book. That was his motive. He knew the rules. He broke them because he was writing a book. You further say, "and he began meeting with a ghost writer while he was still Vice President." There is the motive.

Mr. Hur, how much did President Biden get paid for his book?

Mr. Hur. Off the top of my head, I'm not sure if that information appears in the report.

Chair JORDAN. It sure does. There is a dollar amount in there.

You remember?

Mr. Hur. I don't. It may be \$8 million, if that's—

Chair Jordan. Eight million dollar. Joe Biden had \$8 million reasons to break the rules. Took classified information and shared it with the guy who was writing the book. That is why he knew the rules, but he broke them, for \$8 million in a book advance. You know what? Wasn't just the money. Joe Biden—here is—this is page 231, very next page. In your report, "Joe Biden viewed his notebooks as an irreplaceable contemporaneous record of the most important moments if his Vice Presidency." He had written this all down for the book, for the \$8 million. The next thing you say in your report is, quote, "Such a record would buttress his legacy as a world leader."

You know what this is? It wasn't just the money. It wasn't just \$8 million. It was also his ego. Pride and money are why he knowingly violated the rules. The oldest motives in the book: Pride and money. You agree with that, Mr. Hur? You wrote about it in your report.

Mr. Hur. That language does appear in the report, and we did

identify evidence supporting those assessments.

Chair JORDAN. You also had another interesting statement in your report. You said, "Joe Biden"—I want to make sure I get this right, "viewed himself as a man of Presidential timber." Remember that statement, Mr. Hur?

Mr. Hur. I believe that does appear in the report, or at least in

the Executive Summary.

Chair Jordan. I think this is interesting because here is the scary part: Page 200. I said this earlier in my opening statement. page 200, and this is a quote— "Joe Biden risked serious damage to America's national security when he shared information with his ghost writer." Shared it with his ghost writer, the guy who was helping Joe Biden get \$8 million.

Oh, by the way, Mr. Hur, what did that ghost writer do with the information Joe Biden shared with him on his laptop? What did he

do after you were named Special Counsel?

Mr. HUR. Chair, if you're referring to the audio recordings that Mr. Zwonitzer created of his conversations with—

Chair JORDAN. Exactly what I am referring to.

Mr. Hur. He slid—if I remember correctly, he slid those files into his recycle bin on his computer.

Chair JORDAN. Tried to destroy the evidence, didn't he?

Mr. Hur. Correct.

Chair JORDAN. The very guy who was helping Joe Biden get the \$8 million, \$8 million Joe Biden used—the motive for Joe Biden to disclose classified information, to retain classified information, which he definitely knew was against the law, when you get named Special Counsel, what does that guy do? He destroys the evidence. That is the key takeaway in my mind. That is the key takeaway. I yield back.

The gentleman from Maryland for five minutes.

Mr. RASKIN. Thank you, Mr. Chair.

Mr. Hur, your report starts with the line, "We conclude that no criminal charges are warranted in this matter." Have you had any reason to change your opinion about that?

Mr. Hur. No, Congressman. No, Ranking Member.

Mr. RASKIN. You highlight the independence and support you got from the Attorney General and DOJ. Have you changed your mind about that?

Mr. Hur. I have not.

Mr. RASKIN. The report describes President Biden's cooperation. In your request he allowed his homes to be searched, he answered questions for hours in the midst of a global crisis. Have you had any reason to change your mind about that?

Mr. Hur. No, Ranking Member.

Mr. RASKIN. All right. You also repeatedly contrast Biden's cooperation with the conduct of Donald Trump. You say, quote,

Most notably after being given multiple chances to return classified documents and avoid prosecution Mr. Trump allegedly did the opposite. According to the indictment he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then lie about it.

Have you had any reason to change your judgment about the differences between President Biden's cooperation and the former President's noncooperation?

Mr. Hur. No, I continue to stand by those words in my report. Mr. RASKIN. With such a striking contrast our colleagues have switched over from being impeachment investigators for constitutional high crimes and misdemeanors, which is how this whole thing started, to being amateur memory specialists, giving us their drive-by diagnoses of the President of the United States, whose soaring oratory, powerful historical analysis, and devastating extemporaneous repartee with even the most skilled Ninja hecklers of the Freedom Caucus were on full display at the State of the Union Address last week for the whole country to see.

The desperate question vent an issue is a distraction from the 91 Federal and State Federal charges that Donald Trump faces now, his staggering civil court losses in New York, now totaling more than a half a billion dollars, and his full-blown embrace and romance with authoritarian dictators and communist tyrants all over the world from Viktor Orban in Hungary to Vladimir Putin in Russia, the former head of the KGB to the communist dictator of North Korea.

My friends, this is a memory test, but it is not a memory test for President Biden. It is a memory test for all of America. Do we remember fascism? Do we remember Nazism? Do we remember communism and totalitarianism? Have we completely forgotten the sacrifices of our parents and grandparents in prior generations?

While we play pin tail on the donkey in this wild goose chase, all these silly games, Donald Trump entertains authoritarian hustler Viktor Orban at Mar-a-Lago for the weekend and Orban comes out to declare that if we indeed sleepwalk into another Trump Presidency, Trump will, quote, "not give a single penny to Ukraine." That is what all this is about. It is about trying to pull the wool over the eyes of America because the tyrants and dictators of the world are on the march today.

So, wins with this ludicrous embarrassing spectacle? Orban wins, Putin wins, and Xi wins. The tyrants of the world win. They have one more reason to celebrate Donald Trump and his cult followers who have completely lost their way. They are looking for high

crimes and misdemeanors. Now, they appoint themselves amateur memory specialists, and that is what they pounce on the President of the United States about.

America faces a choice between democracy and tyranny. The President laid it out at Valley Force and he laid it out in the State of the Union. Will America stand on the side of people struggling against fascist aggression? Will we stand with the people of Ukraine against Vladimir Putin, whose filthy war has meant the kidnapping of thousands of Ukrainian children, the murder, the slaughter of thousands of Ukrainian civilians, and the attack on an

independent sovereign democracy?

We are not working on that today. We are not standing up for democracy and human rights and international law around the world. No, we are trying to play memory detectives, to parse the language of a President who the whole world got to see at the State of the Union Address directly address the real questions of our time. It is democracy versus dictatorship. All of the autocrats and the theocrats, all the kleptocrats of the world are together in league against American democracy, and we have to stand up for American democracy against these stupid games.

I yield back, Mr. Chair.

Chair JORDAN. The gentleman yields back.

The Chair of the Oversight Committee, Mr. Comer, is recognized for five minutes.

Mr. COMER. Thank you, Mr. Chair.

During the Oversight Committee interviews we have identified a number of White House employees who were involved in the mishandling of classified documents under the leadership of President Biden.

Special Counsel Hur, can you please tell us approximately how many current and former White House employees you interviewed related to your investigation?

Mr. Hur. Chair Comer, I don't have that figure immediately at hand. Of course, it was a subset of the 173 interviews that we conducted during our investigation.

Mr. COMER. Your report indicates that one of those former White House employees who you interviewed was Dana Remus. Is that correct?

Mr. Hur. We did interview Ms. Remus, yes.

Mr. COMER. Ms. Remus was President Biden's former White House counsel, correct?

Mr. Hur. She was President Obama's former White House counsel.

Mr. COMER. I am sorry, President Obama's White House counsel. Mr. Hur. Yes.

Mr. COMER. Related to Ms. Remus, in your report on page 257 you wrote:

In May 2022, White House counsel Dana Remus undertook an effort to retrieve Mr. Biden's files from the Penn Biden Center. Remus described the original purpose of that effort as gathering materials to prepare for potential congressional inquiries about the Biden family's activities during the period from 2017 to 2019.

Now, it seems odd to me that Dana Remus and Joe Biden's personal lawyers were obtaining documents related to potential con-

gressional inquiries about the Biden family activities when Joe Biden has publicly claimed he had no involvement with his family's business dealings. Could you provide more information about why Dana Remus, a government employee, was retrieving Joe Biden's documents from the Penn Biden Center?

Mr. Hur. Chair, I am able to tell you and clarify information that appears in the report about relevant significant sources of information. I am not in a position to be able to go beyond that.

Mr. COMER. When you interviewed President Biden did you ask him what documents he possessed at Penn Biden Center that could be related to a potential congressional inquiry about his family's activities?

Mr. Hur. We asked President Biden a wealth of questions about all the different sets of classified materials that were recovered during the course of our investigation.

Mr. COMER. Did anything pertain specifically to our congressional inquiry of President Biden that you recall?

Mr. Hur. If there are more specific aspects of it you have in mind, Chair, that would be helpful to me.

Mr. COMER. Interest pertaining to his family's influence peddling activities?

Mr. Hur. If it's helpful, Chair, Appendix A does list in table chart form a brief description of all the marked classified documents that were recovered in our investigation.

Mr. COMER. We intend to interview Ms. Remus and the recording or transcript of your interview would be highly relevant to our future questioning of her. Can you confirm that you did in fact record her in your interview?

Mr. Hur. It was our practice to record the interviews that we conducted, Chair Comer.

Mr. COMER. Additionally, in the course of the investigation the Oversight Committee learned from a Penn Biden Center employee that Annie Tomasini, a White House employee, visited the Penn Biden Center in 2021. Did you interview Annie Tomasini in the course of your investigation?

Mr. Hur. Chair, we do not—the report does not reflect that specific name, but what I can tell you is that the report does reflect that we interviewed the Director of Oval Office Operations. One of the places that's reflected is footnote 973.

Mr. COMER. OK. The Oversight Committee interviewed Kathy Chung, a Department of Defense employee and former assistant to Vice President Biden and learned that Ms. Chung visited the Penn Biden Center in June 2022, after being contacted by White House counsel in May 2022. This was months before classified documents were allegedly found in November 2022. Did you interview Kathy Chung in the course of your investigation?

Mr. Hur. Chair, I believe that the substance related to the subject you're asking about appears on page 259 of the report. While the name Kathy Chung does not appear in the text of the report, there are references to interviews of an executive assistant, including at footnote 988.

Mr. COMER. The Oversight Committee also learned from its interviews with Penn Biden Center employees and Kathy Chung that Dana Remus, Anthony Bernal, and Ashley Williams, all at the

time White House employees, then visited the Penn Biden Center on different occasions before the alleged discovery of classified materials in November 2022. Did you interview these individuals dur-

ing your investigation?

Mr. Hur. We interviewed many individuals and we—I can assure you, Chair, it was a priority of ours to interview all the relevant sources of information about these documents, how they got there, who knew about them, and who accessed them.

Mr. Comer. So again, they were all recorded, is that correct? So,

there would be recordings of those interviews?

Mr. Hur. It was our practice to interview recordings, yes, sir.

Mr. COMER. How many White House employees visited the Penn Biden Center before classified materials were reportedly discovered there in November 2022 according to the White House?

Mr. Hur. Sir. I don't have an exact count of [inaudible].

Mr. COMER. How many visits to the Penn Biden Center were made by either White House employees or President Biden's personal attorneys before the official discovery of documents in November 2022?

Mr. Hur. I don't have that figure at hand, but that should be detailed in Chapter 14 of the report, sir.

Mr. COMER. Yield back.

Chair JORDAN. The gentleman yields back.

The gentlelady from Texas is recognized for five minutes.

Mr. Hur, any time you need a break, if you need a break, let us know, because we are going to go a while, as you well know.

Mr. Hur. Thank you, sir.

Chair JORDAN. Ms. Jackson Lee is recognized.

Ms. JACKSON LEE. Mr. Hur, good morning.

Mr. Hur. Good morning.

Ms. JACKSON LEE. The Republicans here asked for a lot of transcripts, but Chair Jordan has yet to release 90-plus transcripts from our interviews when where those, if they are to be released to the American people, is a question.

My question to you is you decided based on the facts not to prosecute or indict or bring forward charges against the President of the United States, the sitting President, Joseph Biden. Is that cor-

rect?

Mr. Hur. That was my judgment.

Ms. Jackson Lee. This investigation was independent and thorough, is that correct?

Mr. Hur. Yes.

Ms. Jackson Lee. We have heard from our Republican colleagues who are grasping at straws allegations that President Biden was treated lightly in this investigation. Just a plain reading of this report completely refutes that argument. There was no two-tiered system of justice. There was only a lack of evidence against President Biden.

Mr. Hur, your office and the FBI undertook an extensive investigation into Mr. Biden's handling of classified information and of the classified documents the FBI seized, correct?

Mr. Hur. Correct.

Ms. Jackson Lee. In your investigation you conducted 173 interviews with 147 witnesses, correct?

Mr. Hur. That is correct.

Ms. Jackson Lee. President Biden himself was one of those witnesses, correct?

Mr. Hur. Correct.

Ms. Jackson Lee. For at least five hours or more?

Mr. Hur. Correct.

Ms. Jackson Lee. President Biden engaged in this interview voluntarily?

Mr. Hur. Correct.

Ms. Jackson Lee. The interview with President Biden lasted more than five hours. I have said that. That is correct?

Mr. Hur. Correct.

Ms. Jackson Lee. It occurred the day, which all should know, after the horrific attack, October 7, 2023, Hamas attack in Israel, according to a letter from the White House counsel. Is that correct?

Mr. Hur. The interview spanned two days: October 8th and October 9th.

Ms. JACKSON LEE. With the President having to be in and out to deal with an international crisis. After the interview he provided handwritten answers to additional questions, correct?

Mr. Hur. Congresswoman, I don't recall the President being in and out during our interview to handle the international—

Ms. Jackson Lee. Let me go on. President Biden allowed investigators to search his private houses, is that correct?

Mr. Hur. He did consent to the search of his residence.

Ms. JACKSON LEE. Your investigation collected seven million documents for review in your investigation, is that correct?

Mr. Hur. Correct.

Ms. JACKSON LEE. This included emails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources, correct?

Mr. Hur. Correct.

Ms. JACKSON LEE. You referred, or reviewed President Biden's handwritten notes as well, correct?

Mr. Hur. Correct.

Ms. Jackson Lee. You coordinated with the multiple government agencies to organize and complete your investigation, correct?

Mr. Hur. We consulted with numerous agencies to conduct—

Ms. Jackson Lee. That included classification reviews of evidence that was seized during the investigation. That included working with national security experts in the intelligence community to carefully analyze each classified document that was obtained?

Mr. Hur. With respect to marked classified documents, that's correct. We submitted excerpts from the former Vice President's notebooks for classification review.

Ms. JACKSON LEE. If agencies reviewed classified material and gave it different levels of classification, you classified it as a higher level for the purposes of your investigation, to be thorough, correct?

Mr. Hur. That is reflected in Appendices A in the-

Ms. Jackson Lee. Thank you. The FBI requested classification review from each identified agency accordingly for documents where multiple agencies had equities. The Special Counsel's Office

used the highest level of classification identified by an agency as the current classification of the document.

Let me go on. Attorney General Garland appointed you as Special Counsel over the matter on January 12, 2023, correct?

Mr. Hur. Correct.

Ms. Jackson Lee. He authorized you to investigate Mr. Biden's possession of the classified documents including possible unauthorized removal and retention of classified documents or other

Mr. Hur. Correct.

Ms. Jackson Lee. —at the Penn Center—Penn Biden Center, President Biden's home, Delaware, as well as any matters that arose from the initial investigation or may arise directly from the Special Counsel. Is that correct?

Mr. Hur. I believe that accurately reflects the language of the

appointment order.

Ms. Jackson Lee. So, you operated an independent investigation for about a year, which you just stated that you had adequate resources to complete, in which you conducted 173 interviews including with President Biden himself, you reviewed seven million documents including President Biden's personal records, and searched his home thoroughly. In this thorough, lengthy investigation you did not uncover enough evidence to recommend prosecution against the President. Is that correct?

Mr. Hur. That's my judgment. Ms. Jackson Lee. If you had found enough evidence to warrant prosecution, did you feel free, unrestrained, unrestrained by the Attorney General appointed by President Biden, to make such a recommendation to the Attorney General?

Mr. Hur. I was aware of the Office of Legal Counsel policy right now prohibiting sitting Presidents from being charged with Federal crimes, but apart from that what I can tell you, Congresswoman, is that the investigative steps that we took were my own, the judgment was my own, and the words in my report are my own.

Ms. Jackson Lee. You would have done so-

Participant. Point of order, Mr. Chair.

Chair JORDAN. The time of the gentlelady has expired. Ms. JACKSON LEE. Mr. Chair, I would like to put into the record justsecurity.org, the Real Robert Hur report, by unanimous consent. Chair JORDAN. Without objection.

Chair JORDAN. The Chair now recognizes the gentleman from Florida for five minutes.

Mr. Gaetz. February 8th the White House guestioned, "Mr. President, why did you share classified information with your ghost writer?" The President: "I did not share classified information. I did not share it. I guarantee I did not." That is not true, is it, Mr. Hur?

Mr. Hur. That is inconsistent with the findings based on the evidence in my report.

Mr. Gaetz. Yes, it is a lie. It is just what regular people would say, right?

Mr. Hur. [No response.]

Mr. GAETZ. Yes. All right. So, the next one: "And all the stuff that was in my home was in filing cabinets that were either locked or able to be locked." That wasn't true either, was it?

Mr. Hur. That was inconsistent with the findings of our investigation.

Mr. GAETZ. Another lie people might say, right? Because what you put in your report was, "Among the places Mr. Biden's lawyers found classified documents in the garage was a damaged open box."

So, here is what I am understanding, right? As Mr. Armstrong laid out, you find in your report that the elements of a Federal criminal violation are met, but then you apply this senile cooperator theory, that because Joe Biden cooperated and the elevator doesn't go to the top floor, you don't think you could get a conviction.

I actually think you get to the right answer in that. I don't think Biden should have been charged; don't think Trump should have been charged. Under like the senile cooperator theory isn't it frustrating that Biden continues to go out and lie about the basic facts

of the report that lay out a Federal criminal violation?

Mr. Hur. Congressman, I need to disagree with at least one thing that you said, which is that I found that all the elements were met. One of the elements of the relevant mishandling statute is the intent element, and what my report reflects is my judgment that based on the evidence I would not be able to prove beyond a reasonable doubt to a jury that this intent element had been met.

Mr. GAETZ. Right, but the reason you have that doubt is the senile cooperator theory, the fact that Joe Biden is so inept in responding that you can't prove the intent, which again I don't quibble with that conclusion, but it is frustrating to be like, oh, well, this guy's not getting treated the same way as Trump, because the elevator is not going to the top floor. So, we can't prove intent, while at the same time Biden goes out there at the White House and says, well, you know—he just blatantly lies.

What I am trying to figure out is whether or not Biden is lying because he is still so senile that he hasn't read your report or whether it is a little craftier and a little more devious, and perhaps

a little more intentional than we might otherwise think.

So, I also want to go to this Biden Penn Center. Did it give concern to you that the Biden Penn Center, where all this classified stuff was being mishandled, was being floated by foreign governments?

Mr. Hur. Congressman, we were concerned with getting to the bottom of all the classified documents that were recovered during the course of our—

Mr. GAETZ. Yes, but like what bothers me is that the money that was paying for the place where the documents were being inappropriately held—it was the Chinese and there were other foreign countries that would—did that play into your analysis? Did you look into the billion dollars in foreign funding sources at the Biden Center at U. Penn, for example?

Mr. Hur. Congressman, we conducted a thorough, impartial, and fair investigation and we were very, very concerned with getting to the bottom of all the relevant questions relating to the recovered documents

Mr. GAETZ. Sir, did you look into the fact that the Chinese were floating the place where this guy was keeping the documents unsecure, yes or no? Mr. Hur. Congressman, to the extent that we identified evidence that was relevant and significant to our investigation we put it in our report.

Mr. GAETZ. OK. Well, it seemed relevant to me, maybe not to

you.

Another thing that seemed relevant to me is this ghost writer, right? So, the ghost writer purposefully deletes this evidence that seems to be—like show culpability of Biden's crimes and you don't charge him. Why did you not charge the ghost writer with obstruct-

ing justice and deleting evidence?

Mr. Hur. Well, for a number of reasons that are laid out in the report, but in brief, Congressman, yes, when we interviewed the ghost writer he did tell us; and I'm trying to get the exact language, that one of the things on his mind, one of the things he was aware of was that I had been appointed Special Counsel and was conducting an investigation.

Mr. GAETZ. All right. Just so everybody knows, the ghost writer didn't delete the recordings just as a matter of happenstance. The ghost writer has recordings of Biden making admissions of crimes. He then learns that you have been appointed. He then deletes the information that is the evidence, and you don't charge him.

Mr. Hur. That is reflected in the report. One of the reasons—

Mr. GAETZ. What does somebody have to do to get charged with obstruction of justice by you? If deleting the evidence of crimes doesn't count, what would meet the standard?

Mr. Hur. So, Congressman, as we State in the relevant chapter of the report, one of the things that Mr. Zwonitzer did not delete was transcripts of the recording that he had created that included inculpatory evidence relating to Mr. Biden.

Mr. GAETZ. Oh, so if you destroy some evidence, but not other evidence that somehow absolves you of the evidence you destroy? Like here is what I see: Zwonitzer should have been charged. Wasn't. Biden and Trump should have been treated equally. They weren't. That is the double standard that I think a lot of Americans are concerned about.

I see my time has expired. I yield back. Chair JORDAN. The gentleman yields back.

The gentleman from Tennessee is recognized for five minutes.

Mr. COHEN. Thank you, Mr. Chair.

Mr. Hur, thank you for being here. I am a little confused about this hearing. Mr. Raskin laid out the big picture of we should be concerned about, but in the more limited picture Director Mueller had an investigation; he is our most famous recent Special Prosecutor, and he found sufficient evidence to say there was a connection between Russia and the Trump campaign. It supported a criminal prosecution if you were not President. You found there was no evidence to support a criminal prosecution.

The story here is simple: President Biden identified classified documents in his home and other places and told Archives about them. The independent Department of Justice under Attorney General Merrick Garland appointed you, a former Trump political appointee, as Special Counsel to fully investigate these circumstances and authorized you to prosecute criminal misconduct. You declined

to prosecute because you found insufficient evidence of a crime. Case closed.

It makes really a prefect case. You did your job. Mr. Garland did his job. Unlike Mr. Barr, he didn't interfere. Did Mr. Garland ask you to change your report at all?

Mr. Hur. He did not, sir.

Mr. COHEN. Didn't redact a thing?

Mr. Hur. No, sir.

Mr. Cohen. Like Mr. Barr did. He redacted everything and made the Mueller report look 180 degrees different than what it was. Mr. Garland did right, and you did right, and I commend each of you.

The Department of Justice is independent and allows its Special Counsels to investigate and prosecute the facts if—that support it. Joe Biden's actions in handling of classified materials is similar to most other former Presidents and Vice Presidents. The exception is

So, let's start with some yes or no questions. Did you receive any pressure from Mr. Garland or his staff to make any specific factual finding or legal conclusion? Mr. Hur. No.

Mr. Cohen. Did you receive the resources necessary to carry out your duties?

Mr. Hur. Yes.

Mr. Cohen. Do you have any reason to believe that you were treated differently with regard to independence or resources than other DOJ Special Prosecutors?

Mr. Hur. No.

Mr. Cohen. Based on your experience as Special Counsel do you have any reason to believe the Attorney General was improperly directing, pressuring, or interfering with Jack Smith or his work?

Mr. Hur. I have really—I do not have the basis to answer that

Mr. Cohen. Your declination, which we treat as thoughtful and apolitical—we should treat prosecutorial decisions by Jack Smith the same way to the best of your knowledge?

Mr. Hur. Again, I really do not have sufficient information with respect to Jack Smith's investigation to provide any comment on it.

Mr. COHEN. Let me ask you this: If President Biden in his testimony to you knew the exact date, January 20th, whatever it was, 2009, when he became Vice President, and the day when he left being Vice President, January 20th—I guess the first would have been January 20, 2009, and then January 20, 2017. If he knew those dates exactly right and if he knew the exact date and the instant that Beau Biden died, would that have changed your decision to not bring a prosecution?

Mr. Hur. Sir, I cannot engage in hypotheticals about what my decision would have been with different facts. What I did was to make a decision based on the facts and the circumstances that I was presented with, and we identify during our investigation.

Mr. COHEN. It appears to me, and I think it would appear to the American public, that these minor discrepancies as far as dates after a long period of time was not the basis—it was the basis for your decision to decline to prosecute. It was the fact that you didn't have the facts, that he acted differently Trump, that he voluntarily

provided the documents, that he complied with the Justice Department, that he didn't try to obstruct justice. Those were the reasons you didn't prosecute him, not because he missed a few dates.

Mr. Hur. Congressman, my reasons for my declination decision are set out in my report and I stand by the words in the report, sir

Mr. Cohen. Well, thank you. I think I am encompassing them in what I am saying to you is that it was not anything to do with his memory why he wasn't chosen to be—you chose not to indict him. It was the difference in the facts in the case and how he dealt with it. The fact is Mr. Biden sat through five hours and he did an admirable job.

He did an outstanding job in the State of the Union laying out the case for the future of America for the middle class, for democracy around the world, for standing up to the Russians, not bending down to them. That is what is important, not if you can be like on the \$64,000 question, assuming it was legit, and answering every single question correctly. That is not what you need to be President.

To be President you need to have values, you need to have an understanding of what values America has and needs to maintain to keep the world safe and peaceful. That is dealing with Ukraine. That is dealing with difficult people like Netanyahu in Israel, to try to get something done that is correct. That is what Joe Biden does.

Understanding Social Security and Medicare/Medicaid are important institutions that help seniors, not senile people. I object to that comment that people—see he is not—nobody suggest he is senile. That is disrespectful of senior people with any kind of memory disability. Lots of seniors have memory disabilities, but they are not senile. To do such was shameful. Joe Biden is a competent good President who knows American values.

Chair JORDAN. The gentleman's time hass expired. The gentleman yields back.

The gentleman from California is recognized for five minutes.

Mr. ISSA. Thanks, Chair.

Mr. Hur, I would like to start off by thanking you for a year of hard work and a comprehensive report. I am going to try not to provide testimony, as some people on both sides are, or provide conclusions, but I do have some questions that lead me to ask you for conclusions.

One question is: Were there notes of the President of the United States that dated back to when he was a Senator that contained classified information?

Mr. Hur. Among the documents that were recovered during our investigation were marked classified documents that dated back to when Mr. Biden was a Senator.

Mr. ISSA. When he was in his 30s, 40s, 50s?

Mr. Hur. I believe that is correct.

Mr. ISSA. Were there documents from the time that he was Vice President?

Mr. Hur. Yes.

Mr. ISSA. OK. So, there has been a lot to do about senility, nonsenility, poor memory, and so on. Let's just go through something that you deal with as a prosecutor every day. You first start off with a set of initial evidence that indicates there may have been a crime, is that right? By the time it gets to you, usually you have some evidence that there may have been a crime.

Mr. Hur. I think that is fair, yes.

Mr. ISSA. OK, and in this case, at some point during this investigation where the elements of the crime, including willfulness, were put before you, and you reached a personal conclusion that either there was likely guilt or not, is that correct?

Not provable, not in front of a jury, just personal. Because you

have to make that decision as part of the case, correct?

Mr. Hur. Correct. I would say I approached the task as I have been trained to as a prosecutor, which is on an iterative basis. Investigation is always uncovering new evidence that you incorporate.

Mr. Issa. Right, so before, during, and at the end, did you reach a conclusion, notwithstanding his current mental state of being an elderly man with a poor memory and so on, that he did in fact deliberately take documents and held them from back when he was a Senator and we are talking about your personal, not that you could prove it.

Personally, did you see a pattern that goes all the way back to him being a Senator of taking documents, making notes, and taking them and holding the personally?

Mr. Hur. Congressman, I viewed my task as a prosecutor in this

matter to determine what I believed the evidence—

Mr. Issa. No, I appreciate that. I am not trying to take away from your conclusion. Some others are debating the conclusion, I am not debating the conclusion. I just want to go through one element that I think is important.

Look, you have prosecuted people in the past and failed to get

a conviction, is that correct? Mr. Hur. Correct.

Mr. ISSA. OK, you are not a 1.000 perfect batting average. OK.

Mr. Hur. I can't say that.

Mr. Issa. Yes. So, you went into cases thinking that you would succeed, and you didn't. One might say you probably declined to prosecute ones that you might have either gotten a conviction or gotten a plea on. Would you say that is fair to say, over your long career?

Mr. Hur. I think that is fair. Because I take the rules as set forth in Justice Manual seriously.

Mr. ISSA. OK. However, I am going to presume that you would never prosecute someone you thought was outright innocent.

Mr. Hur. Correct.

Mr. ISSA. In this case, did you reach a conclusion that this man was outright innocent?

Mr. Hur. That conclusion is not reflected in my report, sir.

Mr. ISSA. Right. So, you did not reach that conclusion, or it would

have been in your report.

Mr. Hur. I viewed my task of explaining my decision to the Attorney General as being based on my judgment and my assessment of the evidence, would a conviction at trial be the probable outcome.

Mr. ISSA. I just want to make sure the record is complete in that, because I think it is extremely important. You did not reach an idea that he had committed no wrong. You reached a conclusion that you would not prevail at trial, and therefore did not take it forward. Is that correct?

Mr. Hur. Correct, Congressman.

Mr. ISSA. OK. I just want to go through one or two little, these are housekeeping almost. The documents that the President, then-Vice President, took, which included his own notes, to your knowledge, aren't those covered by the Freedom of Information Act, potentially?

Mr. Hur. I honestly do not know, Congressmen.

Mr. Issa. Aren't they covered by the Presidential Records Act, as every note and every text of the President, the Vice President, and Members of the cabinet are covered?

Mr. Hur. I think different folks would have different views on

whether they are covered by the PRA, Congressman.

Mr. ISSA. Isn't it true that he left office leaving no copies of that behind, and that alone was inconsistent with an open and transparent individual, correct?

Mr. Hur. I am not aware of copies of those materials being left

behind, Congressman.

Mr. ISSA. OK. I want to thank you, and Mr. Chair, I want to thank you for the extra few seconds. I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from Georgia is recognized.

Mr. JOHNSON. Thank you, Mr. Chair.

Mr. Hur, you have led a distinguished career, earning your law degree from Stanford University. You served as a student as Executive Editor the Stanford Law Review, correct?

Mr. Hur. Correct.

Mr. JOHNSON. Then you went on to clerk for Judge Kozinksi of Ninth Circuit, correct?

Mr. Hur. Yes, sir.

Mr. JOHNSON. After that, you ascended to a clerkship with then-Chief Justice William Rehnquist on the U.S. Supreme Court, correct?

Mr. Hur. Correct.

Mr. JOHNSON. Then you later joined the Daddy Bush Department of Justice as a Special Assistant to known Federalist Society member and now FBI Director Christopher Wray, isn't that correct?

Mr. Hur. I did spend some time working for former Assistant At-

torney General Christopher Wray.

Mr. JOHNSON. You later joined the Trump Justice Department as the Principal Associate Deputy Attorney General, working as the right-hand man for another known Federalist Society member, Rod Rosenstein, isn't that correct?

Mr. Hur. I served as Mr. Rosenstein's Principal Deputy.

Mr. JOHNSON. Then Donald Trump appointed you to serve as U.S. Attorney for the District of Maryland. Is that correct?

Mr. Hur. President Trump nominated me to serve in that posi-

tion, and I was unanimously confirmed by the U.S. Senate.

Mr. JOHNSON. That is correct. Thereafter, Attorney General Merrick Garland appointed you to serve as Special Counsel for the

United States Department of Justice to conduct a full and thorough investigation of certain matters to determine whether or not Joseph Biden should be charged with unlawfully removing and retaining classified documents. Isn't that correct?

Mr. Hur. Correct.

Mr. Johnson. Nowhere in that order does Attorney General Garland authorize you to conduct an investigation and issue a report on whether President Biden is mentally fit to serve as President, isn't that correct?

Mr. Hur. That does not appear in the appointment order.

Mr. JOHNSON. Pursuant to your appointment to conclude your investigation, you issued a report that was published by Attorney General Garland, correct?

Mr. Hur. He made it available to Congress, sir.

Mr. JOHNSON. Your report concluded that after a full and thorough investigation, the evidence was insufficient to establish that President Biden had willfully retained classified documents, isn't that correct?

Mr. Hur. My judgment was that based on the State of the evi-

dence, a conviction at trial was not the probable outcome.

Mr. JOHNSON. You determined that there was no evidence of will-ful retention because each time classified documents were discovered to be in the President's possession, the White House notified the National Archives right away. The Biden legal team and the White House fully cooperated with the National Archives during the investigation.

Once the DOJ opened the investigation, President Biden and his personal counsel fully cooperated, isn't that correct?

Mr. Hur. We did identify some evidence of willful retention and disclosure, but we also noted—

Mr. JOHNSON. The point is, though, that the President cooperated fully with you. Didn't the President—they never tried to hide any documents from you, did they?

Mr. Hur. The report does note steps of cooperation taken by the President.

Mr. Johnson. Thank you, sir. Last but not least, unlike in the Trump classified documents case, President Biden's counsel never falsely certified that there was no classified documents in the President's possession, correct?

Mr. Hur. The report does include some comparisons and contrasts between the facts alleged in the Trump case and the Biden case

Mr. JOHNSON. Despite clearing President Biden from being prosecuted, you used your report to trash and smear President Biden because he said in response to questions over a five-hour interview that he didn't recall how he got the documents.

You knew that this would play into the Republicans' narrative that the President is unfit for office because he is senile. The American people saw, during the State of the Union address, that this was not true.

Yet, that is what you tried to offer to them, and that is why they are having you here today, so that they can expand on that narrative. You knew that this is what was going to happen, didn't you?

Mr. Hur. Congressman, I reject the suggestions that you have just made. That is not what happened.

Mr. JOHNSON. Well, let me move on.

Mr. Hur. Partisan politics played no part whatsoever in my work.

Mr. JOHNSON. You are a member of the Federalist Society, are you not?

[Simultaneous speaking.]

Mr. Hur. Fair.

Mr. JOHNSON. Are you a member of the Federalist Society?

Mr. Hur. I am not a member of the Federalist Society.

Mr. JOHNSON. You are a Republican, though, aren't you?

Mr. Hur. I am a registered Republican.

Mr. JOHNSON. Yes, sir. You are doing everything you can do to get President Trump reelected so that you can get appointed as a Federal judge or perhaps to another position in the Department of Justice, isn't that correct?

Mr. Hur. Congressman, I have no such aspirations, I can assure you. I can tell you that partisan politics had no place whatsoever in my work. It had no place in the investigative steps that I took. It had no place in the decision that I made. It had no place in a single word of my report.

Mr. JOHNSON. Thank you, sir.

Chair JORDAN. Gentleman's time is expired. The gentleman from New Jersey is recognized for five minutes.

Mr. VAN DREW. Thank you, Mr. Chair.

Mr. Hur, thank you for being here. I think for the folks that may be watching this at home, they might be a little bit confused. I am trying to organize this in my mind as well, the way the President is portrayed in your report and just how we feel about him.

Was he a well-meaning, forgetful man, as you said, or was he a man that was focused on history? Was he a man that maintained and retained these top-secret documents that should have been not in his home?

Was he a man that wanted to prove he was worthy to be President, and that his vision of Afghanistan was better than even President Barrack Obama's, and that his focus on history was most important to him? Do you know which it is?

Mr. Hur. Congressman, to the extent you are quoting language from my report, I stand by the words in my report.

Mr. VAN DREW. So, you stand by that he was, and let me quote

you exactly, "a well-meaning but forgetful old man."

Mr. Hur. I don't think those exact words appear in the report, Congressman. To the extent that I used words similar to that effect in my assessment of how a jury would perceive Mr. Biden and the evidence relating to him, including his testimony, I do stand by that assessment.

Mr. VAN DREW. So, is it accurate to say that in your interview, President Biden retained and disclosed classified materials as a means to bolster his image as a President figure? I am going to ask you for yes or noes here because our time is so limited.

Mr. Hur. I believe words to that effect are in my report, Congressman.

Mr. VAN DREW. So, the answer is yes. Would you agree that President Biden's intent to showcase his legacy provides a motive for his actions concerning classified materials, yes or no?

Mr. Hur. It is one of the motives addressed in the report.

Mr. VAN DREW. Yup. To showcase his legacy. Is it accurate to quote your report that classified documents were found in "badly damaged boxes in his garage near a collapsed dog crate, a dog bed, a Zappos box, and an empty bucket," is that correct?

Mr. Hur. Those words do appear in the report.

Mr. VAN DREW. So, it is correct, the answer is yes. Are these secure locations to store classified documents?

Mr. Hur. They are not.

Mr. VAN DREW. OK. So, we got a former Vice President who is established to have willfully, purposefully retained classified documents to highlight his political stature and show his stature as a Presidential figure. We have a former Vice President who stored classified documents in very unsecure places.

We have a former Vice President who will not suffer any consequences for all of these actions. All because we say, well, "he is

a well-meaning, forgetful old man."

If you were kind of a well-meaning, forgetful old man that was driving a car and you forgot what you were doing a little bit and you hit somebody and killed them, I believe you would be responsible. The law must apply you know this to everywere

sible. The law must apply, you know this, to everyone.

The standard behind the decision not to prosecute Joe Biden, especially in light of Special Counsel Jack Smith's decision to prosecute President Trump for similar conduct, gives the real appearance of two standards. Just again, so much part of this Department of Justice. Justice for thee, but not for me.

Special Counsel Hur, has any former President or Vice President, besides President Trump, ever been criminally charged for knowingly retaining classified information after they left office, yes or no?

Mr. Hur. No.

Mr. VAN DREW. Would you concur that Special Counsel Smith's decision to charge a former President for retaining and disclosing classified information was an extraordinary, unusual, and unprecedented decision?

Mr. Hur. I will not comment on that matter.

Mr. VAN DREW. Well, I am going to comment, the answer is yes. Special Counsel Hur, these two reports are the culmination in my mind of the Department of Justice's two standards, two standards. An example, again, of the Justice Department being weaponized against conservatives.

There is another piece to this too, while I have just a few seconds. We know that when his ghost writer was speaking to him, he also did recordings. When he did those recordings, it was clear—in fact, I will try to quote this here.

It was a month in 2017, a month after Biden left his VP. He was aware of top-secret classified materials that were "downstairs." Is that true?

Mr. Hur. That is reflected in an audio recording, yes.

Mr. VAN DREW. It is reflected in an audio. So, sometimes he may be sleepy, sometimes he may be forgetful. Sometimes he may be

cognitively impaired. There is no doubt about that.

Man, when it came to his personal legacy, the way he wanted to be remembered, to be sure that he was a big deal, in plain English, in the future, we were willingly and knowingly breaking the law.

It is unfortunate that we have a Department of Justice that will treat one person one way and somebody else a different way. It is a sad day for America.

Thank you, Mr. Hur. I yield back.

Chair JORDAN. Gentleman yields back. The gentleman from Cali-

fornia is recognized.

Mr. Schiff. Mr. Hur, I want to ask you about some of the differences between the facts involving President Biden and President Trump. Before I do, I want to refer back to your opening statement in which you said that you did not disparage the President in your report.

Of course, you did disparage the President. You disparaged him in terms you had to know would have a maximal political impact.

You understood your report would be public, right?

Mr. Hur. I understood based on comments that the Attorney General had made that he had committed to making as much of my report public as consistent with legal policy and legal requirements.

Mr. Schiff. You could have chosen just to comment on the President's particular recall vis-à-vis a document or a set of documents, but you decided to go further and make a generalized statement about his memory, didn't you?

Mr. Hur. Congressman, I could have written my report, theoretically, in a way that omitted references to the President's memory, but that would have been an incomplete and improper report in that it did not reflect my analysis—

Mr. Schiff. That wasn't my question. You could have written—

Mr. Hur. The explanation of my decision—

Mr. Schiff. You could have written your report with comments about his specific recollection as to documents, a set of documents, or a set of documents, but you chose a general, pejorative reference to the President.

You understood when you made that decision, didn't you, Mr. Hur, that you would ignite a political firestorm with that language, didn't you?

Mr. Hur. Congressman, politics played no part whatsoever in my investigative steps, my decision—

Mr. Schiff. You understood nevertheless—Mr. Hur. The words that I put in my report.

Mr. Schiff. Didn't you, Mr. Hur? Mr. Hur, you cannot tell me you are so naive as to think your words would not have created a political firestorm. You understood that, didn't you, when you wrote those words?

When you decided to include those words? When you decided to go beyond specific references to documents, you understood how they would be manipulated by my colleagues here on the GOP side of the aisle and by President Trump? You understood that, did you not?

Mr. Hur. Congressman, what I understood is the regulations that govern my conduct as Special Counsel. The regulations required me to write a—

Mr. Schiff. Those regulations—those regulations—

Mr. Hur. Confidential report for the Attorney General—Mr. Schiff. Which you knew would not be confidential.

Mr. Hur. Explaining my decision. That is what I did, Congressman, I followed the rules.

Mr. Schiff. Which you knew—Mr. Hur, you knew it would not be confidential.

Mr. Hur. I knew the rules and I followed them.

Mr. Schiff. You knew it would not be confidential, didn't you? Mr. Hur. Sir, the regulations required me to write a confidential report explaining my decision to the Attorney General—

Mr. Schiff. Which you knew would be released.

Mr. Hur. It was up to the Attorney General to determine what portion of the report would be released, consistent with DOJ policy and legal requirements.

Mr. Schiff. You understood it would be released. You under-

stood it would be released.

Mr. Hur. I understood, from the Attorney General's public comments, that he would make as much of my report public as he could, consistent with legal requirements and DOJ policy.

Mr. Schiff. You also understand DOJ policy that you are to take care not to prejudice the interests of the subject of an investigation,

right?

Mr. Hur. That is generally one of the interests that DOJ policy requires that prosecutors respect.

Mr. Schiff. It was your obligation to follow that policy in this report, was it not?

Mr. Hur. It was also my obligation to write a confidential report

for the Attorney General explaining completely my decision.

Mr. Schiff. What you did write was deeply prejudicial to the interests of the President. You say it wasn't political, and yet you must have understood, you must have understood the impact of your words.

You must have understood the impact of your decision to go beyond the specifics of a particular document, to go to the very general, to your own personal, prejudicial, subjective opinion of the President, one you knew would be amplified by his political opponent. One you knew that would influence a political campaign.

You had to understand that. You did it anyway, and you did it anyway. Let me just go to some of the differences here between the

President's conduct and Mr. Trump's.

In the superseding indictment, on page 3, it says that Mr. Trump suggested that his attorney falsely represent to the FBI and grand jury that he did not have documents called for by the grand jury subpoena.

You didn't find anything like that with respect to Mr. Biden, did

you?

Mr. Hur. Congressman, I do not have the Trump indictment in front of me, but I need to address something that you said in your prior question.

What you were suggesting is that I needed to provide a different version of my report that would be fit for public release. That is nowhere in the rules. I was to prepare a confidential report that

was comprehensive and thorough of an-

Mr. Schiff. What is in the rules, Mr. Hur, what is in the rules is you don't gratuitously do things to prejudice the subject of an investigation when you are declining to prosecute. You don't gratuitously add language that you know will be useful in a political campaign.

You were not born yesterday. You understood exactly what you were doing. It was a choice. You certainly didn't have to include that language. You could have said vis-à-vis the documents that

were found at the university, the President did not recall.

There is nothing more common, you know this, I know this, there is nothing more common with a witness of any age, when asked about events that are years old, to say I do not recall. Indeed, they are instructed by their attorney to do that if they have any questions about it.

You understood that. You made a choice. That was a political choice. It was the wrong choice.

Mr. Chair, I yield back.

Chair JORDAN. Gentleman yields back. The gentleman from Arizona—did the Special Counsel wish to respond to that final question?

Mr. Hur. Yes. Congressman, what you are suggesting is that I shape, sanitize, omit portions of my reasoning and explanation to the Attorney General for political reasons.

Mr. Schiff. No, I suggest that you not shape your report for political reasons, which is what—

Chair JORDAN. Time is the witness' in response.

Mr. Hur. That did not happen, Congressman, that did not happen.

Chair JORDAN. The gentleman yields back. The gentleman from Arizona is recognized for five minutes.

Mr. BIGGS. Thank you, Mr. Chair.

Thank you, Mr. Hur, for being here. Thank you for your report, I have read it. I think where you and I might have disagreements, they may be matters of opinion and not necessarily the facts as you reported them.

So, I want to go over the elements of the offense that seem to have at least struck my craw is the—where you put in here twice that the jury would not find, not likely to find intentionality on the part of disclosure in particular. So, I want to talk about that for a second.

So, if it is not willful, we might say an accident, something negligent, or careless. That would not necessarily rise to willful, intentional, or purposeful, right?

Mr. Hur. Those are different standards of intent under the law.

Yes, sir.

Mr. BIGGS. Yes. So, when President Biden misplaced 30 briefing documents in 2010 that had classified material, and they are not sure even if they ever got them all back, or when he was in the Hamptons at a party and he lost what they were calling code words, which is high-security information, that wasn't necessarily

willful, there was no indication that he purposefully did that. Accidental or negligent.

You indicated don't know if we even got all that information back. We are assuming maybe we did. That would not be willful,

right?

Mr. Hur. As reflected in the report, there were certain categories of documents where when we looked into them and investigated how they got to where they ended up or how they ended up being misplaced, we did not identify evidence of willfulness.

Mr. BIGGS. Yes, and so if something is willful, you wouldn't say it is ignorant. It is not incompetent; it is not accidental. We would say something like it is willful, it is intentional, it is purposeful.

It indicates really a choice, that you have made a deliberate, con-

scious decision to act in a certain way. Is that fair?

Mr. Hur. That is fair, Congressman. As I explained in the report, the standard, the willfulness standard basically involves, can be boiled down to the following things: That you know that what you are doing is against the law when you do it.

Mr. BIGGS. Correct. So, let's take a look at it. This has been brought up before. In February 2017, he is having a discussion with the ghost writer. He says—he is at the Virginia house at this point. He says, "I just found all the classified stuff downstairs." Right, so he knows he has got classified stuff, right?

Two months later, in April, he is at a different location is my understanding. I think he is now up in Delaware. If you look at pages

105–106 here. He says,

Biden reads from a different notebook entry. He reads aloud from notes summarizing a range of issues. We are talking about U.S. military views expressed there and by the intelligence community, the DNI, CIA Director.

While he is reading those notes, he says,

I can't read my own writing. Do you have any idea what the heck I am saying here?

He asked the ghost writer. The ghost writer says, "Well, something blah, blah." Biden says this: "Some of this may be classified, so be careful." Some of this may be classified, so be careful. Now, my immediate response was OK, so he knows he has got classified docs. He is looking at this, he can't read it. He is giving this to somebody he knows has no security clearance. So, he says hey, "read this, but be careful, it might be classified."

The next thing—and the guy says OK. Next thing he says, "Well, I don't know if it is classified or not." I am suggesting to you, and this is where you and I have a difference of opinion, when you say something like hey, I just—look, this may be classified, be careful.

That warning to be careful because it may be classified, that indicates guilty knowledge. That indicates he might know something more than he otherwise would have. It indicates—then they go on and they read it, as you point out here. He reads classified information, and it is still classified today. That is on page 106.

So, when you look at this, it is hard for me to say, well, he was ignorant. He was incompetent, he was accidental. No. He had guilty knowledge. He knew and told the guy that he was going to expose that classified material to hey, be careful, be careful, it may

be classified.

That indicates something a little bit more than mere knowledge. Indicates that he has some intent there. Because the next thing he should have said is, hey, I don't know if it is classified, but we are going to skip over this until that is resolved. He didn't do that. What he said is, read it anyway.

Yield back.

Chair JORDAN. The gentleman yields back. The gentleman from California is recognized for five minutes.

Mr. SWALWELL. Mr. Hur, I was moved by your parents' immigrant story and how that has shaped you. Their story is a story that so many of us know through our constituents. It is a story of America.

It is a story that the guy who appointed you would end if he was in charge again. It is a story that most of the folks on the other side of the aisle seek to block every day in this room. It is a story that is persuasive.

You want your report to be received with credibility, is that

right?

Mr. Hur. My goal was to provide a thorough explanation of my decision to the Attorney General as I'm required to do and as I said in my opening statement, I felt that I needed to show my work.

Mr. SWALWELL. You want to be received as credible, right?

Mr. Hur. That would be helpful and laudable, yes.

Mr. SWALWELL. Well, a lot has changed since 2018 for the person who appointed you, former President Trump. Since you were appointed, he was impeached for leveraging U.S. \$350 million over Ukraine to get dirt on President Biden. He was then impeached a second time for inciting an insurrection.

He was charged with possessing classified documents and obstructing justice. He was charged for paying for the silence of a

porn star.

He was charged in Georgia for his role on January 6th. He was charged in the District of Columbia for his role on January 6th. He owes \$400 million to the State of New York for defrauding the State through his taxes and he has been judged a rapist.

You want to be perceived, understandably, as credible and so I want to first see if you will pledge to not accept an appointment

from Donald Trump if he is elected again as President.

Mr. Hur. Congressman, I am not here to testify today about what will happen in the future.

Mr. SWALWELL. Seems like an easy answer considering what I just laid out.

Mr. Hur. I'm here to talk about the report and the work that went into it and—

Mr. SWALWELL. You don't want to be associated with that guy again, do you?

Mr. Hur. Congressman, I'm not here to offer any opinions about what may or may not happen in the future. I'm here to talk about the work that went into the report, which I stand by.

Mr. SWALWELL. There were no limits on you as to what you could charge President Biden by the Attorney General. Is that right?

Mr. Hur. The decisions that I made that are reflected in the report are my own.

Mr. SWALWELL. You did not bring any charges. Is that correct?

Mr. Hur. Correct.

Mr. SWALWELL. There were no limits on John Durham in his investigation of the prior administration when he was Special Counsel. Is that right?

Mr. Hur. I don't believe I have the information required to an-

swer the question about the Durham investigation.

Mr. SWALWELL. Well, he sat in the same chair that you're sitting in. He told us that he also investigated President Biden and President Obama and did not bring any charges. President Biden sat for an interview with you over two days for approximately 10 hours. Is that right?

Mr. Hur. A little over five hours, Congressman.

Mr. SWALWELL. Over two days?

Mr. Hur. Correct.

Mr. SWALWELL. That's in sharp contrast to a guy who did not sit for an interview when the Mueller investigation took place. That was Donald Trump.

Did not sit for an interview when he was impeached in this committee room by the Judiciary Committee. Did not sit for an interview when the second impeachment occurred and he was invited to sit for an interview for his role on January 6th, and did not sit for an interview in the January 6th classified—in the January 6th, case or the classified documents case.

The Chair also has not sat for an interview in his own subpoena but Joe Biden has. I now want to turn you to the transcript and day one page 47.

You said to President Biden, "You appear to have a photographic understanding and recall the of the house." Did you say that to President Biden?

Mr. Hur. Those words do appear on page 47 of the transcript. Mr. Swalwell. "Photographic" is what you said. Is that right?

Mr. Hur. That word does appear on page 47 of the transcript.

Mr. SWALWELL. Never appeared in your report, though. Is that correct? The word photographic?

Mr. Hur. That does not appear in my report.

Mr. SWALWELL. I now want to show you and play a video of what is absolutely not photographic.

[Video played.]

Chair JORDAN. The time of the gentleman has expired.

The gentleman yields back.

The Chair now recognizes the gentleman from North Carolina.

Mr. BISHOP. Thank you, Mr. Chair.

Mr. Hur, I'm way down here at the end of the dais.

I think today the Justice Department released the transcripts of the interviews with President Biden. Are you aware of that?

Mr. Hur. I understand that to be true, yes.

Mr. BISHOP. Did you have any involvement in the decision or the timing of the release of the transcripts?

Mr. Hur. No, Congressman.

Mr. BISHOP. Did you make any recommendation about the release of the transcripts being done or not?

Mr. Hur. I did not. That was above my paygrade.

Mr. BISHOP. I don't know why they've been released so close to this hearing, but it impacts our ability to evaluate your report and ask you questions about it.

There's one point. Just as an illustration, on page 221 of your report you're describing the Afghan pack (phonetic) or something like that, about in 2009. is the information where that came from, and you say as one reason not to prosecute Mr. Biden, it says,

In addition, Mr. Biden told us in his interview that he does not recognize the marking confidential as a classification marking. To him the marking means the document should be held in confidence, but not necessarily that it is classified.

Footnote 866 is a reference, and it refers to the Biden, October 9, 2023, transcript at pages 24–25.

Now, we have that, but we haven't until this morning. I just want to read from that exchange. This is on page 24, line 15.

Mr. Krickbaum: So, this is a typewritten document. It's got a confidential—what appears to be a stamp at the top and the top of the document indicates it's from the American AM Embassy Kabul. It's dated what appears to me to be November 1909. The only question I have for you about this, Mr. President, is the confidential marking. Do you recognize that to be a classification marking?

President Biden: No. I mean, confidential doesn't want to get around. It's not in a category, I don't think, of code word top-secret, that kind of thing. I don't even know where it came from.

Mr. Krickbaum: Are you familiar with confidential as a level of classified information?

President Biden: Well, if I got a document that said confidential it means—it would mean that no one else could see it but me and you give it or the people working on this issue.

Mr. Krickbaum: And are you aware that among certain categories of classified information there is top-secret, secret, and there's also a category of classified information called confidential. Is that something that you are aware of or not?

President Biden: I—yes, I was aware of it. I don't ever remember when I got any document that was confidential that was meant for me to read and/or discuss with the people who sent me the memo so. And that's the—

and then it trails off.

So, as I read those answers they're equivocal. He at first says he doesn't know—do you recognize that to be a classification marking. He said no, and then goes on to explain. Then, Mr. Krickbaum came back, and he said,

Are you aware that among certain categories of classified information there's also a category of classified information called confidential.

He says, "yes, I was aware of it."

So, Mr. Hur, just in that one instance there seems to be a discrepancy between the conclusion in the report or the summary of the evidence in the report and what the transcript says.

Can you offer any guidance to this Committee, why you would put that summary in your report as opposed to saying that he gave inconsistent answers or, in fact, why didn't you nail down in the transcript which was the right answer? He's given an answer that says no and then he says yes. Why didn't you pursue it until you knew it?

Mr. Hur. Congressman, the report reflects our best efforts to summarize and characterize the evidence in the investigation including the investigation received from the President himself during our interview of him.

As you point out, the transcripts of the President's interview over two days are now available to the Committee for their inspection and the Members are able to draw their own conclusions based on the transcripts that are now available to them.

Mr. BISHOP. Well, with all—and I appreciate your answer, and I certainly think things—you can come up with some details that someone can disagree on, and it has the quality of some cherry

picking because I just found something.

We have only had a little bit of time to look. I don't think it serves this process well for the Justice Department to dump these transcripts into the public right now. If they're going to be released, they should have been released at a proper time.

I think I'll leave it at that, Mr. Chair. I'll yield back.

Chair JORDAN. Does the gentleman yield? Does the gentleman yield?

Mr. BISHOP. I will yield to the Chair.

Chair JORDAN. Just really quick, Mr. Hur, someone earlier said something about changing the facts. You said, I'm not going to change the facts. Let's keep the facts the same but change the sub-

You have the same facts and the individual that you were investigating was 65 and had a good memory. Do you reach the same

conclusion?

Mr. Hur. Congressman, as I responded earlier to a question along these lines, I am not here to entertain hypotheticals about facts or circumstances that may be different.

What I did was assess the evidence and the facts that I obtained in this investigation and make a judgment based on this set of evidence.

Chair JORDAN. Fair enough. The Chair now recognizes the gentlelady from Washington for five minutes.

Ms. JAYAPAL. Thank you, Mr. Chair.

Special Counsel Hur, thank you for being here. Thank you for your work.

In your investigation you reviewed more than seven million documents and conducted 173 interviews of 147 witnesses including President Biden. Is that correct?

Mr. Hur. Yes, Congresswoman. Ms. Jayapal. Your 15-month investigation cost several million dollars and resulted in a comprehensive 345-page report with several dozen pages of appendices.

Is it correct that as it says in the first sentence of your Executive Summary that your investigation concluded with an assessment that, quote, "no criminal charges are warranted in this matter"?

Mr. Hur. Correct.

Ms. JAYAPAL. So, this lengthy, expensive, and independent investigation resulted in a complete exoneration of President Joe Biden. For every document you discussed in your report you found insufficient evidence that the President violated any laws about possession or retention of classified materials.

The primary law that you analyze for potential prosecution was part of the Espionage Act 18 U.S.C. 793(e) which criminalizes willful retention or disclosure of national defense information. Is that correct?

Mr. Hur. Congresswoman, that is one statute that we analyzed. I need to go back and make sure that I take note of the word that you used "exoneration." That is not a word that's used in the report. That's not part of my task as a prosecutor.

Ms. JAYAPAL. Mr. Hur, I'm going to continue with my questions.

I'm going to continue with my questions.

Mr. HUR. The judgment that I received that I ultimately reached is whether sufficient evidence existed such that a likely outcome would be a conviction. I did not exonerate him. That word does not appear in the report, Congresswoman.

Ms. JAYAPAL. I know that the term—I know that the term you didn't—you exonerated him. I know that the term willful retention

has a-Mr. Hur, it's my time. Thank you.

I know that the term willful retention has a particular legal meaning and I want to make sure that this meaning is absolutely

clear to the American people before we go any further.

As you wrote in your report to prove as a matter of law that the President, quote, "willfully retained any documents" you would need to prove beyond a reasonable doubt two elements—first, that the President knowingly retained or disclosed national defense information and, second, that he knew that this conduct was unlawful. Is that correct?

Mr. Hur. That's correct.

Ms. Jayapal. To be very, very—

Mr. Hur. Oh, and I'm sorry, Congresswoman. That it was national defense information. That's an important third element.

Ms. JAYAPAL. OK. Thank you. To be very, very clear, you did not find sufficient evidence to prove either of those elements beyond a reasonable doubt to show that Mr. Biden willfully retained any of the classified national defense materials that were recovered during your investigation, correct?

Mr. Hur. My conclusion was that the admissible evidence was not sufficient to make conviction at trial a probable outcome.

Ms. JAYAPAL. Not sufficient. Thank you.

Let me ask you about a few specific examples so the American people are clear. One set of documents was discovered by investigators in the President's Delaware home. His staff had assembled those documents into binders in 2014 to prepare him for an event with Charlie Rose.

Some of the documents in those binders were marked classified. You reviewed all the facts surrounding the classified documents in those binders and you determined, and this is a quote from your report, "these facts do not support a conclusion that Mr. Biden willfully retain the marked classified documents in these binders," correct?

Mr. Hur. That language does appear in the report.

Ms. JAYAPAL. You also reviewed another set of classified documents from the President's home related to the Afghanistan troop surge in 2009 and you evaluated whether the President willfully retained such documents in his Delaware home or a home that he rented in Virginia in 2017.

In your report you said that there was, quote, "a shortage of evidence," for any wrongdoing and, quote, "other innocent explanations for the documents that we cannot refute."

Are those quotes, correct?

Mr. Hur. Congresswoman, if you have particular page cites for those quotations, I'd be happy to confirm their accuracy.

Ms. JAYAPAL. Page 6. It's right on the screen.

Mr. Hur. With respect to the two quotes that are on the screen, in addition to the shortage of evidence, there are other innocent explanations for documents we cannot refute, and we conclude the evidence is not sufficient to convict and we decline to recommend prosecution—

[Simultaneous speaking.]

Ms. JAYAPAL. I was just going to get to that, and you concluded that, quote, "the evidence is not sufficient to convict and we decline to recommend prosecution." Those are your words in the report, correct?

Mr. Hur. Those words appear in the report.

Ms. JAYAPAL. Thank you. President Biden's counsel discovered a different set of documents at the Penn Biden Center and voluntarily turned them over to the FBI.

Those documents contained national security information, but you determined that you could not, in fact, prove that President Biden willfully retained those documents because, quote,

The evidence suggests that the marked classified documents found at the Penn Biden Center were sent and kept there by mistake. Therefore, we decline any criminal charges related to those documents.

Correct?

Mr. Hur. The language "we decline any criminal charges related to those documents" does appear at page 311 of the report.

Ms. JAYAPAL. Thank you. You also reached a similar conclusion regarding the documents found in President Biden's Senate papers at the University of Delaware. Quote,

For these reasons it is likely that the few classified documents found in Mr. Biden's Senate papers at the University of Delaware were there by mistake.

Correct?

Mr. Hur. That language does appear on page 325 of the report. Ms. Jayapal. So, it seems to me that the crux of the report—the main story is that you found insufficient evidence to prove beyond a reasonable doubt that President Biden willfully retained any classified materials. That is the story of this report, and I yield back, Mr. Chair.

Chair JORDAN. The gentlelady yields back. The gentlelady from Indiana is recognized.

Ms. ŠPARTZ. Thank you, Mr. Chair.

I just thank you, Special Counsel, for being here in these challenging times. I want to tell you a few things that are interesting for me. You obviously could see that there is a motive and there is legacy (phonetic). You obviously see there was a willful retention of those documents.

It's interesting for me that when you're talking about sympathetic, well-meaning older man with poor—an elderly male with a poor memory, it seems like every attorney would advise you to be sympathetic and be well-meaning and it seems like the whole FBI needs to do a-based on my hearings here, need to do a check on amnesia because everyone says they doesn't recall.

So, it seems to me that it might have been something way more in his recollection because the typical I don't recall—because that's what everything—that I've learned it here. So, is there any more substance more than that just, I don't recall something, for you to actually decide? Because it seems like this is the core of the whole investigation. Why didn't you pursue further the charges?

Mr. Hur. Congresswoman, my judgment as to how a jury would likely perceive, receive, and consider evidence, relating to all the evidence that would be put by both the government and the de-

fense at trial.

It was based on a number of different sources from documents, including various recordings, some of them from the 2016–2017 timeframe, some from our interview with the President in October

I think what you're asking about specifically is how the President presented himself during his interview in October last year and, of course, I did take into account not just the words from the cold record of the transcript, but the entire manner in living color in real time of how the President presented himself during his inter-

Ms. Spartz. Hopefully he didn't outsmart you and all of us. Before I yield, I just wanted to actually just comment on something Mr. Raskin mentioned about us not remembering communism. I actually grew up under communists and I have a very good recollection of what it is and, unfortunately, tyranny is on the rise, on the march, which he said.

Unfortunately, they've been emboldened by President Obama, now by President Biden, too, and, unfortunately, our government and Department of Justice really now resembles a tyrannical government. It's sad for me to see that. I'm going—and with a really double standard what we have there. I'm going to yield to Chair Jordan the rest of my time.

Chair JORDAN. I thank the gentlelady for yielding.

Mr. Hur, during your one-year investigation did you have communications with the White House and the White House Counsel in particular?

Mr. Hur. Yes.

Chair JORDAN. I think you had—like, I got five letters that they communicated with you regarding your investigation. Is that accurate?

Mr. Hur. We received a number of letters from White House Counsel's office and as well as the President's personal counsel.

Chair JORDAN. Right. That would be the Special Counsel or personal counsel. I see they signed the letters.

Did the White House get the report before the report was made public?

Mr. Hur. We did provide a draft of the report to the White House counsel's office and members of the President's personal counsel team for their review.

Chair JORDAN. No, I understand.

Did the White House then—once they got the report before it went public did the White House try to weigh in with your investigation on elements of that report and, frankly, get the report changed?

Mr. Hur. They did request certain edits and changes to the draft

report.

Chair JORDAN. Yes. I see that in the February 5th letter.

Did they only correspond with you?

Mr. HUR. I'm sorry, Congressman. Are you asking if they corresponded with anyone else on my team?

Chair JORDAN. Once you gave the report to the White House—

Mr. Hur. Yes.

Chair JORDAN. —they tried to—they saw changes. I have one letter here that's addressed to you on February 5th and they said, "we're pleased that after more of a year of investigating you've determined"—they respond to the report.

Then they ask—they disagree with your—they asked for you to change some of the things you had in your report, namely, the fact that the President's memory was not very good. Do you remember

that?

Mr. Hur. Yes, sir.

Chair JORDAN. OK. I also have two other letters, one on February 7th to Merrick Garland where they raised the same concern, and then on February 12th where they go to the DAG, Bradley Weinsheimer. Are you familiar with those?

Mr. Hur. I am familiar with those letters. Bradley Weinsheimer is an Assistant or Associate Deputy Attorney General.

Chair JORDAN. Right. Associate DAG—ADAG, right?

Mr. Hur. Yes.

Chair JORDAN. Merrick Garland, of course, is the Attorney General?

Mr. Hur. Yes.

Chair JORDAN. So, you're familiar with the fact that they went over your head?

Mr. Hur. They were certainly entitled to write whatever letters they wished to Mr. Weinsheimer and to the Attorney General.

Chair JORDAN. I just find that interesting. The White House is—they're communicating with you throughout this one-year investigation and then the White House says, oh, we're going to—we're going to go to the principal's office and we're going to talk about Mr. Hur's report. Do you find that interesting?

Mr. Hur. As I said, they were free to correspond with whomever in the Federal Government they wished to correspond with. I did engage in numerous communications with them during the course of the investigation, and as is reflected in the Special Counsel regulations, the Attorney General did provide oversight of my investigation.

Chair JORDAN. I understand. I thank the gentlelady for yielding and yield back.

The Chair now recognizes the gentleman from California for five minutes.

Mr. LIEU. Thank you, Chair Jordan.

First, I want to say that the House Judiciary Committee is responsible for helping to enforce the rule of law. Unfortunately, the

actions of this Chair in ignoring a bipartisan Congressional Subpoena have damaged the ability of this Committee to get information from witnesses and damaged the rule of law.

Now, Mr. Hur, thank you for being here today. Thank you for sharing your compelling immigrant story. That just goes to high-

light how America is a Nation of immigrants.

I'm going to ask you a series of questions—yes or no questions. They are not trick questions. They're simply designed to highlight what you already found in your report, which is that there are, quote, "material distinctions," between President Biden's case and Mr. Trump's case.

So, here's my first question. In your investigation did you find

that President Biden directed his lawyer to lie to the FBI?

Mr. Hur. We identified no such evidence.

Mr. LIEU. Did you find that President Biden directed his lawyer to destroy classified documents?

Mr. HUR. No.

Mr. Lieu. Did you find that President Biden directed his personal assistant to move boxes of documents to hide them from the FBI?

Mr. Hur. No.

Mr. LIEU. Did you find the President Biden directed his personal assistant to delete security camera footage after the FBI asked for that footage?

Mr. Hur. No.

Mr. LIEU. Did you find that President Biden showed a classified map related to an ongoing military operation to a campaign aide who did not have clearance?

Mr. Hur. No.

Mr. LIEU. Did you find that President Biden engaged in a conspiracy to obstruct justice?

Mr. HUR. No.

Mr. LIEU. Did you find that President Biden engaged in a scheme to conceal?

Mr. Hur. No.

Mr. LIEU. Each of the activities I just laid out describe what Donald Trump did in his willful mishandling of classified information and his criminal efforts to deceive FBI.

In contrast, President Biden handed over documents without delay and complied fully with investigators.

Mr. Hur, in your report you write that, quote,

According to the indictment Trump not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it.

You also say that if proven these would be, quote, "serious aggravating facts." Do you still stand by your analysis?

Mr. Hur. I do.

Mr. LIEU. I have a few more questions as well. In your investigation did you find that President Biden set up a shell company and covertly paid \$130,000 in hush money to an adult porn star?

Mr. HUR. No.

Mr. LIEU. Did you find that President Biden directed his lawyer to pay \$150,000 in hush money to a former Playboy model?

Mr. Hur. No.

Mr. LIEU. In your investigation did you find that President Biden called the Georgia Secretary of State to demand that he, quote, "find 11,780 votes?"

Mr. HUR. No.

Mr. LIEU. Did you find that President Biden devised a scheme to organize a slate of fake electors to undermine a free and fair election?

Mr. Hur. No.

Mr. LIEU. Did you find that leading up to January 6, 2021, President Biden urged his supporters to travel to D.C. and to storm the Capitol?

Mr. Hur. No.

Mr. LIEU. Thank you.

Each of these activities I laid out describe what Donald Trump did, his efforts to bully election officials, overturn the results of the election and deceive the American people. That is why Donald Trump has been indicted and not just one, not just two, not just three, but four criminal cases.

I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Wisconsin is recognized for five minutes.

Mr. TIFFANY. I just want to do a little repetition, Mr. Hur, in regard to the Chair's questions from a few minutes ago.

So, is it correct that that February 5th letter that was sent to you asking you to change references to the President's poor memory wasn't there a request by the White House to do that?

Mr. Hur. There was a request, yes.

Mr. TIFFANY. Mr. Chair, I think the record should show that the gentleman from Maryland earlier said that was not the case. I think he said, nor did he seek to redact a single word of Hur's report. Obviously, Mr. Hur is telling us differently here.

Didn't the White House then go to the Attorney General himself and say that he would like to see changes to the references in re-

gard to the President's memory?

Mr. Hur. The White House Counsel did send such a letter.

Mr. TIFFANY. So, if this President was 60 years old rather than 80 years old would you prosecute him?

Mr. Hur. Congressman, as I've said before, I cannot engage in hypotheticals. I address the facts and the evidence as I found them in this matter.

Mr. TIFFANY. So, there was an 80-year-old grandma that came to Washington, DC, a few years ago. Did not commit a violent crime. Committed a crime, but did not commit a violent crime, and she was fully prosecuted. Doesn't that seem like it's a dual system of justice where the President is above the law?

Mr. Hur. Congressman, I don't know the facts and the details of this other case that you're referencing with this other person.

Mr. TIFFANY. You say that the President is unlikely to "reoffend in the future." I believe that was a quote that you put in your report. Is that correct?

Mr. Hur. I believe that's in Chapter 13.

Mr. TIFFANY. How so? How is he unlikely to reoffend in the future? How do you come to that judgment?

Mr. Hur. As I say on page 254 any deterrent effect at prosecution would likely be slight. We are not concerned with specific deterrence as we see little risk he will reoffend.

Mr. TIFFANY. Well, isn't it because he's now the President and he has almost unlimited authority to release documents? Isn't that correct? I mean, as a Vice President he didn't have that authority.

Now, that he's President isn't it easy to say that he's unlikely to reoffend because he's got almost unlimited authority to release these documents?

Mr. Hur. Well, that statement was based on—that assessment of the likeliness of reoffending from this particular person, President Biden, is based on a number of factors including the authority that he has now with respect to classified materials as well as the experience that he's had going through a Special Counsel investigation.

Mr. TIFFANY. Yes, but looking back at 2011 there were multiple instances where he was informed by his staff, and they ratcheted it up to where there was a formal process. You're saying he's learned from that when he's proven that he hasn't? That goes all the way back to 2011.

Mr. Hur. Congressman, what I'm saying in the report at page 254 is that—

Mr. TIFFANY. He's a repeat offender, Mr. Hur, isn't he?

Mr. Hur. What I say—

Mr. TIFFANY. Let me move on to—I'll move on to something else here.

You said he had strong motivations to ignore the proper procedures for safeguarding classified information and he provided raw material to his ghostwriter that would be of interest to prospective readers and buyers of his book, and you said something about he viewed himself as a historic figure, correct?

Mr. Hur. I believe those words do all appear in the report.

Mr. TIFFANY. Yes. He was also doing this for business purposes—that there may be people that would want to buy his book?

Mr. Hur. Toward the end of his Vice Presidency, Mr. Biden had resolved to write a book and began to work on it toward the end

of his Vice Presidency.

Mr. TIFFANY. Mr. Chair, this is really consistent with the Biden family when you look at them in trying to enrich themselves. You're familiar with the work that the Oversight Committee has done over the last year, right?

Mr. Hur. I have read some reports of it.

Mr. TIFFANY. Twenty phone calls that were made to his son that he denied in 2019–2020 shell companies that were created. Over \$20 million.

Doesn't it appear there's a pattern here where I come from, they almost call it money grubbing.

Mr. Hur. Congressman, what I'm here to testify about today is the work that I conducted in this investigation and in this report.

Mr. TIFFANY. So, I want to thank you for the work that you did as far as you could. Unfortunately, you are part of the Praetorian Guard that guards the swamp out here in Washington, DC, protecting the elites and Joe Biden is part of that company of the elites.

You see it in the things that the Department of Justice has not acted on, Mr. Chair. You look at the President's son who does not have to answer for lying on his Form 4473 in regard to throwing

away a weapon.

You see it where the Department of Justice fends off the IRS when the whistleblowers come with this information. Now, we see it once again where a President believes he is above the law and there is no doubt that this President does believe he's above the law.

I yield back, Mr. Chair.

Chair JORDÁN. The gentleman yields back. The gentleman from California is recognized.

Mr. CORREA. Thank you, Mr. Chair.

Mr. Hur, welcome. I also concur and let me echo what's already been said by my colleagues that your personal story of being an immigrant, your family immigrants to this country. The way you've contributed to the greatness of this country shows why America is great. A great immigrant story. Thank you for being here, sir.

The first question to you is: You're a Republican?

Mr. Hur. I am, sir.

Mr. CORREA. Does that stop you from conducting a thorough and fair investigation?

Mr. Hur. I certainly hope not, and I know not.

Mr. CORREA. This story is really proof of the old saying that the cover up is worse than the crime. President Trump and President Biden handled their classified materials differently, wouldn't you say?

Mr. Hur. My report includes an assessment of the alleged facts in the pending indictment of former President Trump and a comparison of the facts that we found in this case.

Mr. CORREA. Clearly, the handling of these documents was night and day, correct?

Mr. HUR. Congressman, do you have a specific aspect of the han-

dling of the documents that you have in mind?

Mr. Correa. Well, President Trump intentionally took classified materials and obstructed justice to ensure that those materials wouldn't be taken from him and refused to work with law enforcement. Is that correct?

Mr. Hur. My report reflects no findings of obstructive conduct on

the part of—

Mr. Correa. Let me ask you another question. President Trump has been indicted in the U.S. District Court of Southern Florida on 40 counts related to his possession of classified documents. Is that correct?

Mr. Hur. I don't know the exact number of counts. I know that

an indictment is pending in that district.

Mr. CORREA. Mr. Hur, you even wrote that after being given a number of chances to return classified documents and avoid prosecution, I should say President Trump allegedly did oppose. According to the indictment, he not only refused to return those documents over for many months but he also obstructed justice by enlisting others to destroy evidence and lie about them. Compare and contrasting to President Trump, President Trump turned classified documents over to the National Archives and the Department of

Justice and he consented to searching his home and other locations. Wouldn't you say that's night and day when it comes to co-

operation with law enforcement?

Mr. Hur. Congressman, the report does include an analysis and a comparison of the facts that are alleged with respect to former President Trump and does detail steps of cooperation that the President and his team took with respect to my investigation.

Mr. CORREA. I would say President Biden, you had his full co-

operation in this investigation?

Mr. Hur. The report includes cooperative steps that the President took.

Mr. CORREA. Would this be a factor in your decision to prosecute? Mr. Hur. It was a factor, and I explained it as such in the report, Congressman.

Mr. CORREA. You stated that the recommendation not to prosecute had nothing to do with Department of Justice policy not to

indict the sitting President. Is that correct?

Mr. Hur. Well, the report says that even if it were not current Department of Justice policy that a sitting President may not be indicted on Federal crimes, I would reach the same conclusion that criminal charges are not warranted.

Mr. CORREA. Mr. Hur, have you set a new precedent here today? Mr. Hur. To the extent that the Department of Justice makes enforcement decisions or nonenforcement decisions in particular cases, those are precedents. Those are events that future prosecutors do look to in an endeavor to make sure that Federal law is applied consistently over time.

Mr. CORREA. Mr. Hur, I'd say based on your education and your career experience, you are a very, very competent prosecutor, a very, very well-prepared attorney. I'm going to ask you one more time. Does the fact that you're Republican, does that stop you from

a thorough and fair investigation?

Mr. Hur. No, partisan politics had nothing to do with the work that I did or the report that I wrote or the decision that I reached. Mr. Correa. Thank you very much for being here. Mr. Chair, I

yield.

Chair JORDAN. The gentleman yields back. Gentleman from Wis-

consin is recognized.

Mr. FITZGERALD. Attorney Hur, Webster's Dictionary defines senile as exhibiting a decline of cognitive ability such as memory associated with old age. Mr. Hur, based on your report, did you find that the President was senile?

Mr. Hur. I did not. That conclusion does not appear in my re-

port, Congressman.

Mr. FITZGERALD. You felt, though, that the President's memory or lack thereof was a critical reason to decline prosecution. The reason I'm asking this is whether you believe the President would be fit to stand trial. Do you think his lawyers would argue his incompetence to stand trial due to his state of mind? Also, was he in a place to actually be questioned?

Mr. Hur. Congressman, my report to the extent that it addresses the President's memory gaps that we identified and the evidence that we obtained during our investigation, they're addressed in the context of determining how the jury would perceive, receive, and consider evidence relating to whether or not the President had willful intent when it came to retaining or disclosing national defense information.

Mr. FITZGERALD. Very good. I'd like to focus my questioning on Chapter 14 of your report. The classified documents found at the Penn Biden Center, you State in your report that the documents found at the Penn Biden Center were the most highly classified, sensitive, and compartmentalized materials recovered during your investigation. Is that correct?

Mr. Hur. That is correct.

Mr. FITZGERALD. Many of the documents came from Mr. Biden's West Wing office. That's also correct, isn't it?

Mr. Hur. I believe that is reflected in the report.

Mr. FITZGERALD. Did you ask if he had packed the boxes himself? Mr. Hur. I believe that was one of the questions that we asked and that is reflected in the transcript now available to the Committee.

Mr. FITZGERALD. I think it's important. How would you characterize the packing of these boxes? Was it slow and meticulous or where they packed in haste without much scrutiny at all?

Mr. Hur. I don't recall if it's exactly how you characterize it. I think the gist of the evidence is that the manner in which files were packed up and moved out of the end of the Obama Administration it was in something of a rushed manner.

Mr. FITZGERALD. Very good. According to your report, the boxes were moved between multiple offices, between Mr. Biden departing his West Wing Office in January 1917 and his arrival at the Penn Biden Center's permanent offices in October 1917. Were any of these offices authorized to store classified information?

Mr. Hur. No.

Mr. FITZGERALD. When the boxes finally arrived at the Penn Biden Center's permanent offices, how were they stored?

Mr. Hur. I believe when the materials were recovered, some of them were stored in a storage closet. I believe the others were in file cabinet drawers.

[Simultaneous speaking.]

Mr. FITZGERALD. What's your assessment of security and access control measures at the Penn Biden Center?

Mr. Hur. That was something that we looked at. There were some security access controls at the Penn Biden Center. We did get a handle on people who had access to the office space during the time period when we believed the materials were there. There were other people, including students and some foreign dignitaries that visited that facility at the time.

Mr. FITZGERALD. Very good. You anticipated my next question. So, when the boxes were discovered to have classified documents more than five years later, who discovered these boxes? It was Patrick Moore. Is that correct?

Mr. Hur. Correct. One of the President's personal counsel.

Mr. FITZGERALD. Did Mr. Moore have some type of active security clearance at the time?

Mr. Hur. No.

Mr. FITZGERALD. How about the Executive Assistant at the Penn Biden Center?

Mr. Hur. No.

Mr. FITZGERALD. On page 265 of your report—

Mr. Hur. Actually, I'm sorry, Congressman. I may have misspoken. I am not certain whether or not that Executive Assistant had an active security clearance at the time.

Mr. FITZGERALD. Very good. On page 265 of your report, you stated.

When interviewed by FBI agents, Moore believed the small closet was initially locked and that the Penn Biden Center staff member provided a key to unlock it but his memory was fuzzy on that point.

An interview with Mr. Biden's Executive Assistant seemed to contradict his statement. Do you remember this exchange? Did, in fact, it contradict each other?

Mr. Hur. Sir, you're asking if I remember the exchange with Mr. Moore during our interview with him?

Mr. FITZGERALD. Right. Do you remember them contradicting each other?

Mr. Hur. I don't remember that contradiction specifically. Generally during the interview, sometimes we heard things from some witnesses that were in tension with what we heard from other witnesses. We did our best to resolve those conflicts.

Mr. FITZGERALD. Just very quickly. In total, National Archives discovered nine documents totaling 44 pages with classification markings. Is that correct?

Mr. HUR. From the Penn Biden Center, yes.

Mr. FITZGERALD. You decline charging because in summarizing your analysis, you couldn't prove beyond a reasonable doubt that retention of the documents was willful?

Mr. Hur. Correct, sir.

Mr. FITZGERALD. Very good. I yield back.

Chair JORDAN. The gentleman yields back. Gentlelady from

Pennsylvania is recognized.

Ms. Scanlon. Thank you. Thank you, Mr. Hur, for your testimony today. With all the posturing that we heard thus far this morning, I think it's important that we refocus and remember the conclusion that you reached on the first page and in the very first sentence of your report which was we conclude that no criminal charges are warranted in this matter. Did I read that accurately?

Mr. Hur. You did, Congresswoman.

Ms. Scanlon. OK. Your report also says, in addition, to the shortage of evidence, there are other innocent explanations for the documents that we have not been able to refute. Did I read that correctly?

Mr. Hur. Congresswoman, if you would give me a page citation, I can—

Ms. Scanlon. Page 6.

Mr. Hur. Six. Yes, I see that language on page 6.

Ms. Scanlon. OK. Thank you. Now, in addition to those conclusions, your report details several material distinctions as you called them between President Biden's actions and former President Trump's mishandling of classified materials. The facts are that President Biden cooperated with your investigation. Is that correct?

Mr. Hur. He did.

Ms. Scanlon. His team notified authorities when they discovered classified documents and he turned them over immediately. Is that correct?

Mr. Hur. Yes.

Ms. Scanlon. He consented to multiple searches of his home and other properties. Is that correct?

Mr. Hur. Correct.

Ms. Scanlon. He voluntarily sat for an interview with you. Is that correct?

Mr. Hur. Correct.

Ms. Scanlon. When it comes to Mr. Trump's treatment of classified materials, your report states that according to the criminal indictment against him, he refused to return classified documents in his possession for many months despite having multiple chances to do so. He obstructed justice by enlisting others to destroy evidence and lie about it. Is that correct?

Mr. Hur. Correct.

Ms. Scanlon. Now, you note in your testimony that the specific comments you made about President Biden's memory have gotten a lot of attention. As we've seen today, our Republican colleagues are again and again trying to weaponize those comments in a cheap attempt to score political points. As someone who's participated in trials, you know that witnesses regardless of age often have difficulty recalling specific statements or facts when asked about them many years after those facts. So, let's take a quick look at a differing witness experiencing a lapse in memory during a deposition.

[Video shown.]

Ms. Scanlon. So, I would also add that Mr. Trump told lawyers, I don't remember, 35 times in his deposition for a lawsuit over Trump University. In response to questions from Special Counsel Robert Mueller, he answered, he did not remember or could not recall, 27 times. Now, Mr. Hur, you've said today that DOJ process and regulations required you to assess whether a jury would find Mr. Biden to be a credible witness, correct?

Mr. Hur. I'm not sure that I said those words exactly. Of course, in my view, how a jury would perceive Mr. Biden if he elected to testify in his own defense at a trial, that would be part of the whole ball of wax the jurors would consider in determining whether he had willful intent in retaining or disclosing national defense information.

Ms. SCANLON. Sure. Do you have any reason to believe that the Special Counsel who investigated and charged Mr. Trump with willful retention of classified documents would've failed to make an assessment of whether the jury would find Mr. Trump to be a credible witness?

Mr. Hur. I don't have any information relating to what or how— I'm not qualified basically to answer that question as to what went into Mr. Smith's decisionmaking.

Ms. Scanlon. You are qualified to say what are the normal procedures followed by Special Counsel, correct?

Mr. Hur. I'm familiar with the rules as set forth in the Justice Manual and my understanding of how to apply them.

Ms. Scanlon. In fact, what you did?

Mr. Hur. Correct.

Ms. Scanlon. OK. So, I would suggest that we can all assume that the fact that Mr. Trump was charged with multiple counts of willfully concealing classified documents suggests that the Special Counsel in that case determined that Mr. Trump's denials are not credible. At the point, I would ask unanimous consent to enter into the record an excerpt from the Committee's transcribed interview with Steven D'Antuono, former Assistant Director in Charge of the FBI Washington Field Office on July 7, 2023, in which, he explained the urgency for the FBI to retrieve and secure classified documents from Donald Trump's estate because they contain national security information that should not be viewed by anyone without the proper security clearance. Even Mr. D'Antuono himself could not view the documents given their high security clearance despite being the Assistant Director in Charge of the FBI Washington Field Office. Thank you. Chair JORDAN. Without objection.

Ms. Scanlon. I yield back.

Chair JORDAN. Gentlelady yield back. The Gentleman from Or-

egon is recognized for five minutes.

Mr. Bentz. Thank you, Mr. Chair. I was quite interested in the dates that are set forth in your report, Mr. Hur. The reason I'm interested is because I keep getting confused between the 2017 date and the 2024 date as to the condition of the President's memory. So, was there a difference, because when I look at it, it seems like his memory was bad in 2017 and then it was bad today.

There's never any distinction made. Isn't it true that if you're going to be look at prosecuting as you were, you would look carefully at his condition in 2017. Is that the proper time? Because I think you say in your report that your best case, I think you call it out—the best case for charges to rely on Mr. Biden's possession of Afghanistan documents in his Virginia home in February 2017 when he was a private citizen and when he told his ghost rider, he just found classified material. That's the best case as you say it?

Mr. Hur. Yes.

Mr. Bentz. Then you work your way through a series of defenses against your best case. So, you were looking at his condition in 2017. Do I have that right?

Mr. Hur. You do, Congressman.

Mr. Bentz. His memory was bad then and we can maybe draw our conclusions whether improved over the next six years or not. I just want to make sure it's clear that we're looking at his condition in 2017, which you then find as you go through kind of the list of defenses that is his memory is bad, his memory is bad, this memory is bad.

There are about six or seven defenses here. So, where it gets me to is this question. I actually pulled this quote out this morning that perhaps your report concluded and perhaps it did not that the President is, quote, "incapable of being held accountable." That's not quite what happened, is it? You didn't find that he was incapable of being held accountable, did you?

Mr. Hur. I did not. Those words do not appear in my report.

Mr. BENTZ. They do not. You reached the conclusion that you didn't have the evidence. Then your report continually recites these defenses. I'm having a hard time putting the two together. If you didn't have the evidence, why do you persist in reciting these defenses?

Mr. Hur. Congressman, I wrote my report as an explanation of my decision to decline charges as to President Biden. The way that I came up with that explanation and wrote it in my report for the Attorney General is the following. The approach that I took was a prosecutor envisioning what would be the probable outcome of trial if we charge this case, if we presented the evidence to a jury. Not only the government presenting the evidence to a jury, but what would happen if the defense lawyers also got a chance to try to poke holes in the government's case at trial?

With respect to one of the several potential defenses that I lay out in the report, one of them does focus on the President's memory-related issues. That is a defense that the President's defense lawyers may well present at trial. A jury is going to be confronted with at least three separate sets of evidence relating to the President's memory. One is from the recordings in 2016 and 2017 from

the ghostwriter.

Mr. Bentz. Forgive me for interrupting, but I'm limited on time as everybody else was. You say, that the evidence suggests he is incapable of forming or you're incapable of proving intent. There's

kind of a bit of a difference there, right?

You may well have had the intent, but you could not prove holding these documents and I hate to say hiding the documents. You couldn't prove it. So, what you did instead is fell back to the various defenses that might also be asserted against you, kind of a heap of rationale for not pursuing the President. Do I have a right now?

Mr. Hur. Congressman, I think we're on the same page. I think what I'm trying to convey is that the way that prosecutors assess the strengths and weaknesses of their case is to think through, hey, in the government's case-in-chief, here's the evidence we're going to present. The jury might be with us.

Mr. Bentz. Maybe another—

Mr. Hur. That's not the end of the trial. The trial also has to in-

clude presentation from the defense lawyers.

Mr. Bentz. You're correct. I'm a lawyer. I've tried cases, so I get it. Your report is not an exoneration so much as a determination that the evidence as you saw it would not overcome the defenses that you'd identified plus whatever lack of evidence you perceived. So, it's not an exoneration, is it?

Mr. Hur. The word, exoneration, does not appear anywhere in

my report and that is not my conclusion.

Mr. Bentz. The other thing that's of interest and I think you were misquoted. You said something about—or someone, I think it was Mr. Raskin, suggested that you—I'm going to run out of time. I appreciate the work you do as a prosecutor, and I yield back.

Chair JORDAN. Gentleman yields back. Mr. Hur, we've been at this close to three hours. We will—if you can hang with us, we'd like to keep going. There's a chance we can complete votes by the time we have to go to votes on the House floor which would be about 1:40 p.m.

Mr. Hur. I can keep going, Chair. Chair Jordan. OK. Then we'll try to do that. There's a chance we may not too. I just wanted you to know the lay of the land.

Now, I'll yield to the gentleman from Colorado.

- Mr. NEGUSE. Thank you, Mr. Chair. Thank you, Mr. Hur, for your testimony and for your service as a prosecutor at the Department of Justice. I want to focus a bit more on the progress of the investigation, kind of some process questions. So, you were appointed by Attorney General Garland as Special Counsel to investigate the President's handling of classified documents in January 2023, correct?
 - Mr. Hur. Correct.
- Mr. Neguse. Attorney General Garland, of course as you know, was nominated by President Biden to serve in his role?

Mr. Hur. Correct.

Mr. Neguse. During your 15-month investigation, did the Attorney General attempt to interfere with your investigation?

Mr. Hur. No.

Mr. Neguse. Did he impede your investigation in any way?

Mr. Hur. No.

Mr. NEGUSE. Did any other member of the Department of Justice or within the administration refuse to cooperate with your investigation?

Mr. Hur. No.

Mr. Neguse. Were you ever denied access to materials, witnesses, resources from Attorney General Garland that you might've needed during the investigation?

Mr. Hur. No.

Mr. NEGUSE. You submitted—I think this is right—your final report to Attorney General Garland on February 5, 2024?

Mr. Hur. Correct.

Mr. NEGUSE. OK. It was then released publicly three days later on February 8, 2024. Is that right?

Mr. Hur. I believe that's true, yes.

Mr. Neguse. In the final report that was released, were any of your substantive findings redacted or changed in any way?

Mr. Hur. No.

Mr. NEGUSE. None of your findings were modified by the Attorney General?

Mr. Hur. No.

- Mr. NEGUSE. Did the Attorney General issue any kind of statement or a letter attempting to describe the contents of your report? Mr. Hur. No.
- Mr. Neguse. OK. You're familiar, I'm sure, with the investigation that was conducted by Special Counsel Mueller years ago with respect to the former President?

Mr. Hur. Yes.

Mr. NEGUSE. At that time, Attorney General Barr was in charge of the Justice Department. He sat where you sat in this Committee. I remember it well, just a few short years ago, testifying to the nature of that particular investigation. Are you familiar with the way, in which, he released that report and characterized it?

Mr. Hur. Yes.

Mr. NEGUSE. OK. Very different from the way that Attorney General Garland conducted this particular release. I'd take it you'd agree with that.

Mr. Hur. They were not the same approach.

Mr. Neguse. Not the same approach, right? In the case of Attorney General Garland, no impeding or interfering with your investigation in anyway whatsoever, releasing the report in full to the American public, not attempting to mischaracterize it or describe it in any way? Dissimilar from Attorney General Barr who five years ago as you recall after Special Counsel submitted his report to the Department of Justice took nearly a month to release the report to the American public, heavily redacted and not before had issued a letter of his own to the leaders of the Senate and House Judiciary Committees, mischaracterizing the contents of that report.

That distinction and difference is very important because from your testimony, at least from what I gleaned from your testimony, is that Attorney General Garland acted appropriately and ethically

with respect to this investigation. I take it you agree?

Mr. HUR. Attorney General Garland did not interfere with my efforts. I was able to conduct a fair, thorough, and independent investigation.

Mr. NEGUSE. Very different approach as you said from the way in which the Department of Justice unfortunately, tragically functioned under the former President. I'm going to yield back the balance of my time.

Chair JORDAN. Gentleman yields back. The gentleman from Alabama is recognized for five minutes. Will the gentleman yield for

10 seconds?

Mr. Moore. Yes, sir.

Chair JORDAN. I would just point out to the gentleman of Colorado's last point. There was one big difference. Bill Barr didn't name Bob Mueller as Special Counsel.

Bob Mueller was named by Rod Rosenstein. That's a huge difference in how this whole thing works. I now yield back to the gentleman from Alabama.

Mr. MOORE. Thank you, Mr. Chair. Mr. Hur, in your report, you cited principles of Federal prosecution and observed that, and I quote,

Historically, after leaving office, many former Presidents and Vice Presidents have knowingly taken home sensitive materials related to national security from their administrations without being charged with crimes. And this historical record has imported context for judging whether and why to charge a former Vice President and/or former President.

Why is examining this history so important?

Mr. Hur. Congressman, one of the reasons that it was important was because it would bear on how a jury would perceive—how a jury would decide whether or not criminal willful intent was formed by the person retaining or disclosing the national defense information at issue.

Mr. Moore. Has there been an exception to this in the history of the Nation? Have we charged any former Presidents?

Mr. Hur. As I state in the report, to my knowledge, there is only one exception and that is former President Trump.

Mr. MOORE. Given the history, is it fair to say it's preferable not to charge a former President or a Vice President for allegedly mishandling classified documents in your opinion?

Mr. HUR. Congressman, I can't articular a preference, whether it's preferable. All I can talk about is the work that I did, the facts that I found, and the decision that I reached in my case.

Mr. Moore. Mr. Hur, what's the difference in a U.S. Senator having documents and a former President of the United States?

Mr. Hur. For purposes of proving willfulness, I believe that there would be a number of differences in terms of the types of access and the easy with which Presidents while in office can access classified information as compared to the access privileges that Senators have.

Mr. MOORE. Can Presidents declassify documents that they have in their possession?

Mr. HUR. I believe under certain circumstances, yes.

Mr. Moore. Former Presidents as well?

Mr. Hur. Congressman, I confess. I'm not—this is not an area of the law that I've looked into or explained in my report. I'm here

to talk about the work that is reflected in the report.

Mr. Moore. Well, let me say this, sir. You have a reputation beyond reproach. I just want you to know that. I think that President Biden ought to be thankful that the Attorney General appointed you to investigate his case. You have a Special Counsel colleague by the name of Jack Smith who cannot lay claim to such a reputation. Isn't that right?

Mr. Hur. I have no opinion. I don't have anything to say about—Mr. Moore. In fact, Jack Smith who Biden Justice Attorney General Garland appointed to investigate President Trump has a reputation according to deep-rooted reporting from Washington Times, "as an overzealous prosecutor who relies ethically—or unethically dubious tactics." His prosecutorial record is replete with a, quote, let me say this, "string of mistrials and overturned convictions." Actually, Chief Justice Roberts once rebuked Mr. Smith's prosecutorial theory as a balanced interpretation of Federal rivalry statute.

That did not comport with the text of the statute or the President of this court according to the Supreme Court Justice. So, my question is, do you think in the case of Jack Smith, do you think justice is blind when he's looking at President Trump? Since we've never done this in the history of the country, is justice truly blind?

Mr. Hur. Sir, I'm not here to express any opinions with respect to a pending case against another defendant. I'm here to talk about the work that I did with respect to the investigation relating to President Biden.

Mr. Moore. Mr. Chair, I yield the balance of my time.

Chair JORDAN. Can you explain what specifically in your interview with President Biden led you to this conclusion?

[Audio malfunction.]

Mr. Hur. Congressman Jordan, I'm sorry, the mic was turned on midway through.

Chair JORDAN. Yes, can you explain what specifically in your interview with President Biden led you to this conclusion?

Mr. Hur. The conclusion about—

Chair JORDAN. A broad statement that's been cited many times. Mr. Hur. The totality of the time that I spent with the President during his voluntary interview was something that I certainly considered in framing my assessment and articulating it in the report. That includes not only the words in the cold record of the transcript of the interview, but also the experience of being there in the room with him and frankly considering how he would present to a jury in a criminal trial if charges were brought.

Chair JORDAN. I guess I'm asking specifically. I know you site in the report the dates that he couldn't remember when he was Vice President, when he began, when his term ended. You cite that in your report. Is there anything else specifically that stands out from

that interview with the President?

Mr. Hur. A number of things stand out. Again, I'm aware that the transcript how now been made available. I do provide certain examples in my report of significant personally painful experiences about which the President was unable to recall certain information.

I also took into account the President's overall demeanor in interacting with me during the five-plus hour voluntary interview. So, it was a wealth of details about being there in the moment with the President, including his inability to recall certain things. I'll also say, as reflected in the transcript, the fact that he was prompted on numerous occasions by the members of the White House Counsel's Office.

Chair JORDAN. I read that. We looked at the transcript this morning because we just got it this morning. I saw some of that. Chair now recognizes the gentlelady from Texas—or excuse me, Pennsylvania. I'm used to you being down there, the gentlelady from Pennsylvania.

Ms. DEAN. I got an upgrade.

Chair Jordan. OK.

Ms. DEAN. Thank you, Mr. Hur. Thank you, Chair. Thank you, Mr. Hur, for your service to our country, for your team's service in this investigation.

You determined after what you described as rigorous, detailed, and thorough analysis that President Biden should not be prosecuted for mishandling classified documents. In fact, everybody can take a look at your report. The very first sentence says as much. It says, quote, "We conclude that no criminal charges are warranted in this matter." Am I correct?

Mr. Hur. Yes.

Ms. Dean. That's the bottom line of this report, am I correct? Mr. Hur. That is the first sentence.

Ms. DEAN. It's the first sentence and the bottom line. There's an awful lot of misinformation that has been put forward by the press in some cases, and also, by the other side of this dais.

You didn't reach this decision because President Biden was sympathetic, is that correct?

Mr. Hur. I reached the decision based on the totality of the reasons that I set forth at length in my report.

Ms. Dean. Based on the evidence? While Mr. Trump, who is being prosecuted, is not sympathetic. You didn't calibrate any of that in there? Sympathetic, not sympathetic, it doesn't matter? It's

the evidence, right?

Mr. Hur. Congresswoman, I did not reach any assessments of the evidence in the Trump matter. To the extent that I considered the allegations against former President Trump, it was for purposes of hearing relevant precedence.

Ms. DEAN. I trust that, with your credibility, you were not out to get Mr. Trump, nor here to help Mr. Biden. I think it's about the evidence, and I think you say that over and over again in your

report.

Why did you decide President Biden should not be prosecuted? Your report tells us, quote, "We conclude the evidence is not sufficient to convict." Those are your words, is that correct?

Mr. Hur. I believe, if those exact words do not appear in the report, that is consistent with the gist of my conclusion.

Ms. DEAN. Very good. They are your exact words.

That was not the case with Donald Trump. You have a copy of your report today, don't you, in front of you?

Mr. HUR. I do.

Ms. DEAN. Would you read a portion of it for me? Your words, it is page 11, starting on line 3, beginning with the words, "Unlike the evidence involving Mr. Biden" Would you read the next few sentences?

Mr. Hur.

Unlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump, if proven, would present serious aggravating facts.

Ms. Dean. Keep going.

Mr. Hur. Congresswoman, I'm happy to have you read the words in my report.

Ms. DEAN. Well, it's your report. So, I think it actually is more fitting that you read those.

Mr. Hur.

Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite.

Ms. Dean. Keep going.

Mr. Hur.

According to the indictment, he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it.

Ms. Dean. You may stop there. Thank you.

You mentioned the indictment against Mr. Trump for mishandling sensitive classified national security information. That indictment says, at the end of his Presidency, Mr. Trump—I'm looking for my indictment here. I have it here. Hang on.

Mr. Trump himself ordered that boxes containing classified materials go to Mar-a-Lago, where he hosts tens of thousands of guests. Then, he kept the sensitive materials carelessly about the property.

As you can see here, classified documents ended up in a bathroom, a ballroom, on a floor strewn about.

When a grand jury subpoenaed the documents, what did Donald Trump do? The indictment again shows against him what he responded, by suggesting that his attorney falsely represented at the FBI and grand jury that he did not have documents called for by the subpoena.

He directed his employee Waltine Nauta to move boxes of the documents to conceal them from Mr. Trump's attorney and then lied to his attorney and the FBI and the grand jury, suggesting his attorney might hide or destroy documents called for by the grand jury investigation.

Mr. Hur, are those the type of aggravating facts to which you refer to in your report?

Mr. Hur. Congresswoman, the aggravating facts that I refer to in the report are set forth and described in my report on page 11.

Ms. DEAN. Very good. Mr. Hur, to the best of your knowledge and investigation, did President Biden ever direct an employee to lie about, hide, or destroy classified information? Yes or no?

Mr. Hur. We did not identify such evidence.

Ms. Dean. Did he do so himself?

Mr. Hur. We did not identify such evidence.

Ms. Dean. I want to give you a chance, since the transcript is out, to correct the record on an important point. Very sadly, your report, on page 208, says that Mr. Biden couldn't come up with the date, the year, of his son Beau Biden's death, when, in fact, in the transcript it shows that you asked him the month. Do you know what he said, Mr. Hur? He said, "Oh, God, May 30th."

Would you like to correct the record? His memory was pretty

firm on the month and the day.

Mr. Hur. Congresswoman, I don't believe that's correct with respect to the transcript, but if you could refer me to a specific page, I'd be happy to look.

Ms. DEAN. I've read about it in reporting.

Thank you. I yield back.

Mr. Armstrong. [Presiding.] The Chair now recognizes Mr. Kiley.

Mr. KILEY. Mr. Hur, why did the White House ask you to remove parts of the report? What was the reason they gave for that?

Mr. Hur. I don't have the letter in front of me, Congressman. I believed that, among the reasons, was that they contested, or that they asserted, that certain language in the report was inconsistent with DOJ policy.

Mr. KILEY. The day that your report came out the President gave a live news conference on national television. Did you watch that

news conference?

Mr. Hur. I watched the press conference, yes.

Mr. KILEY. What was your reaction to seeing the President personally attack you and your team?

Mr. Hur. Congressman, I'm here to talk about the work that went into the report and my declination decision and my explanation of it for the Attorney-

Mr. KILEY. It wasn't just the President. Anthony Coley, former spokesman for Merrick Garland, has said that "Democrats should focus their ire on Hur.

The President's personal attorney, Bob Bauer, said that your report is, "a shabby piece of work and a shoddy work product." Do you agree with that characterization of your report?

Mr. Hur. I disagree vehemently with that characterization of my report.

Mr. KILEY. I also disagree. I think it's very well-written, well-considered, and comprehensive.

Do you think it's appropriate for the administration to be attack-

ing the work of a Special Counsel that it appointed itself?

Mr. Hur. Congressman, I'm not going to comment on the propriety of the administration's reaction to my report. What I can tell you is that I stand by the report and the work that went into it.

Mr. KILEY. Today, the Ranking Member started his opening statement by saying, "Mr. Hur completely exonerated President Biden," and called your report "a total and complete exoneration." Mr. Hur, did you completely exonerate President Biden?

Mr. HUR. That is not what my report does.

Mr. KILEY. Was your report a total and complete exoneration?

Mr. Hur. That is not what the report says.

- Mr. KILEY. So, the statement by the Ranking Member was incorrect? Yes?
- Mr. Hur. As I said, the report is not an exoneration. That word does not appear in my report.
- Mr. KILEY. Based on the facts, and anticipation of defenses presented in your report, could a reasonable juror have voted to convict?
- Mr. Hur. As I said in the report, some reasonable jurors may have reached the inferences that the government would present in its case-in-chief.
- Mr. KILEY. So, a reasonable juror could have voted to convict, based on the facts that you—

Mr. Hur. Correct.

Mr. KILEY. If you were on the jury, would you have voted to convict?

Mr. Hur. I have not engaged in that thought exercise, Congressman. So, what I'd like to stick to is what's in the report, which is my assessment as a prosecutor.

Mr. KILEY. Sure. What you did find in the report is that the President—and you said this on page 200— "risked serious damage to America's national security" through his handling and mishandling of classified materials. You identified, quote, "a strong motive" for the way he handled those materials.

Two of the motives you cited was his desire to run for President and his desire to sell books. So, a reasonable inference for your report is that the President risked serious damage to America's national security to make money and advanced his personal political ambitions. Is that correct?

Mr. Hur. The report includes a description of the evidence and different inferences that reasonable jurors could draw from the evidence.

Mr. KILEY. You also note that the President described his predecessor's handling of classified materials as "totally irresponsible," and your report concludes that Mr. Biden's emphatic and unqualified conclusion that keeping marked classified documents unsecured in one's home is "totally irresponsible" applies equally to his own decision. Is that correct?

Mr. Hur. That language does appear in the report.

Mr. KILEY. You cite as a mitigating factor the fact that the President cooperated in the investigation. At the time that the investiga-

tion was happening and these acts of cooperation occurred, the Mar-a-Lago investigation was already a matter of public record. Correct?

Mr. Hur. I believe that's correct.

Mr. KILEY. So, we already had a public debate about the handling of classified documents and the potential application of criminal laws to that general set of circumstances?

Mr. Hur. I think that's fair.

Mr. KILEY. So, the President, when he decided to cooperate or not cooperate, had to know that this decision to cooperate or not cooperate would become known to the public and he would be judged accordingly. Is that correct?

Mr. Hur. I'm not in a position to opine on what was or was not

in the President's—

Mr. KILEY. It's relevant to your analysis as to whether or not it counts as a mitigating factor. He knew that he was going to have to be judged based on whether he cooperated or not. That would have lessened its value as a mitigating factor. So, did that in your analysis lessen its value?

Mr. Hur. We undertook a comprehensive assessment—

Mr. KILEY. So, that, that specific factor, did it lessen its value as a mitigating factor?

Mr. Hur. That and all facts relating to the President's coopera-

tion with our investigation.

Mr. KILEY. Another factor you discuss is a deterrence. You say that deterrence, actually, the factor actually counsels against bringing charges here. Because you said,

As for general deterrence, future Presidents and Vice Presidents are already likely to be deterred by the multiple recent criminal investigations, and one prosecution of current and former Presidents and Vice Presidents for mishandling classified documents.

So, that one prosecution, of course, is the indictment brought by Jack Smith. So, by the very terms of your analysis, Jack Smith's indictment actually counseled against and was—it counted against bringing charges in this case, is that correct?

Mr. Hur. I'm sorry, Congressman, I don't follow your drift there. Mr. Kiley. Well, you said that there's already deterrence because there's this prosecution out there in a prior case related to classified documents. So, we don't need to bring another case to establish deterrent value. That was the essence of your analysis. Correct?

Mr. Hur. Congressman, what I'll say is that I will stand by the way and the specific words, in which, I characterized my assessment of deterrence value of a case, under the Principles of Federal Prosecution that's on pages 254–255 of my report.

Mr. KILEY. Thank you. My time is out, but I'll just add the perverse implication here is that the administration, by the very terms of your analysis, actually made it less likely that the President would face charges by Jack Smith bringing an indictment.

Thank you, and I yield back.

Ms. DEAN. Mr. Chair, I have a unanimous consent request.

Mr. Armstrong. OK.

Ms. DEAN. Thank you. I ask unanimous consent to enter into the record two documents.

First, the superseding indictment against Donald Trump in the Southern District of Florida, where he is currently facing criminal charges on 40 counts, including obstruction of justice, lying to the FBI, his unlawful, willful retention of national defense information and withholding the concealment of documents from law enforcement, among other things. That was the shortened version.

My second document, to clarify for you, sir, Mr. Hur, from the transcription, page 82, the words are President Biden's. "What month did Beau die? Oh, God, May 30th." A searing memory.

I ask unanimous consent.

Mr. Armstrong. Without objection.

Mr. Armstrong. The gentlewoman from Georgia is recognized.

Ms. McBath. I thank you, Mr. Chair and Ranking Member, for this hearing.

Thank you so much for spending so much time with us today, Special Counsel Hur.

In accordance with the law, classified information must be treated with the highest respect and also protected. President Biden has made it clear during this investigation, and long before, that he agrees.

In response to Mr. Hur's report, he said, and I quote,

Over my career in public service, I have always worked to protect America's security. I take these issues seriously, and no one has ever questioned that.

The Special Counsel's report makes clear that this is, unfortunately, a common occurrence for classified documents to get swept up into Members of Congress' or Executive Branch, branch officials' personal effects.

As soon as President Biden discovered that he had mistakenly kept classified material, he took swift and immediate action to ensure that those materials were returned, and he fully cooperated with every step of your investigation.

President Biden's predecessor, when dealing with the issue of having classified materials, took very different steps. In 2016, Donald Trump declared, and I quote,

I'm going to enforce all the laws concerning the protection of classified information. No one will be above the law.

Yet, when his lawyer told him that it was going to be a crime if he didn't return the classified documents that he had, after NARA, the DOJ, and the FBI requested multiple times that Trump return the classified documents—yet, he hid them. Trump himself acknowledged that the same year that service members have risked their lives to acquire classified intelligence to protect our country—yet, he decided that his desire to keep these documents outweighed the potential loss of life for these people, if those papers got out.

Not only did Trump have a legal obligation, but he also had a moral obligation to all of us, and he failed to live up to that.

Mr. Hur, thank you for being here today.

I'd like to talk about your report regarding President Biden and some of your findings. For the sake of time, if you don't mind just answering yes or no.

Please answer this question: On page 187 of your report reads,

At no point did we find evidence that Mr. Biden intended or had reason to believe the information would be used to injure the United States or to benefit a foreign Nation.

Is this what you reported?

For the second time, please answer yes or—yes or no.

Mr. Hur. Congresswoman, you said page 187?

Ms. McBath. Of your report, yes.

Mr. Hur. Ah, yes. At no point did we find evidence. Yes, that language is on page 187.

Ms. McBath. OK. So, then, this is what you reported? Correct? Yes.

Mr. Hur. That language is in my report.

Ms. McBath. OK. Mr. Hur, you acknowledge, on page 12 of your report, that there are, as you said,

Numerous previous instances in which marked classified documents have been discovered intermixed with the personal papers of former Executive Branch officials and Members of Congress.

Please, once again, can you confirm for us, yes or no, to answer whether this is what you reported?

Mr. Hur. That language appears on page 12 of my report.

Ms. McBath. Page 323 also reads,

As a matter of historical context, there have been numerous previous incidents in which marked classified documents have been discovered intermixed with the personal papers of former Executive Branch officials and Members of Congress.

Is this what you reported?

Mr. Hur. That language appears on page 323.

Ms. McBath. Thank you.

Now, it's my understanding that this has happened before where classified documents are swept up into official papers. So, Mr. Hur, aside from Donald Trump, are you aware of similar instances in history where officials who have had these classified documents engaged in a months-long, elaborate scheme to hide those documents from Federal law enforcement officials?

Mr. Hur. The one case that comes to mind that we do address in the report is the prosecution of General Petraeus.

Ms. McBath. So, are these historical examples, aside from Donald Trump, where officials instructed their aides to delete evidence pertaining to those classified documents?

Mr. Hur. That was not present in the Petraeus prosecution, no. Ms. McBath. So, the American people deserve, as we've always been saying all along here, that we deserve a leader who will not put themselves above the law, but will work with law enforcement and hold themselves accountable.

Thank you, and I yield back.

Mr. Armstrong. The gentlewoman from Wyoming is recognized. Ms. Hageman. Special Counsel Hur, when you determined that no criminal charges should be brought against President Biden in this matter, you focused on the specific facts surrounding the classified documents, where President Biden stored them, and on his memory and age.

You wrote that President Biden's, quote,

Memory was significantly limited during his recorded interviews with the ghostwriter in 2017 and during his interview with the Special Counsel's Office in 2023.

You also expressed concern that prospective jurors would be persuaded by President Biden's presentation "as a sympathetic, well-meaning, elderly man with a poor memory."

Your assessment, however, was focused on how President Biden would currently present to a jury, if he stood trial, is that correct?

Mr. Hur. That was an element of my explanation to the Attorney General about my decision. It was not the only element.

Ms. HAGEMAN. OK. That wasn't my question, but it was one of the things that we were considering, was his current state of mind, his current memory? Correct?

Mr. Hur. One of the things that I considered would be how, if a trial—whenever a trial, theoretically, were to be held, how President Biden would present himself to the jury, if he elected to testify.

Ms. Hageman. OK. You did not compare President Biden's current memory or condition with his memory or condition when he was in the Senate or when he left the Vice Presidency and took the classified documents subject to your investigation, is that right?

Mr. Hur. Actually, I believe that's not correct, Congresswoman. One of the things that's in the report is an assessment of the President's memory, based on recordings from the 2016–2017 timeframe, recordings of conversations between Mr. Biden and his ghostwriter, and comparing that with the President's memory that he exhibited during our interview of him in October 2023. So, there was a comparison there.

Ms. Hageman. OK. So, unless there was some issue undisclosed to the American people during his 50 years in office, you found that Mr. Biden fully understood his legal responsibility related to the handling of classified materials, which is why you concluded in your report that Mr. Biden, quote, "willfully retained and disclosed classified materials after his Vice Presidency when he was a private citizen." You State that on page 1, correct?

Mr. Hur. I believe that what I stated on page 1 was that we

Mr. Hur. I believe that what I stated on page 1 was that we identified evidence that Mr. Biden willfully retained classified information after the end of his Vice Presidency, but, ultimately, we concluded that the evidence was insufficient to warrant—

Ms. HAGEMAN. I understand that. Please listen to my question. What, what I'm getting at is that Mr. Biden fully understood that he could not keep classified information at his home, as both a former Senator and Vice President. Isn't that right? He understood that, correct?

Mr. Hur. My understanding is that, based on the evidence, my assessment was that a jury—

Ms. HAGEMAN. That isn't what my question was. Please listen to my question. My question was that Mr. Biden understood when he was a Senator and Vice President that he could not keep classified materials at his home, at his garage, and in other offices. Is that fair?

Mr. Hur. I don't think that's accurate, Congresswoman, because when Mr. Biden was Vice President, he was authorized to have classified, classified material in his home.

Ms. HAGEMAN. After he left, he knew that he was not entitled

to keep classified information at his home. Correct?

Mr. Hur. After he left, there is evidence to suggest that he knew that he could not legally have classified information at his home. However, there is evidence with respect to his notebooks that he believed he was authorized to keep the notebooks at home, based on precedent.

Ms. Hageman. Based on precedent. I guess the way that I would put it is this: President Biden knew better. He knew that he wasn't entitled to keep these documents from the—when he was a Senator

and he knew he wasn't entitled to keep these documents after he had had left the Vice Presidency.

Because he's now suffering from an impaired memory, as you so

delicately put it, he got away with it. Is that fair?

Mr. Hur. Congresswoman, what, what I stated in my, in my report is that there's certainly evidence that some jurors could infer to suggest that Mr. Biden willfully retained and disclosed national defense information. In my judgment, the likely outcome of a trial, the probable outcome of a trial would not be a conviction.

Ms. HAGEMAN. Mr. Hur, I have represented a variety of clients over the years in actions against the Federal Government over, in fact, several decades of time. It's been my experience that the Federal Government, and the DOJ specifically, has essentially unlimited resources to go after and prosecute citizens and will spare ab-

solutely no expense in doing so.

It has also been my experience that the DOJ is not only overly aggressive in these cases but makes it clear that part of the reason for such aggression is to make an example of the poor soul who is the subject of such action. In other words, so that other people will not engage in this same kind of conduct.

Mr. Hur, having been a long-term DOJ prosecutor, can you please explain why those people without the last name of Clinton or Biden are typically treated quite differently, and seem to be the only ones who are never held accountable for violating the law?

Mr. Hur. Congresswoman, one of the things that I explain in my report is the fact that there are historical precedents with respect to former occupants of the White House and their retention of classified materials after they leave-

Ms. HAGEMAN. I'm asking specifically about Ms. Clinton and—

Mr. Armstrong. The gentlewoman's time has expired. Ms. HAGEMAN. Ms. Hillary Clinton and Joe Biden.

Mr. Hur. Congresswoman, I don't have any opinion to articulate with respect to the investigation relating to Ms. Clinton.

Ms. HAGEMAN. I yield back. Mr. Armstrong. The gentlewoman from Texas is recognized.

Ms. ESCOBAR. Mr. Hur, Special Counsel Jack Smith has charged Donald Trump with 40 counts related to his unlawful possession of classified documents. The most serious charge carries a penalty of 20 years in prison. According to the Trump indictment, Trump stored those documents at Mar-a-Lago, which, quote, "hosted events for tens of thousands of members and guests.

The indictment continues, quote,

Trump stored his boxes containing classified documents in various locations at the Mar-a-Lago club, including in a ballroom, a bathroom, and a shower, an office space, his bedroom, and his storage room.

Mar-a-Lago is more than a mansion or a compound. It is a club with membership—with a membership program that sells access to the public. It has hundreds of people moving through it at any given time. Staffing it alone required 150 staff members. While those classified national security documents sat in places like his ballroom, Trump hosted more than 150 social events, like weddings and movie premiers, which thousands of people attended.
In brief, Special Counsel Smith has alleged that Trump willfully

and knowingly took highly classified documents to a location accessible by tens of thousands of people.

Mr. Hur, was President Biden's residence accessible to tens of thousands of people?

Mr. Hur. No.

Ms. ESCOBAR. Did President Biden ever bring tens of thousands of people into spaces where he stored classified material?

Mr. Hur. Not to my knowledge.

Ms. ESCOBAR. Did Joe Biden advertise and sell memberships to his home that would allow members of the public to have access? Mr. Hur. Not that I'm aware of.

Ms. Escobar. Did your investigation find that Joe Biden ever hosted movie premieres at his home while classified documents were stored there?

Mr. Hur. No.

Ms. ESCOBAR. Moving on, among the 150 staff members working at Mar-a-Lago was a Trump aide named Walt Nauta. According to Special Counsel Smith, Trump ordered Nauta to move boxes of documents, so that they could not be found by people looking for them.

Mr. Hur, did President Biden ever direct his staff to move documents, so that you or the FBI could not find them?

Mr. Hur. We did not identify evidence of that.

Ms. ESCOBAR. In fact, according to your report, as soon as Bob Bauer discovered material in President Biden's residence, he contacted John Lausch, and the President immediately consented to an FBI search of his home. Is that correct?

Mr. Hur. Our report does State that.

Ms. ESCOBAR. You found no evidence that any documents were moved prior to that search. Is that correct?

Mr. Hur. Correct.

Ms. ESCOBAR. That's in stark contrast to Donald Trump. President Biden did not obstruct your investigation. He was fully compliant, and with access to the millions of documents he gave you and the dozens of hours of witness interviews he facilitated, you were able to fully and totally exonerate him of any criminal wrongdoing. I thank you, Mr. Hur.

Before I yield back, Mr. Chair, I ask unanimous consent to enter into the record an excerpt from the Committee's transcribed interview with Steven D'Antuono, former Assistant Director in charge of the FBI Washington Field Office, on June 7, 2023, in which Mr. D'Antuono explained that the FBI executed a search warrant for classified material at Mar-a-Lago because there was probable cause to believe that Donald Trump did not fully comply with a subpoena to turn over classified documents.

Chair JORDAN. [Presiding.] Without objection.

Ms. ESCOBAR. Thank you.

Ms. ESCOBAR. Mr. Chair, I yield back.

Chair JORDAN. The gentlelady yields back.

The gentlelady from Florida is recognized—

Mr. NADLER. Mr. Chair?

Chair JORDAN. Oh, excuse me. The gentleman from—the Ranking Member is recognized.

Mr. NADLER. Mr. Chair, I have three unanimous consent requests.

Chair JORDAN. All right.

Mr. Nadler. First, I ask unanimous consent to enter into the record the publisher's webpage for President Biden's 2017 book, "Promise Me, Dad," which shows that the book is a deeply moving memoir about the year President Biden's son Beau died.

I also ask unanimous consent to enter page 97 of Mr. Hur's report, which says that President Biden's book is not known to contain classified information.

Finally, I ask unanimous consent to enter into the record the February 5, 2024, letter from President Biden's counsel to Special Counsel Hur that clarifies that President Biden's 2017 book, quote, "does not contain classified information; there has never been any suggestion to the contrary."

Chair JORDAN. Without objection.

Chair JORDAN. The Chair now recognizes the gentlelady from Florida, Ms. Lee.

Ms. LEE. Thank you, Mr. Chair.

Thank you to Special Counsel Hur for joining us here today to discuss your investigation regarding President Biden's mishandling of classified documents. This has become an issue of great interest to all Americans and, of course, to all of us here today.

As is outlined in your report, despite the discovery of confidential and top-secret records located in the President's personal residence in Delaware, including in his garage, office, and basement, the Department declined prosecution.

My colleagues' questions today have focused on the highlights from your report; specifically, referring to President Biden's mental capacity, his willful disregard for the law as a private citizen, and how he would be perceived if presented to a jury of his peers.

Dependent on—and I'll use your words from the report—how this "sympathetic, well-meaning, elderly man with a poor memory," handled and managed the storage of these Confidential documents, the national security of the United States might have been put at great risk because of the President's behavior.

So, one of the things we must consider today is how we can ensure that our national security will not be continually put at risk when under the leadership of this same "well-meaning, elderly man with a poor memory."

Since the release of the report, to your knowledge, has the Justice Department started to analyze a damage assessment of what may have been disclosed by these documents being mishandled and

any ongoing national security risks from the inappropriate storage and retention of the documents?

Mr. Hur. Congresswoman, my understanding is that such a damage assessment is underway in coordination and cooperation with the members of the intelligence community.

Ms. Lee. Do you today for us have any information about the status of that investigation or how long it might take to conclude?

Mr. Hur. I do not, Congresswoman.

Ms. Lee. I'd like to turn your attention to a discussion of the distinction between proving the underlying elements of an offense and

the concept of an obstruction of justice charge.

Is it correct, Special Counsel Hur, that in some circumstances, as a Federal prosecutor, you may investigate the underlying offense, an underlying offense, choose not to charge that offense, but still have developed sufficient evidence to charge a defendant with obstruction of justice?

Mr. Hur. I think, as a matter of law, theoretically, that could occur. I can't bring to mind specific examples of that happening, but I suppose that, if that were to happen, it would be a more difficult case to try from a prosecutor's perspective.

Ms. Lee. Well, the elements are distinct, though, are they not?

Mr. Hur. They are distinct elements.

Ms. Lee. Isn't it similar to a case where a Federal prosecutor undergoes an investigation, and ultimately, doesn't pursue the original charge they were investigating, but during the course of the investigation concludes that a false statement was made to a Federal law enforcement officer, and brings a charge under 1001?

Mr. Hur. That could happen. Ms. Lee. Yes. Again, there, too, the elements would be different?

Mr. Hur. Correct.

Ms. Lee. In reaching your final decision related to the declination or the recommendation to decline prosecution, you considered both the underlying elements of the offenses at issue, and also, the Principles of Federal Prosecution? Is that right?

Mr. Hur. Correct.

Ms. Lee. Right. Now, the Principles of Federal Prosecution, those are things that may vary case to case, is that right?

Mr. Hur. The determinations under the Principles of Federal Prosecution are very fact- and circumstance-dependent.

Ms. Lee. The elements of the criminal offense are not. Isn't that also correct?

Mr. Hur. Elements are defined by law, and they do not vary from case to case.

Ms. Lee. Thus, those elements of the underlying criminal offense would be exactly the same from one defendant to the next, to the next. Isn't that right?

Mr. Hur. Yes.

Ms. Lee. So, you would expect, would you not, that a prosecutor who was considering the underlying offenses that you were considering here would be looking at exactly the same elements and requirements of proof that you did on the underlying charges?

Mr. Hur. Prosecutors assessing their cases under the same statutes must consider the same elements with respect to those stat-

utes.

Ms. Lee. All right. Thank you, Special Counsel Hur.

Then, if we could turn back to the concept of those Principles of Federal Prosecution, those are the additional factors, aggravating or mitigating, that you might consider in ultimately reaching a charge in the decision here, is that right?

Mr. Hur. They do include such things that are referred to as ag-

gravating and mitigating circumstances.

Ms. LEE. There's one thing I want to go back to, though, to be clear. It's been said today that your report is tantamount to a total exoneration of President Biden. That's not correct, is it?

Mr. Hur. That is not correct.

Ms. LEE. All right. Thank you, sir.

I yield the balance of my time to the Chair. Chair JORDAN. The gentlelady yields back.

The Chair now recognizes the gentlelady from North Carolina.

Ms. Ross. Thank you very much, Mr. Chair.

Thank you, Mr. Hur, also, for your patience. You are almost to,

what, 3½ hours, so almost as much as Biden.

Throughout your report you repeated, you repeatedly cite and credit a number of innocent explanations for the presence of classified materials at the President's home and other locations, innocent explanations that you admit that you cannot refute. I would like to just focus on a few of them. I will give you citations.

One of these explanations for the presence of classified documents is that a member of the President's staff maintained those documents when he was the Vice President and then mistakenly included them in sets of documents that were later sent to locations such as the Penn Biden Center and the University of Delaware. Is that correct?

Mr. Hur. I believe that's correct. If you have a specific page number for me, that would help the matter.

Ms. Ross. We will get you one. That would be great.

You also found that another innocent explanation to be more likely than a criminal explanation for the presence of classified documents that were found at the Penn Biden Center and the University of Delaware. Is that correct?

Mr. Hur. Correct. Ms. Ross. Right.

Then, let's talk about the documents in the President's garage. As you noted, a reasonable juror could conclude that the location of the documents, surrounded by household junk, is not a place where a person knowingly and intentionally stores classified documents that are critical to his legacy. Instead, it looks more like a place where a person stores classified documents that he is unaware of. That is on page 209 of your report. Correct?

Mr. Hur. That is something that a reasonable juror could factor into his or her consideration of whether or not the President had criminal, willful intention.

Ms. Ross. Right.

You also noted that President Biden was allowed to have classified documents in his home for eight years as Vice President and then again when he was President, and that he also had layers of staff who were responsible for assembling, carrying, storing, and retrieving these types of classified documents?

Mr. Hur. Correct.

Ms. Ross. Because of these facts, you determined it was,

... entirely possible that the President did not know he still had some of these documents in his home when his Vice Presidency ended in 2017.

That is on page 215. Entirely possible?

Mr. Hur. Entirely possible.

Ms. Ross. Yes. That is the citation. I am going to go, keep going—

Mr. Hur. OK.

Ms. Ross. —because my time is running while you are looking. So, you cite, you also cite the President's cooperation with your investigation as evidence that he did not have criminal intent. I want to quote you here because this is important. You wrote, page 210.

Most significantly, Mr. Biden self-reported to the government that the Afghanistan documents were in his Delaware garage and consented to the search of his house to retrieve them and other, and other classified materials. He also consented to searches of other locations. And later in the investigation he participated in an interview with our office that lasted more than five hours, and provided written answers to most of our written questions. Many will conclude that a President who knew he was illegally storing classified documents in his home would not have allowed such a search of his home to discover those documents and then answer the government's questions afterwards.

Then you said that you expect this argument about the President's innocence to carry real force for many reasonable jurors because, in your words,

Reasonable jurors will conclude that Mr. Biden, a powerful, sophisticated person, with access to the best advice in the world, would not have handed the government classified documents from his own home on a silver platter if he had willfully retained those documents for years. Just as a person who destroys evidence and lies often proves his guilt, a person who produces evidence and cooperates will seem by many to be innocent.

Again page 210.

As you said in your report, it would be reasonable for a juror to reach that conclusion, and that a president advised by counsel would not have informed investigators of the presence of classified documents in his home, or invited agents in the search of every nook and cranny of his home or other residence, or sat for an hours-long interview, or answered pages of written questions all going to his full cooperation and his lack of criminal intent.

Thank you, Mr. Chair. I yield back.

Chair JORDAN. The gentlelady yields back.

Mr. Hur, we have got three more we are going to, and then we are going to take votes, and then we will just have a couple more after that.

So, I am going to start with the gentleman from Kentucky is recognized.

Mr. Massie. I yield to the Chair.

Chair JORDAN. I thank the gentleman for yielding.

Mr. Hur, are you opposed to the U.S. Congress having access to the audiotapes of the people you interviewed during your investigation?

Mr. Hur. Chair, I am not in a position to articulate an opinion one way or the other. That is not really up to me. I am a former

employee of the Department of Justice. I would refer you to the White House and DOJ leadership.

Chair JORDAN. You are an accomplished lawyer. Is there any reason why we shouldn't, why the U.S. Congress shouldn't have access to the same information you had access to and that was the basis of your decision?

Mr. Hur. Chair, it is not for me to opine on what materials.

Chair JORDAN. Well, the Justice Department released the transcripts the day of the hearing. It would be nice if we had them in a better time for the Committee to prepare for our questioning for you. They released them today. The White House and Justice Department released them today. It would be nice if we actually had the audiotapes too.

Again, is there any reason why you can see why the American people and their representatives in the U.S. Congress should not have access to those tapes?

Mr. Hur. Chair, what I can tell you is that my assessment that went into my conclusions that I described in my report was based not solely on the transcripts. It was based on all the evidence, including the audio recordings.

Chair JORDAN. Great point. That is where I was going.

So, this was valuable evidence for you, as the Special Counsel named to investigate this issue, valuable evidence for you to reach your conclusion and the statements you put in your report.

All I am asking is shouldn't the U.S. Congress have access to that same information?

Mr. Hur. Chair, again, it is not for me to weigh into what information Congress should or should not have. What I will tell you is that the audio recordings were part of the evidence, of course, that I considered in coming to my conclusion.

that I considered in coming to my conclusion.

Chair JORDAN. I will yield back to the gentleman from Kentucky and hope he can yield to the gentleman from North Dakota.

Mr. MASSIE. I yield to the gentleman from North Dakota.

Mr. ARMSTRONG. Thank you.

Mr. Hur, in Chapter 8 of your book, or your report, you detail that Mr. Biden retained in his Delaware basement classified documents relating back to his time as a U.S. Senator in the seventies; correct?

Mr. Hur. Correct.

Mr. ARMSTRONG. Even more Senate papers dating back to the seventies through 1991 were found in the University of Delaware Morris Libraries, and in the Biden Senate Papers Collections; correct?

Mr. Hur. Correct.

Mr. ARMSTRONG. Even more Senate papers dating back to the 1970s–1980s were found in Biden's Delaware garage?

Mr. Hur. I believe that's, yes, that's correct.

Mr. Armstrong.

Mr. Biden had nearly 50 years' experience dealing with classified information, including as a member of the Senate Select Committee on Intelligence, and member and chairman of the Senate Committee on Judiciary, a member and chairman of the Senate Committee on Foreign Relations, and Vice President of the United States, and that he was deeply familiar with the measures taken to safeguard information and the reasons for them.

Correct?

Mr. Hur. That language certainly sounds familiar, Congressman.

If you have a page citation for me, I can confirm.

Mr. Armstrong. As Vice President is it correct that in 2011, Mr. Biden received advice from the staff about the need to secure classified information in the form of notes?

Mr. Hur. Correct.

Mr. Armstrong. Including his first counsel, Cynthia Hogan?

Mr. Hur. Correct.

Mr. ARMSTRONG. He was advised in writing in 2011 by Hogan that classified notes must be maintained in secure safes and stored in secure facilities?

Mr. Hur. Correct.

Mr. ARMSTRONG. His second counsel John McGrail also advised Biden that all of Mr. Biden's records, including his notes, would be sent to the National Archives, and Biden understood and accepted that. Correct?

Mr. Hur. That's correct, with the exception that Mr. McGrail was Vice President Biden's final counsel, not his second one.

Mr. Armstrong. All right.

On his way out, Mr. Biden was also appraised of his obligations by the National Archives staff twice more that his classified notes should be secured in a SCIF?

Mr. Hur. That particular fact is not immediately coming to mind, Congressman. Give us a page citation and I can confirm it for you.

Mr. ARMSTRONG. Well, did Mr. Biden have 30 years' experience handling this information, he received advice from at least two separate counsels, the National Archives staff, he has demonstrated enough knowledge of the law to attack President Trump in public over the same exact issue in detail? This is where I got into this. I just have a problem with this.

In your report and this testimony, a reasonable person would conclude that Mr. Biden knowingly retained national defense information and failed to deliver it to an appropriate government official, and that he knew his conduct was unlawful. I think that is where we end up here and that is what the point is.

Over the last three election cycles there has only been three people who have run for President: Hillary Clinton, Joe Biden, and Donald Trump. All three of them have been accused of mishandling classified documents. Only one of them has been prosecuted.

That is what the American people see. That is what the Amer-

ican people see. That is what we see.

We had Hillary Clinton, who ran a program called BleachBit on her server. They used hammers to destroy evidence.

Joe Biden has a 50-year history of misplacing classified docu-

ments in numerous different positions, places.

All these cases have the same underlying elements of the crime, the same fact patterns. Yet, we only see one person being prosecuted.

With that, I yield back to the gentleman from Kentucky.

Mr. MASSIE. My time has expired. I yield back. Chair JORDAN. The gentleman yields back.

The Ranking Member is recognized for a unanimous consent.

Mr. NADLER. Thank you, Mr. Chair.

Mr. Chair, in light of what the Chair previously said, I ask unanimous consent that all transcribed interviews taken by the Committee this year be made public.

Chair JORDAN. There is an objection to that.

The gentlelady from Missouri is recognized for five minutes.

Ms. Bush. Thank you, Mr. Chair. Thank you for being here, Mr. Hur.

St. Louis and I are here today once again to focus on the real issues that affect our communities instead of partisan hit jobs. Let me start by saying that the potential mishandling of classified information is a serious issue. I believe it was appropriate for the Attorney General to appoint both Special Counsels in the Biden and Trump cases.

As my colleagues have pointed out, President Biden fully complied with the investigation conducted by Special Counsel Hur, who did not find evidence sufficient to warrant criminal charges.

Despite this outcome, Republicans have used the Special Counsel's Report to further their longstanding effort to reelect, reelect the former White Supremacist-in-Chief Donald Trump, who faces 40 criminal charges related to the mishandling of classified documents, including obstruction of justice.

While President Biden returned all the classified material and complied with the Special Counsel's investigation, let's remind ourselves what Donald Trump has said and done.

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He refused to turn over the classified documents in his possession to the National Archives.

He is on tape sharing documents he said he could have declassified when he was President.

He wrongly claimed in an interview that the Presidential Records Act allows him to do whatever he wants, and he was allowed to do everything he did.

He also said on his right-wing social media platform, "I'm allowed to do all of this."

He continues to admit to his possession of these documents on the campaign trail.

So, this hearing is not a good faith oversight effort. It is just the latest in a long line of dysfunctional and destructive actions taken by this Republican majority. They don't care about responsible governance or making people's lives better. They don't have an affirmative agenda.

They are throwing whatever they can at the wall and hoping it sticks. They have zero credibility to talk about mental acuity when they support Donald Trump, the same Donald Trump who mixes up Joe Biden and Barrack Obama, and Nikki Haley and Nancy Pelosi, the same Donald Trump who incorrectly pronounced the words Venezuela, respected, and United States, the same Donald Trump who calls January 6th defendants hostages, and the same Donald Trump who believed bleach injections could treat COVID–19.

It is deeply hypocritical for anyone who champions this man for the Presidency to talk about the mental acuity of anyone else.

This is nothing new. This has been a consistent pattern of the Republican majority in this Congress, from the sham impeachment

investigation that has completely collapsed, to the absurd impeachment of Secretary Mayorkas, Republicans have solely focused on destroying the incumbent President, destroying the Democratic Party, destroying progressive movements for social justice, all so that they can reelect one of the worst President of all time.

Now, it is well known that I have disagreement with President Biden on certain issues. My concerns are rooted in the desire to resolve policy matters and help him take better positions that save more lives. That is not what Republicans are doing. That is not what these investigations and attacks are about. They are trying everything they can to turn back the clock on our rights and our freedoms. We cannot take the bait.

Let's focus on policy. Let's focus on substance. Let's focus on saving and improving the lives of our constituents, not misusing the precious time and resources of this Committee, not being dishonest just because it serves our political interests. We are better than that, and our country deserves better than all of this.

I will continue to reject these absurd distractions from the investments we need in the communities that we represent. Let's focus on that, instead of this irresponsible and easily repudiated Republican clown show.

Thank you. I yield back.

Mr. MÖRAN. [Presiding.] The gentlelady yields back.

I recognize myself for five minutes.

Special Counsel Hur, thank you for a number of things.

First, thank you for agreeing to testify today.

Second, thank you also for sharing your family story at the beginning of your testimony. It is an extraordinary story of them coming to America.

Third, let me also thank you for your in-depth investigation and your detailed report, and generally for your service as Special Counsel. It is not something that I think many people would look for, and certainly comes with a lot of burdens. So, thank you for your work.

In your opening statement you described your investigation as "thorough and independent." I agree with that.

One where you attempted to give "rigorous and detailed analysis." I also agree with that.

One where you say you "must share your work," which we very much appreciate today. We don't normally see that.

Did I recall your opening statement correctly as it relates to those quotes?

Mr. Hur. Yes, sir. You did.

Mr. MORAN. In fact, as part of your investigation you interviewed about 150 different witnesses, you looked at millions of different documents, because you wanted to do a thorough investigation. Isn't that true?

Mr. Hur. Correct.

Mr. MORAN. You did this because you took your investigation extremely seriously and you wanted to reach accurate conclusions. Correct?

Mr. Hur. Very much.

Mr. MORAN. Then let's review some of your specific findings regarding the issues pertaining to competency and mental capacity of

President Biden because, as you say, this is very important to whether or not there was criminal willful intent.

As you can see, I have set forth a number of different quotes up here on this board that I prepared, some of which I will read to

Page 5 you say Mr. Biden's, quote, "Mr. Biden's memory was significantly limited." Then, again on page 6 you say, "Mr. Biden would likely present himself to a jury as a sympathetic, well-meaning elderly man with a poor memory." Then, on page 207 you say, "Mr. Biden's memory also appeared to have significant limitations." Then, again on page 208, "He did not remember when he was Vice President, and he did not remember even within several years when his son Bo died."

You finally make the statement on page 248, "For these jurors Mr. Biden's apparent lapses and failures in February and April 2017, will likely appear consistent with the diminished capacity

and faulty memory he showed."

Those were astounding conclusions to me. As I looked through those quotes I would say I harkened back to my time before Congress. I was a judge, and one of the things that I oversaw was guardianship. Frankly, when I read your, when I read your conclusions red flags began to go up in my mind because I oversaw hundreds of guardianships back in Texas. As I saw your conclusions I began to wonder what does the D.C. Statute say about guardianships and how you define an incapacitated individual in Washington, DC.

I want to show you this statute because I presume, are you familiar with the statute at all?

Mr. Hur. I am not, Congressman.

Mr. MORAN. So, I didn't think you had probably reviewed that. So, let me just read to you some of these, some of the definitions here.

An adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his financial resources.

That is the first part of the definition of incapacity, an incapacitated individual under the guardian statute in the District of Columbia. Quite frankly, I see tons of overlap from what you set forth in your testimony, in your written report, and the definition here. The phrases are almost identical.

I would posit that if he cannot manage national top-secret resources, I am not sure how he can manage his personal financial resources. Given your report's findings that his memory was "significantly limited" and that he is a person with "diminished faculties," and with "faulty memory," it makes me wonder how close he is coming to meeting this definition of an incapacitated individual such that he should have a guardian appointed by the D.C. courts for her personhood.

There is at least, I believe, a prima facie argument to say that there is substantial evidence to indicate such. You mentioned it is not just what you have written in the report, but it is the demeanor of President Biden as you interviewed him.

I will say in conclusion, whether he does or does not meet this definition, I believe your findings raise significant concerns about

his current fitness for the Office of President, and certainly his fitness going forward in the future.

I appreciate the fact that you were brazen enough to raise this issue in this report because you knew this would be significant in your findings, but you did so based on a very significant, very detailed, very thorough independent report. I praise you for that, doing your duty in such a way.

Thank you, Special Counsel.

I yield back.

Chair JORDAN. [Presiding.] The gentleman yields back.

Mr. Hur, we have votes on the floor. We have a few more Members who will do their five minutes of questioning.

So, we are going to recess. Then we will convene 10 minutes after the conclusion of the last vote. I believe we only have a couple votes. Is that right? Two votes. So, you know Congress, that will take a while. We will get back here as soon as we can.

There is food in the back room for—I think we still have some left that you are welcome to.

With that, we stand in recess until 10 minutes after the last vote.

[Recess.]

Chair JORDAN. The Committee will come to order. I see a former colleague of ours, Mr. Brat from the great State of Virginia. Welcome to the Committee.

Mr. Hur, we will now go to the gentleman from Maryland for five minutes, Mr. Ivey.

Mr. IVEY. Thank you, Mr. Chair.

Mr. Hur, appreciate you coming in today. I did want to deal with one preliminary matter, which is the issue of the release of the transcript. I have heard complaints from my Republican colleagues about the White House only releasing the transcript from the Biden interview this morning, but I have to note that there are I think over 90 transcripts that are being held by the majority here of the Judiciary Committee and Oversight Committee for interviews that we all care about. They all go directly to issues with respect to the alleged impeachment inquiry. That is kind of the pot calling the kettle black, it seems to me, as an understatement.

I noted too that when the Ranking Member requested the majority release of the transcripts, the Chair objected. So, I hope that we can move forward in the mode of cooperation sharing information. I think it is just reasonable to do.

Mr. Hur, I wanted to thank you again for the work you did. I don't agree with everything you wrote in the report, but that is the nature of the business, I think. I did want to ask you about this: I know you started off with, "In the first line Executive Summary we conclude that no criminal charges are warranted in this matter." I take it that is still your position today.

Mr. Hur. Yes, it is.

Mr. IVEY. All right. You also noted a little bit below that, "For the reasons summarized below we conclude that the evidence does not establish Mr. Biden's guilt beyond a reasonable doubt." You still share that—still hold that view?

Mr. Hur. I do.

Mr. IVEY. OK. Even though you objected to the use of the word "exonerated," from your perspective he has been cleared of all criminal charges in your investigation. Is that fair?

Mr. Hur. I determined that based on the evidence criminal

charges are not warranted.

Mr. IVEY. OK. I did want to go to the issue of material distinctions that you raised in your report between President Biden and former President Trump. We have got a document up here that lays some of it out. You have asked—answered some questions about this already, but I think it seemed to be highly relevant in your analysis that President Biden cooperated and I wanted to walk through a couple of those points.

One is that he turned in classified documents to the National Archives and to the Department of Justice upon request. Is that fair?

Mr. Hur. That was a factor that we considered, yes, Congress-

Mr. IVEY. All right. He cooperated with your investigation?

Mr. Hur. Yes.

Mr. IVEY. Consented to the search of multiple locations including his house?

Mr. Hur. Correct.

Mr. IVEY. Sat for a voluntary interview?

Mr. Hur. Yes. Mr. Ivey. That was five hours over two days?

Mr. Hur. A little over five hours over two days.

Mr. IVEY. OK. Turned over and allowed investigators to review handwritten notebooks he believed to be his personal property?

Mr. Hur. Correct.

Mr. IVEY. Now, with respect to the comparison with former President Trump, and I believe this is on page 11, which is still in our Executive Summary—and I will just read part of this to you.

Unlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump if proven would present serious aggravating facts. Most notably, after being given multiple chances to return classified documents and avoid prosecution Mr. Trump allegedly did the opposite. According to the indictment he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it. In contrast Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations including his homes, sat for a voluntary interview, and in other ways cooperated with his investigation.

That is from page 11 of your report?

Mr. Hur. I see that language on page 11.

Mr. IVEY. All right. You still stand by that language?

Mr. Hur. I do, sir.

Mr. IVEY. OK. This is your report? You take full responsibility for everything that is in the document?

Mr. Hur. I do. I stand by every word in it.

Mr. IVEY. All right. I wanted to ask you a couple of questions. One is with respect to the surprising line of questions you got right before we broke about guardianship, which seems to me like a dramatic stretch of the-anything that was remotely involved in your

Did you raise any kind of issues about Mr. Biden needing guardianship or anything along those lines?

Mr. Hur. Nothing relating to guardianship appeared—is in my

Mr. IVEY. OK. So, I guess you made the one point about him being an elderly man with poor memory, but are you saying youdid you say anywhere in your report that you thought not only would he be unfit to handle his own finances, but he would be unfit for public office?

Mr. Hur. My report did not include any opinions on those issues. Mr. Ivey. OK. I see my time is exhausted, but thank you again for your testimony. I appreciate your efforts.

Chair JORDAN. The gentleman yields back. The gentleman from Virginia is recognized. Mr. VAN DREW. I yield to the Chair briefly.

Chair JORDAN. I thank the gentleman for yielding.

I will just point out Mr. Ivey raised the issue of transcripts. He has complete access to every transcript that we have done in the congressional investigation. You can go—he could show up for all the depositions like—frankly, I show for most of those. So, he has complete access to that.

What we don't have is access to the transcripts of all the witnesses. We only have Mr. Biden. We don't have access to the audio

tapes of all the witnesses-

Mr. IVEY. Will the gentleman yield?

Chair JORDAN. It is not my time. I yield back to the gentleman from Virginia.

Mr. IVEY. You are speaking, but it is not your time? Mr. VAN DREW. It is my time.

Chair JORDAN. He yielded to me.

Mr. IVEY. All right.

Mr. VAN DREW. I thank the gentleman.

Special Counsel Hur, thank you for being here. Your story is an impressive one. Your achievements are impressive as well. You have been a prosecutor for many years, correct? Mr. Hur. Yes, sir.

Mr. VAN DREW. I was not a prosecutor for more than a couple of years, but I still remember my record in jury trials. Do you remember your record?

Mr. HUR. It will take me a little time to reconstruct, but I think

I could get there.

Mr. VAN DREW. Is it above 500?

 $Mr.\ Hur.\ It$ is above 500, yes, sir. Mr. Van Drew. OK. Well, I am curious because the evidence that you outlined in your report is pretty significant. "When it comes to evidence that after his Vice Presidency," and I am reading from your report,

Mr. Biden willfully retained marked classified documents about Afghanistan and unmarked classified handwritten notes in his notebooks, both of which he stored in unsecured places in his home.

Further, you noted that,

There's evidence that he willfully retained classified Afghanistan documents including the Thanksgiving memo and had a strong motive to keep such classified documents.

You outline what that motive is. Can you tell me, what is the motive for keeping the Thanksgiving Day memo?

Mr. Hur. One of the motives that we addressed in the report was that the issue of whether or not a troop surge should be sent to Afghanistan in 2009 was a hotly contested and debated issue within the Obama Administration back in 2009 and one in which then Vice President Biden had a significant role. He felt very strongly about it.

Mr. VAN DREW. I am going to quote from your report.

President Biden believed President Obama's 2009 troop surge was a mistake on par with Vietnam and wanted the record to show that he was right about Afghanistan, that his critics were wrong, and that he had opposed President Obama's mistaken decision forcefully when it was made, that his judgment was sound when it mattered most.

Does that sound correct?

Mr. Hur. That language sounds familiar from the report, yes.

Mr. VAN DREW. OK. That is pretty significant in terms of a motivating factor for retaining those documents, wouldn't you say?

Mr. Hur. That would be a factor that a jury would assess in considering whether or not Mr. Biden had criminal intent.

Mr. VAN DREW. I also know that President Biden was working with a ghost writer on a book, Mark Zwonitzer. Correct?

Mr. Hur. Correct.

Mr. VAN DREW. Your investigation concluded when President Biden began work on his memoir, correct? At what time did your investigation conclude?

Mr. Hur. With respect to the second book published in 2017 we identified evidence that Mr. Biden began recorded conversation with Mr. Zwonitzer in 2016 before the end of Mr. Biden's Vice Presidency.

Mr. VAN DREW. It is your understanding that while Mr. Zwonitzer interviewed President Biden, he read classified information from his notebooks nearly verbatim, sometimes for an hour or more at a time. Correct?

Mr. Hur. Correct.

Mr. VAN DREW. Was Mr. Zwonitzer authorized to receive this classified information?

Mr. Hur. He was not.

Mr. VAN DREW. In fact, in their February 16th meeting which has been alluded to earlier, isn't it true that President Biden read aloud and nearly verbatim classified information regarding the actions and views of U.S. Military leaders and the CIA Director relating to the foreign country and foreign terrorist organization?

Mr. Hur. I believe that occurred—that was captured in a record-

ing later in 2017, I believe in April 2017, not February.

Mr. VAN DREW. OK. Mr. Zwonitzer became aware of your Special—your appointment as Special Counsel, correct?

Mr. Hur. At some point Mr. Zwonitzer did become aware of my

appointment, yes.

Mr. VAN DREW. On learning of the investigation Mr. Zwonitzer deleted digital audio recordings of his conversations with Mr. Biden during the writing of the book "Promise Me, Dad?"

Mr. Hur. Correct.

Mr. VAN DREW. Investigators with your office interviewed Mr. Zwonitzer about the deleted recordings and he admitted that part

of his motivation for deleting this recording was because he was aware there was an investigation, correct?

Mr. Hur. Correct.

Mr. Van Drew. Did this conduct raise concerns with your office? Mr. Hur. It did. We considered it to be significant evidence that

we needed to followup on.

Mr. VAN DREW. Significant evidence. I would argue that you also had significant evidence surrounding the retention of these documents, the storage of these documents, and even though there was a bit of a disconnect between what a reasonable juror could conclude, the intent was there, the motive was there for the book, for exoneration, and I would argue that you had enough to move for-

My time has expired. I yield back.

Chair JORDAN. The gentleman yields back.

The gentlelady from Vermont is recognized for five minutes.

Ms. BALINT. Thank you, Mr. Chair.

Thank you, Special Counsel Hur, for being here today. I know it has been hours and hours and I really appreciate you staying to the bitter end here. I think it speaks to the possibility and promise afforded by this Nation that you as a child of immigrants sit here as Special Counsel and I as a child of immigrants sit here as a Member of Congress.

There is a lot that has been said today and part of the challenge that I have is trying to translate this for my constituents back

home, and so I want to start with sort of the top line.

So, you were tasked with identifying whether criminal conduct occurred regarding classified documents. After over a year of investigation including 150 witness interviews and over seven million documents reviewed you wrote in the first sentences of the Executive Summary, quote,

We conclude that no criminal charges are warranted in this matter. We would reach the same conclusion even if Department of Justice policy did not foreclose criminal charges against a sitting President.

Were those your words?

Mr. Hur. Yes.

Ms. Balint. Thank you. So, let's get into it. Mr. Hur, at any time did DOJ leadership or the Attorney General attempt to influence the outcome of your investigation?

Mr. Hur. No.

Ms. Balint. Do you believe it is important that the Special Counsel investigations, or any DOJ investigation be impartial and free of influence from political actors?

Mr. Hur. Yes.

Ms. Balint. Do you believe you were independent and thorough in your report?

Mr. Hur. Yes.

Ms. Balint. Do you think it is true that you received no pressure from Attorney General Garland in this matter?

Mr. Hur. That's correct.

Ms. Balint. Is it true that you had all the resources that you needed in able for you to conduct your interviews, to conduct your investigation, and to complete your report?

Mr. Hur. Yes.

Ms. Balint. Is it true that you recommended that the Attorney General decline to charge President Biden?

Mr. Hur. I submitted a report to the Attorney General explaining my decision that criminal charges were not warranted in this matter.

Ms. Balint. Right. So, you said on page 1 of the report, quote, "We conclude that the evidence does not establish Mr. Biden's guilt beyond a reasonable doubt." Is it true that your report ultimately concluded that the evidence did not support a finding beyond a reasonable doubt that President Biden willfully retained classified materials?

Mr. Hur. Yes.

Ms. BALINT. Is it true that President Biden cooperated with your investigation?

Mr. Hur. Yes.

Ms. BALINT. Is it true that President Biden sat for an interview with you the day after the October 7th attacks in Israel in the midst of an international crisis?

Mr. Hur. He sat for interviews over two days, October 8th and October 9th.

Ms. BALINT. Thank you. Is it true that President Biden allowed the FBI to conduct thorough searches of his home and his beach house?

Mr. Hur. Yes.

Ms. Balint. Is it true that your report found multiple possible innocent explanations as to why the classified documents ended up where they did?

Mr. Hur. As part of our analysis, we walked through a number of different explanations that defense counsel would present, could present at trial if this case were charged.

Ms. Balint. As you said on page 6 of your report, quote, "In addition to this shortage of evidence there are other innocent explanations for the documents that we cannot refute." Your report reads—

Mr. Hur. I see that language, yes.

Ms. Balint. Thank you. Your report reads,

With one exception there is no record of the Department of Justice prosecuting a former President or Vice President for mishandling classified documents from his own administration. The exception is former President Trump.

Am I reading that correctly?

Mr. Hur. Yes.

Ms. Balint. Is it true or is it correct that your report recommends no charges and that you would be the case even if he were not a sitting President?

Mr. Hur. Correct.

Ms. Balint. So, what we have had today is hour after hour after hour of trying to distract us from the clear statements that come through this report. You yourself have said multiple times today there was no attempt to obstruct justice by the President, by the Department of Justice, by the Attorney General, that you had all the resources that you needed to conduct a fair and thorough investigation and report, and that what you concluded was in fact the evidence was not sufficient to bring charges against the President

for mishandling documents. I thank you for being here today. I yield back.

Chair JORDAN. The gentlelady yields back.

The gentleman from South Carolina is recognized.

Mr. FRY. Mr. Chair, I yield to you such time as you may consume, sir.

Chair JORDAN. Oh, I appreciate the gentleman yielding.

Mr. Hur, why did the White House go—why did the White House lawyers go look in the first place? My understanding is they went to the Penn Biden Center. Why did they go look in the first place?

Mr. Hur. Mv-

Chair JORDAN. Look for classified—mishandling of classified—

look for classified documents. Why did they do it?

Mr. Hur. What we identified through our investigation was that at a certain date members of the President's staff went to the Penn Biden Center to get a better handle on what the information—what kinds of evidence and—what kinds of materials were at the Penn Biden Center.

Chair JORDAN. Were they specifically looking for potential—docu-

ments that were classified or was it a broader initial look?

Mr. Hur. My understanding is that it was a broader initial look. I'm looking at chapter 14, page 257, of my report about a visit in March 2021 to the Penn Biden Center.

Chair JORDAN. Right.

OK. In March?

Mr. Hur. In March 2021.

Chair JORDAN. Was this after the Justice Department began their investigation into President Trump?

Mr. Hur. I confess I don't have the date of the beginning of the investigation into President Trump at hand, Chair.

Chair JORDAN. I believe it was the same month. I believe it was

after. So, I was just curious about that.

Now, one other thing I think is important for folks to understand is President Biden had this information everywhere. You said they initially went to the Penn Biden Center. Which location was it at, do you remember, when they initially did their look? Was it at the transition office, was it at the temporary Penn Biden Center in Chinatown, or was that at its current location where the Penn Biden Center currently sits here in—or final location I guess in D.C.? You remember?

Mr. Hur. I believe the visit that I referenced in March 2021, that's described on page 257 was to the Penn Biden Center's permanent and current location.

Chair JORDAN. Permanent and current. So, there were three places. Those three places classified information was at. Is that fair to say?

Mr. Hur. That's correct. The initial transition office immediately after the end of the Vice Presidency, the Penn Biden Center's temporary office, and then the Penn Biden Center's permanent office.

Chair JORDAN. OK. Then you had the University of Delaware Library. The University of Delaware Biden Center, right? So, that is five total. Then you had multiple places in his home.

Mr. Hur. Correct.

Chair JORDAN. The garage, the den, the office upstairs, and the office downstairs.

Mr. Hur. Correct.

Chair JORDAN. So, what is that? That is like nine different places.

Mr. Hur. I've lost count, sir, but that sounds about right.

Chair JORDAN. Yes, it is everywhere, and it was documents over a 50-year timeframe. Then by comparison, because the Democrats want to keep comparing to President Trump's classified documents were at his home with Secret Service protection. I don't know if they were anywhere else, were they?

Mr. Hur. I'm not aware of other locations [inaudible].

Chair JORDAN. Yes, I think that is an important distinction. I would yield back to the gentleman from South Carolina. Appreciate him yielding.

Mr. FRy. Thank you, Chair.

Briefly; I know we have got two minutes left, but, Mr. Hur, how would you define willful?

Mr. Hur. With respect to the intent of willfulness, what a jury has to conclude is that someone knew that their conduct was illegal when they engaged in that conduct.

Mr. FRY. Right. So, it is intentional, right? It is not by accident? It is not accidental or involuntary?

Mr. Hur. Correct.

Mr. FRY. OK. So, here is where I disagree with your portion of the report on willful is that you have a gentleman who served 36 years in the Senate. I have only been here a year, but I understand the importance of handling classified information. He served eight years as Vice President.

In 2010, it came to the attention of the Vice President's staff that classified briefing books had not been returned. Even if they were returned, some of the content was missing. The same year the Executive Secretary raised that nearly of the 30 of the classified briefing books from the first six months of 2010 were missing.

In August of that year then Vice President Biden failed to return top-secret sensitive compartmented information contents of a classified briefing book from a book that he took to the Hamptons. To date you are unable to determine if these documents were ever recovered, is that correct?

Mr. Hur. Correct.

Mr. FRY. So, to me this wasn't—when does willfulness as a—when does willfulness factor in? Is it now in his diminished mental capacity or is it then when he was serving as Senator and Vice President?

Mr. Hur. A jury would be assessing President Biden's mental state and his intent or whether or not he had willfulness at the time that the conduct was committed.

Mr. FRY. Correct. I think everyone can kind of plainly see that the transgression or the difference between then candidate Biden, or Vice President Biden and what is going on now.

So, this is where I go, too, the Chair talked about it in his opening comments—he had eight million reasons to hold these documents. In fact, he disclosed some of this information to his ghost writer. So, I think there could have been willfulness.

I have got 10 seconds left, but look, since 2016 there have been three candidates to run for President. All three have had allegations of issues surrounding the retention of holding of classified documents, but, Mr. Her, only one of them has been charged, and that is President Trump. That is why people think and view this as a two-tiered system of justice. Thank you, sir.

Chair JORDAN. The gentleman yields back.

The Chair now recognizes the gentleman from—you have unanimous consent?

Ms. Jackson Lee. Yes, I will wait. Let him go ahead. Chair JORDAN. The gentleman from Colorado, Mr. Buck.

Ms. JACKSON LEE. Thank you.

Mr. Buck. Mr. Hur, they say they save the best for last, so I am

looking forward to this opportunity.

First, what I have observed in this hearing is that one side thinks you are trying to get President Trump elected and the other side thinks you are trying to get President Biden elected. I served as a prosecutor for 25 years. I know that you are going to take grief from both sides. You must be doing a great job in your report and during your investigation if you have convinced both sides that you are somewhere in the middle.

I commend you for your background. I would have loved to have met Chief Justice Rehnquist. What a hero to conservatives and really Americans. That must have been a great opportunity for you.

When both sides attack you, my admonition is welcome to Con-

I do have a question and it goes along the lines of what Mr. Armstrong and Mr. Fry were asking you earlier. I am really confused about willfulness and your view of willfulness. It is clear to me that at the time Vice President Biden knew he had classified documents. He told his-after he left the Vice Presidency, he told his biographer/ghost writer those classified documents are in the basement. So, he had the mental state that he had classified document. He also knew that his basement was not a SCIF. It is not a secure

So, if at that point in time he said, oh, my gosh, I have got to call the Archivist, I have got to call Secret Service, somebody and get these documents taken away-perhaps he has this defense of acting as quickly as he knew about the documents, but I don't see where the willfulness is missing when he had those two. The element is pretty clear. He possessed classified documents, he held them in a nonsecure area, and he did so knowingly. He knew he had classified documents in an unsecure area.

Where is the willfulness missing?

Mr. Hur. Well, sir, prosecutor to prosecutor, I certainly agree with you that the evidence in the form of the audio recorded statement where the President said to his ghost writer, I just found all the classified stuff downstairs, that is evidence that any prosecutor would present as significant evidence in a case if this went to trial. So, reasonable jurors might well infer that President Biden formed criminal intent based on that piece of evidence.

What we did in our report was to try to walk through exhaustively—you know well as a prosecutor you need to assess with a very cold eye the strengths of your case and the weaknesses of your case and try to anticipate arguments that defense counsel might well present at trial. What we tried to do in our report would—was to walk through potential arguments that would be presented by defense lawyers at the President's trial and to determine by our judgment how jurors would receive and perceive the evidence presented including, including but not limited to evidence relating to the President's memory gaps that were in various pieces of evidence that we assessed.

Mr. Buck. So, how do you overcome that recording where he says "I've got classified documents?" He is 30 years in the Senate or whatever it is. He obviously knows how he has to treat classified documents. I have got classified documents in the basement. What is the defense to that, that it was a made-up recording, that it wasn't his voice, that everyone was wrong? How do you defend that particular fact as well as—I did a lot of tax cases. You had to prove a pattern of conduct. In this case, he had a lot of documents in a lot of places. How do you overcome those things?

Mr. Hur. Yes, Congressman. So, we walked through a number of different evidentiary gaps that reasonable jurors might focus on as well as a number of different arguments that the President's de-

fense lawyers could present at trial.

The first is a theory or an argument to the jury that the President—yes, he did say to his ghost writer I just found all the classified stuff downstairs, but then soon thereafter forgot about the documents. Therefore, it would be difficult to convince a jury that actually he knew that it was illegal to keep the documents and he continued to do so.

A second argument that we considered is that perhaps these documents never actually were in Virginia in his private rental home there. Perhaps the documents were there by virtue of staff or himself, having those documents at the Delaware home from the time that he was still Vice President all the way through the time of their being discovered.

Finally, another theory that we walked through in the report is that there were two folders of marked classified documents relating to Afghanistan found in the box in the President's Delaware garage. One of them contained national defense information and the other—it would be a more difficult task to persuade a jury that it did contain national defense information. So, that argument would be premised on perhaps the President was referring to the one folder that didn't contain national defense information but was not. It would be difficult for the government to prove beyond a reasonable doubt that he possessed the one that did contain national defense information.

So, I just laid a lot on you there, but we do our best to explain that at some length in the report.

Mr. Buck. Thank you. I yield back. Chair Jordan. The gentle yields back.

Ms. Jackson Lee. Mr. Chair?

Chair JORDAN. The gentlelady from Texas is recognized.

Ms. JACKSON LEE. I thank you. There has been a lot of time being shared, Mr. Chair. I ask your very brief indulgence.

Chair JORDAN. Wait, wait, wait. You got an unanimous consent or are you asking a question?

Ms. Jackson Lee. Your brief indulgence and unanimous consent to ask a question.

Chair Jordan. No, no, no, no. You can make a unanimous consent request, but you don't get to get another round. If someone comes to yield you time, but I don't think they can do that because everyone on the Democrat side has taken their time. You know that I appreciate the gentlelady from Texas, but you don't get to go two rounds.

Ms. Jackson Lee. I am not trying to two rounds, but—

Chair JORDAN. If you have a unanimous consent request you want on the record, state so. If not, then we are going to close—

Ms. Jackson Lee. I am getting ready to the unanimous consent request, hoping that someone would come through the door. I ask unanimous consent-

Chair JORDAN. It could only be a Republican, because all the Democrats have spoken.

Ms. Jackson Lee. I ask unanimous consent that we add to the record as stated from page 1 of the Executive Summary,

We conclude that no criminal charges are warranted in this matter. We would reach the same conclusion even if the Department of Justice policy did not foreclose criminal charges against a sitting President.

I would ask unanimous consent that this sentence be put in.

Chair JORDAN. Without objection.

Ms. Jackson Lee. Secondarily, I ask unanimous consent and— Chair JORDAN. Unanimous consent to add something to the record that is already in the record? God bless you. We will do it.

Ms. JACKSON LEE. Thank you. I add with the emphasis of Sheila Jackson Lee does not have and I particularly ask that this be added to the record that Mr. Hur stated that Biden couldn't recall when his son Beau died. I ask unanimous consent out of an article in *Politico* and indicate that there was no mercy given to Mr. Biden and no mercy given to him in the decision of this report.

Chair JORDAN. Without objection, so entered.

Chair JORDAN. Mr. Hur, even though there wasn't a question there, do you want to respond to any of that?

Mr. Hur. No, Chair.

Ms. Jackson Lee. Thank you. I yield back.

Chair JORDAN. All right. Mr. Hur, we want to thank you for being here today and we wish the best to you and your family.

This concludes today's hearing. We thank our witnesses for ap-

pearing before the Committee today.

Without objection, all Members will have five legislative days to submit additional written questions for the witness or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 2:56 p.m., the Committee was adjourned.]

All items submitted for the record by Members of the Committee on the Judiciary can be found at https://docs.house.gov/ Committee / Calendar / ByEvent.aspx? EventID=116942.

Biden loses track of event, yells 'Who's next?' at press conference with India PM

foxnews.com/politics/biden-loses-track-event-yells-whos-next-press-conference-india-pm

Anders Hagstrom

Confused Biden yells 'who's next?' during press conference with prime minister of India

Fox News' Peter Doocy provides details on President Biden's latest gaffe on the world stage, when he appeared to lose track of events during a press conference with the prime minister of the Republic of India.

<u>President Biden</u> became confused and lost track of events during a press conference alongside India's prime minister on Saturday.

The incident came when Biden was supposed to introduce Prime Minister Narendra Modi in Wilmington, Delaware. He instead became confused and appeared to think he was waiting for a question from reporters. An announcer then introduces Modi following an uncomfortable pause.

"I want to thank you all for being here," Biden said. "Now, who am I introducing next?"

"Who's next?" he shouts, leading to several seconds of silence.

An announcer then cuts in to introduce Modi, who approaches Biden and shakes his hand.

WHITE HOUSE CORRESPONDENTS' ASSOCIATION PROTESTS 'UNACCEPTABLE' LACK OF PRESS ACCESS AT BIDEN'S QUAD SUMMIT

EXHIBIT 5

The interaction came just one day after Biden received heavy criticism for allowing First Lady Jill Biden to run a cabinet meeting on Friday.

Biden <u>convened his Cabinet</u> on Friday for the first time since Oct. 2, 2023, and the first lady joined him to speak about the White House Initiative on Women's Health Research.

FLASHBACK: BIDEN'S CABINET DOUBLES DOWN ON SUPPORT FOR PRESIDENT FOLLOWING DEBATE

The president explained Jill Biden's presence there, saying, "Here and across previous administrations, first ladies have attended these meetings for specific reasons. This is the first time Jill has joined us, and it goes to show how important the issue is, which she is

about to speak to."

He concluded by handing off to his wife, saying, "It's all yours, kid."



First lady Jill Biden speaks while attending her first Cabinet meeting during her husband's administration on Sept. 20, 2024, in Washington, D.C. Jill Biden spoke about progress made by the White House Initiative on Women's Health Research. (Chip Somodevilla/Getty Images)

<u>The New York Post</u> reported that Jill Biden, seated at the head of the Cabinet Room's board table, "read from a binder about maternal health initiatives for four-and-a-half minutes after her husband spoke for just two minutes off the top of the meeting."

The president traditionally sits at the center of the table with Cabinet members seated in order of the founding of their departments. The last sitting first lady to attend her husband's Cabinet meeting appears to be Hillary Clinton.

'ACCESS GRANTED': BIDEN'S FREE VACATION AT FRIEND'S CALIFORNIA MANSION DRAWS IRE OF CRITICS

The amount of <u>influence the first lady has over Joe Biden</u>, and therefore his administration, has been a frequent source of controversy, and numerous commentators took to social media to criticize her presence at the meeting.



The last time President Biden held a Cabinet meeting was in October 2023. (AP/Manuel Balce Ceneta)

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The New York Post said that Jill Biden is "considered by insiders to be the most influential first lady since Edith Wilson, who tightly controlled access to her husband, President Woodrow Wilson, after he suffered a debilitating stroke in October 1919."

Fox News' Alexander Hall contributed to this report

Anders Hagstrom is a reporter with Fox News Digital covering national politics and major breaking news events. Send tips to Anders.Hagstrom@Fox.com, or on Twitter: @Hagstrom Anders.

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EXHIBIT 6

Biden cognitive health concerns: What did Kamala Harris know? Experts warn of denial dangers



foxnews.com/health/biden-cognitive-health-concerns-kamala-harris-experts-warn-denial-dangers

Melissa Rudy

Health

'Denial about cognitive decline can delay diagnosis and treatment,' says expert



By Melissa Rudy Fox News

Published August 1, 2024 4:45am EDT

Dr. Marc Siegel: Biden looked 'emotionally vacant, wooden' during address

Dr. Marc Siegel expresses his anger at the Biden White House for 'obfuscating' and showing 'no transparency' over President Biden's health on 'The Ingraham Angle.'

A majority of voters believe that Vice President Kamala Harris knew about — and covered up President Biden's reported cognitive health issues.

That's according to a YouGov/Times of London poll that surveyed 1,170 registered voters on July 22 and July 23.

Among those who believe Biden's <u>health issues</u> were kept under wraps, 92% said they think the vice president was well aware of the situation.

DOCTORS REACT AFTER BIDEN'S LIVE ADDRESS TO THE NATION: A CONCERNING **'LACK OF EMOTION'**

Overall, 68% of respondents believe Biden's decline was on Harris' radar.

"There's no way for me to know what went through Kamala's head or what her experience has been dealing with Joe Biden," Jonathan Alpert, a psychotherapist and author based in New York City, told Fox News Digital.



Many voters believe that Vice President Kamala Harris knew about President Joe Biden's reported cognitive health issues. (Getty Images)

"Perhaps seeing him on a regular basis made it difficult for her to pick up on any changes," said Alpert, who has not treated Biden.

"Of course, this is just speculation, and we do not know of any formal diagnosis."

Judy Gaman, CEO of Executive Medicine of Texas, a luxury medical services provider in Southlake, previously spoke with Fox News Digital about the failure of those around Biden to seek help for the president.

JOE BIDEN'S HEALTH: LEADERSHIP ABILITY QUESTIONS MOUNT AS OVAL OFFICE SPEECH GAVE NO REASON FOR EXITING RACE

"Either they are in denial and have watched this take place over a period of time, so they are less sensitive to the contrast, or they are fully aware but can't bear the thought of what happens to the family (on many levels) if Joe is <u>no longer president</u>," said Gaman, who also has never treated the current commander-in-chief.

Biden health concerns

Although there's long been debate about potential signs of cognitive decline, the issue came to the forefront after the June 27 presidential debate, when Biden sparked concerns with his sometimes incoherent speech and unclear train of thought on national live television.

The president, who is 81, has also appeared to "freeze" on stage during public appearances on more than one occasion.



A new survey found that among those who believe any potential issues with Joe Biden's health have been kept quiet, 92% say they think the vice president was well aware of the situation. (Getty Images)

In mid-July, Biden <u>tested positive for COVID-19</u>, and was said to experience upper respiratory symptoms that included "rhinorhea (runny nose) and non-productive cough, with general malaise," according to a statement on the White House's website.

On July 23, Dr. Kevin O'Connor, the president's personal physician, released a letter stating that Biden's symptoms had resolved and that he would "continue to be monitored for any recurrence of illness."

68% of poll respondents believe Biden's decline was on Harris' radar.

White House press secretary Karine Jean-Pierre has stated that Biden has seen a neurologist multiple times as part of <u>routine health exams</u>, but that he is not being treated for any neurological disorders.

Dangers of denial

Outside the political arena, it is common for family members and loved ones to avoid facing signs of cognitive decline and potential dementia, experts say.

"Ask any family who has dealt with Alzheimer's, dementia or Parkinson's, and they will tell you that what we are seeing play out [here] is classic with most families who face this," said Gaman, whose own mother struggled with <u>Alzheimer's disease</u>.



Signs of potential cognitive issues came to the forefront after the June 27 presidential debate, when the president sparked concern with his sometimes incoherent speech and an unclear train of thought. (Justin Sullivan/Getty Images; ANDREW CABALLERO-REYNOLDS/AFP via Getty Images; Justin Sullivan/Getty Images)

"His story just happens to be playing out on the big stage," Gaman added. "Remember, everyone rallying around Biden and covering up the truth has something personal to gain by him continuing to hold office."

In some cases, Alpert noted, signs may be genuinely missed.

EARLY DEMENTIA OFTEN HAS A SURPRISING WARNING SIGN, REPORT SAYS: 'FINANCIAL CONSEQUENCES'

"Generally speaking, family members who see their loved one on a regular basis don't always pick up on the cognitive decline as perceptively as those who might just see someone on occasion," he said.

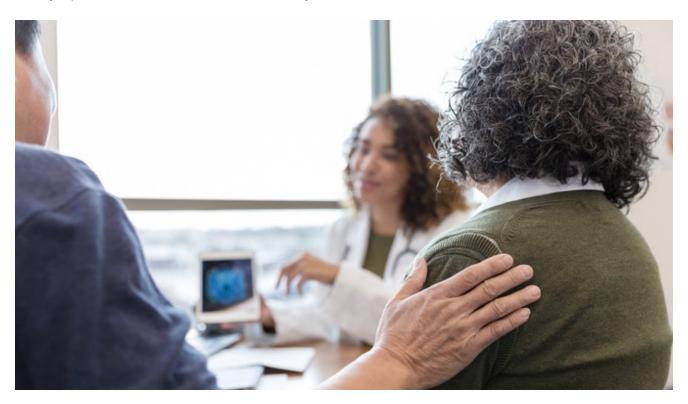
"For example, someone seeing Grandma once a year during the holiday season is more likely to pick up on a decline than if they were seeing her monthly."

"If family members and close associates are in denial about a loved one's cognitive decline, it can delay diagnosis and treatment."

That's because cognitive decline is usually gradual in the beginning, he noted.

"Early signs might be subtle and perhaps mistaken as normal aging or stress."

In other cases, the person experiencing the decline may find ways to adapt and develop strategies to compensate for the cognitive difficulties, according to Alpert, which can make the symptoms less obvious to close family and friends.



"Although in the short term it might be easier to look the other way, ultimately denial leads to more stress for the loved ones as the condition worsens," a psychologist said. (iStock)

Experts agree that a denial of someone's cognitive decline doesn't do the person any favors.

"If family members and close associates are in denial about a loved one's cognitive decline, it can delay <u>diagnosis and treatment</u> of the person," Alpert warned.

FDA APPROVES NEW DRUG FOR ALZHEIMER'S DISEASE

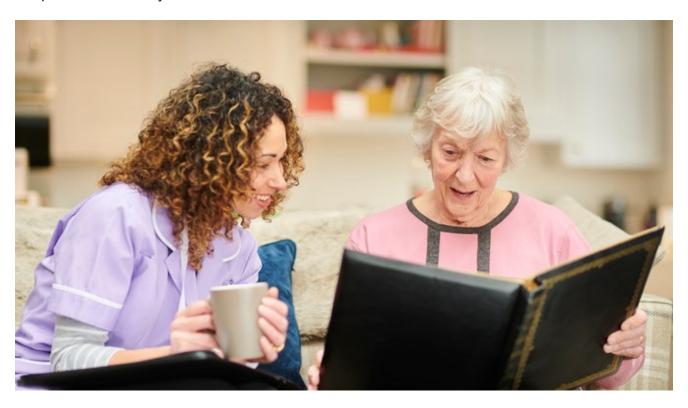
"Dismissing an obvious issue as 'just a bad day' or saying 'everyone forgets from time to time' doesn't help the person, and will only slow access to resources and proper management of the condition," he added.

Delaying treatment can also pose safety risks, experts agree.

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"Although in the short term it might be easier to look the other way, ultimately denial leads to more stress for the loved one as the condition worsens," Alpert said.

"Sometimes, getting a proper medical diagnosis provides the clinical validation necessary for the patient to actually feel understood."



Delaying treatment can also pose safety risks to the person experiencing cognitive decline, experts agree. (iStock)

In Alpert's practice, he said he sometimes has patients who experience a host of symptoms, but don't know exactly what is going on.

"Once I confirm the diagnosis, they feel a bit relieved to know that their symptoms are real and part of a medical or psychological disorder, and not just made up," he said.

In Biden's case, denial of a possible cognitive disorder isn't just dangerous for the president, but also for the country as a whole, experts say.

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If Biden is experiencing cognitive decline, failure to get him the <u>medical attention</u> he needs could be putting his health in danger, according to Gaman.

"From the standpoint of the country, we need to address this as a health crisis and not a political crisis," she said.



President Biden boards Air Force One as he departs Dover Air Force Base in Dover, Delaware, on July 23, 2024, his first public appearance after announcing his exit from the presidential race. (SAUL LOEB/AFP via Getty Images)

Gaman also noted that if Biden does have one of these conditions, he may not understand the need to ask for help.

"This is a prime opportunity to increase funding for research, raise awareness and encourage others dealing with this to come out of denial."

We need to "encourage others dealing with this to come out of denial."

Gaman noted that she is not claiming to diagnose the president, but rather asking that the country open up the discussion on neurodegenerative disease, "especially since it's on the rise."

Fox News Digital reached out to the Harris campaign requesting comment but did not receive a response.

For more Health articles, visit www.foxnews/health

In response to earlier outreach from Fox News Digital, the White House press office said that "health was not a factor" in Biden's decision to withdraw from the 2024 presidential race.

"He looks forward to finishing his term and delivering more historic results for the American people," the White House said in its statement.

Case 1:24-cv-02715-APM Document 4-9 Filed 10/03/24 Page 9 of 9

Melissa Rudy is senior health editor and a member of the lifestyle team at Fox News Digital. Story tips can be sent to melissa.rudy@fox.com.

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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BRENNAN CENTER FOR JUSTICE AT CV No. 1:20-cv-02674-TJK

NYU SCHOOL OF LAW

v.

Washington, D.C.

Thursday, October 8, 2020

2:00 p.m.

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Defendants.

- - - - - - - - - - x

TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY
UNITED STATES DISTRICT JUDGE

APPEARANCES VIA TELECONFERENCE:

For the Plaintiff: Caitlin W. Monahan, Esq.

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Official Court Reporter U.S. Courthouse, Room 6722 333 Constitution Avenue, NW

Washington, DC 20001

(202) 354-3111

Proceedings recorded by machine shorthand; transcript produced by computer-aided transcription.

PROCEEDINGS

THE DEPUTY CLERK: We are on the record in Civil Matter 20-2674, Brennan Center for Justice at NYU School of Law v. United States Department of Commerce, et al.

Present for the plaintiff are Caitlin Monahan and Patrick Carome; present for the defendants are Stephen Elliott and Elizabeth Shapiro.

THE COURT: All right. Well, I said good morning, but let me amend that to say good afternoon to everyone on the line.

I called -- I set this conference mostly so we could set a schedule for litigating the preliminary injunction, and I -- motion that's been filed, but as I was reading that motion, you know, the thought occurred to me that this seems like the type of case that the parties would benefit from conferring and attempting to see if they can't work out a schedule for responding to the FOIA requests at issue that both parties can live with. So before we, kind of, go through and talk about hearing dates and other things, I wanted to just ask, I guess, first the plaintiffs and then the defendants whether the parties have had any discussions along those lines and whether they think -- if they haven't, whether they are likely to have it in the near future. That seems to me to be at least one productive way for the case to move forward.

So please, if -- whoever was going to address that from the plaintiffs, please do so.

MS. MONAHAN: Thank you, Your Honor. This is Caitlin Monahan for the plaintiff.

Yes, we have spoken with Attorney Elliott from the Department of Justice and we have made a proposal to him to take back to his clients regarding a potential schedule for production of the requested information. Our -- and I'll let him speak to that. Our understanding is that they are still taking that into consideration, but we are absolutely willing to have further conversations with him.

THE COURT: All right. Mr. Elliott, do you want to respond? You may not know the, kind of -- whether that's something the Government is willing to -- whether the specific proposal is something you're willing to accept. But does it seem likely to you that those are the kind of conversations that might seem fruitful?

MR. ELLIOTT: Good afternoon, Your Honor.

Yes, it's correct. We had some preliminary conversations with plaintiff's counsel, and I have taken an offer back to my clients when -- they are still considering it. The Government is obviously always willing to sit down with plaintiff's counsel to see if we can come up with some sort of amenable schedule with this sort of case. So yes, we'd be happy to engage in those conversations further.

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THE COURT: Do the parties think that -- I suppose, obviously, there's no reason why I can't -- we can't set a schedule here for the PI, and if the parties reach some sort of accommodation that resolves that in some way, you all can let me know. I just thought, as I've looked at -- as I looked at it, I know it's -- well, both sides, I'm sure, have their points they can argue, but it struck me that it could give -- it might be more productive for the case overall, instead of you all spending a lot of time arguing about a PI, to set -- really, try to see if both sides can accommodate each other. The Government, I'm sure, has its arguments about the practicality of the timing and the plaintiffs have their interests regarding the timing. So I think that makes sense. I think -- I'd encourage both sides to discuss that, because I think, at the end of the day, that's a more, maybe, productive place to put everybody's energies.

That having been said, so my intent, then, is to just go ahead and sketch out a schedule and a hearing date for the PI while I have everyone here, and those discussions can go on, and if they obviate the need to further litigate it, we -- the parties know where to find me and let me know. I calculate, at this point, the Government's response as being due --

Well, let me -- before I do that, have the

1 parties -- let me ask the plaintiffs. Have the parties discussed a schedule for the Government's response that 2 3 might not be exactly what the rules have, but have the 4 parties discussed an agreed-upon schedule to go forward in 5 terms of a response from the Government and a reply for the 6 plaintiffs? 7 MS. MONAHAN: Yes, Your Honor. This is Caitlin The parties have discussed a schedule. We have 8 Monahan. 9 agreed to a schedule, of course, understanding that Your 10 Honor would have to, you know -- the hearing date would have 11 to work for Your Honor, and also, the Brennan Center will be 12 requesting the opportunity to file a reply brief. 13 THE COURT: All right. What is that agreed-upon 14 schedule that the parties are proposing? 15 MS. MONAHAN: So the Government's response would 16 be due on Tuesday, 10/13; the Brennan Center's reply would 17 be filed on Monday, 10/19; and then the proposed hearing 18 time would be Friday, October 23rd, between 10:00 a.m. and 19 12:00 p.m., if that works for the Court. 20 THE COURT: That does. That's, (inaudible) --21 schedule -- and that's something -- again, the Government 22 has agreed to that, as well? Is that true, Mr. Elliott? 23 MR. ELLIOTT: Yes, it is, Your Honor. 24 THE COURT: All right. That is almost precisely 25 the schedule that I was going to suggest. So that works

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              I think that's perfect. So 10 -- Monday [sic] the
       well.
 2
       13th for the Government; the 19th -- Monday the 19th for a
       reply; with a hearing at 10:00 o'clock Friday, October 23rd.
 3
 4
                 I will enter an order, then, laying all that out
 5
       as far as the schedule goes. And, again, you know, I won't
 6
       beat that -- the dead horse too -- I mean, it's not dead,
       but I won't make more of it than I did before, but,
 7
 8
       obviously, if the parties reach an accommodation in terms of
 9
       how they want to proceed and -- I trust you'll all let me
10
       know so I can, (inaudible) -- down as far as preparing for
11
       the hearing goes.
12
                 Very well. Anything, then, else the plaintiffs
13
       think we need to address here today?
14
                 MS. MONAHAN: No, Your Honor.
15
                 THE COURT: Anything that the Government thinks I
16
       need to address today?
17
                 MR. ELLIOTT: No, Your Honor. But just one point
18
       of clarification. The 13th is a Tuesday, not a Monday.
19
       Monday's a holiday.
20
                 THE COURT: Ah, correct. Correct. You're right.
21
       So Tuesday the 13th. Correct.
22
                 If there's nothing further from either side, I
23
       will enter an order laying out those -- laying out that
       schedule and we'll go forward from there.
24
25
                 Everyone have a good weekend and stay safe.
```

| 1 | MR. ELLIOTT: Thank you, Your Honor. |
|----------|---|
| 2 | MS. MONAHAN: Thank you, Your Honor. |
| 3 | MR. CAROME: Thank you, Your Honor. |
| 4 | (Proceedings concluded at 2:11 p.m.) |
| 5 | * * * * * * * * * * |
| 6 | CERTIFICATE OF OFFICIAL COURT REPORTER |
| 7 | I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby certify |
| 8 | that the above and foregoing constitutes a true and accurate |
| 9 | transcript of my stenographic notes and is a full, true and |
| 10 | complete transcript of the proceedings to the best of my |
| 11 | ability, dated this 10th day of August 2023. |
| 12 | /s/Timothy R. Miller, RPR, CRR, NJ-CCR
Official Court Reporter |
| 13 | United States Courthouse |
| 14 | Room 6722
333 Constitution Avenue, NW |
| | Washington, DC 20001 |
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EXHIBIT 8



Sample 1170 U.S. Registered Voters

Conducted July 22 - 23, 2024

Margin of Error $\pm 3.2\%$

| 1. Do you feel that things in this country these days are: | |
|---|--|
| Under control | |
| 2. Would you say that you and your family are | |
| Better off financially than you were a year ago | |
| 3. Looking ahead, do you think that a year from now you and your household will be | |
| Better off financially | |
| 4. Which comes closest to your view? | |
| Our lives are threatened by terrorists, criminals, and illegal immigrants and our priority should be to protect ourselves | |

| | | | | Somewhat | | |
|------------------|-------------------|--------------------|---------|------------------|-----------------------|---------------|
| | Very
favorable | Somewhat favorable | Neutral | unfavor-
able | Very unfa-
vorable | Don't
know |
| | | | | | | _ |
| Joe Biden | 24% | 15% | 6% | 9% | 45% | 1% |
| Kamala Harris | 27% | 15% | 6% | 9% | 43% | 1% |
| Mark Kelly | 14% | 7% | 20% | 9% | 12% | 38% |
| Josh Shapiro | 12% | 10% | 19% | 9% | 13% | 37% |
| Roy Cooper | 5% | 6% | 23% | 5% | 8% | 52% |
| Andy Beshear | 10% | 9% | 22% | 6% | 10% | 43% |
| Amy Klobuchar | 12% | 11% | 20% | 9% | 16% | 31% |
| Gretchen Whitmer | 16% | 11% | 18% | 6% | 22% | 27% |
| JD Vance | 20% | 14% | 13% | 7% | 34% | 12% |
| Donald Trump | 33% | 11% | 5% | 4% | 46% | 1% |



| C Do you approve or discourse of | f Ioo Didon's docisis | n to dran out of | the 2004 D | oidontial race O | |
|--|-------------------------|-------------------|---------------|--------------------|----------------------------------|
| 6. Do you approve or disapprove of | | · | | | 0/ |
| Strongly approve | | | | | |
| Somewhat approve | | | | | |
| Somewhat disapprove | | | | | |
| Strongly disapprove | | | | | |
| Not sure | | | | / | 70 |
| 7. Was Joe Biden unfairly pressure | d to drop out of the | election? | | | |
| Yes | | | | 32 | % |
| No | | | | 48 | % |
| Not sure | | | | 20 | % |
| 8. Joe Biden has decided not to se | ek reelection. Do yo | ou think? | | | |
| He should resign now | | | | 30 | % |
| He should serve until the end | of his term in Janu | ary | | 63 | % |
| Not sure | | | | 7 | % |
| | | | | | |
| Do you think there has been a co | over-up of Joe Bider | n's health? | | | |
| Yes | | | | 54 | % |
| No | | | | | % |
| Not sure | | | | 16 | % |
| | | | | | |
| D. To what extent, if at all, were the | following involved in | n covering up Bid | len's health? | | |
| mong those who think that there has been a | cover-up of Joe Biden's | health | | | |
| | A great | | | | |
| | deal | Somewhat | A little | Not at all | Not sure |
| Kamala Harris | 68% | 17% | 7% | 4% | 4% |
| The news media | 59% | 20% | 9% | 8% | 4% |
| The Biden family | 84% | 9% | 3% | 2% | 3% |
| Democrats in Congress | 61% | 23% | 8% | 4% | 4% |
| | | 14% | 4% | 1% | . , 0 |
| _ | | | 4% | 1 % | |
| White House staff | 77% | 1470 | | 1 70 | 3% |
| White House staff | | | | | 3% |
| White House staff 1. Who do you think is the best ch | | Biden as the De | mocratic car | ididate for Pres | 3%
ident? |
| White House staff 1. Who do you think is the best ch | noice to replace Joe | Biden as the De | mocratic car | ididate for Pres | 3%
ident?
% |
| White House staff 11. Who do you think is the best ch Kamala Harris | noice to replace Joe | Biden as the De | mocratic car | ndidate for Pres | 3%
ident?
%
% |
| White House staff 1. Who do you think is the best ch Kamala Harris | noice to replace Joe | Biden as the De | mocratic car | ndidate for Pres50 | 3%
ident?
%
% |
| White House staff 1. Who do you think is the best che Kamala Harris Gretchen Whitmer Gavin Newsom Pete Buttigieg | noice to replace Joe | Biden as the De | mocratic car | ndidate for Pres | 3%
ident?
%
%
% |
| White House staff 11. Who do you think is the best che Kamala Harris Gretchen Whitmer Gavin Newsom Pete Buttigieg | noice to replace Joe | Biden as the De | mocratic car | ndidate for Pres | 3%
ident?
%
%
%
% |



| 12. How likely are you to vote in the presidential election in November 2024? |
|---|
| Definitely will vote |
| Probably will vote |
| Even chance4% |
| Probably won't vote |
| Definitely won't vote1% |
| |
| 13. Compared to other Presidential elections, are you more or less enthusiastic about voting this year than usual?
Among likely voters |
| More enthusiastic53% |
| About the same34% |
| Less enthusiastic |
| |
| 14. In the election for the U.S. House of Representatives in the district where you live, which party's candidate will you vote for? Among likely voters |
| The Democratic Party candidate |
| The Republican Party candidate |
| Other |
| I will not vote in this race |
| Not sure |
| 15. If the Democratic candidate for President is Kamala Harris and the Republican candidate is Donald Trump, who would you vote for in November? Among likely voters |
| Kamala Harris44% |
| Donald Trump46% |
| Robert F. Kennedy, Jr |
| Jill Stein |
| Cornel West0% |
| Other |
| I would not vote |
| Not sure |
| |
| 16. If the Democratic and Republican candidates were Kamala Harris and Donald Trump, how satisfied would you be with your choices in this election? |
| Very satisfied42% |
| Somewhat satisfied |
| Somewhat dissatisfied |
| Very dissatisfied |



| 17. Who is most likely to win the election for President? |
|--|
| Definitely Kennels Henrie |
| Definitely Kamala Harris15% |
| Probably Kamala Harris14% |
| Equal chance10% |
| Probably Donald Trump18% |
| Definitely Donald Trump |
| Not sure10% |
| |
| 18. Do you think Kamala Harris has a better or worse chance than Joe Biden to defeat Donald Trump in the election for President? |
| Harris is more likely to defeat Trump |
| About the same25% |
| Harris is less likely to defeat Trump |
| Not sure |
| |
| 19. Would you personally rather have had Joe Biden or Kamala Harris as the Democratic candidate for President |
| Prefer Biden over Harris23% |
| Prefer Harris over Biden31% |
| No difference |
| Not sure |
| |
| 20. When do you think abortion should be legal? |
| Abortion should always be legal. There should be no restrictions on abortion31% |
| Abortion should be legal, but with some restrictions (such as for minors or late-term abortions). |
| 200/ |
| Abortion should only be legal in special circumstances, such as when the life of the mother is in |
| Abortion should only be legal in special circumstances, such as when the life of the mother is in danger |
| Abortion should only be legal in special circumstances, such as when the life of the mother is in |
| Abortion should only be legal in special circumstances, such as when the life of the mother is in danger |

| | Kamala | Donald | No |
|-----------------------------------|--------|--------|------------|
| | Harris | Trump | difference |
| The economy | 41% | 51% | 8% |
| Immigration | 40% | 52% | 8% |
| Foreign policy | 42% | 49% | 10% |
| Abortion | 51% | 37% | 12% |
| Crime | 40% | 49% | 11% |
| The environment | 50% | 36% | 14% |
| Appointments to the Supreme Court | 46% | 44% | 10% |



| 22. Is Trump too old to be President? | |
|--|--|
| Yes45% | |
| No47% | |
| Not sure | |
| | |
| 23. Is Donald Trump a threat to democracy? | |
| Yes48% | |
| No46% | |
| Not sure | |
| | |
| 24. Would you say Joe Biden is | |
| Very liberal35% | |
| Liberal | |
| Moderate | |
| Conservative | |
| Very conservative2% | |
| Not sure8% | |
| | |
| 25. Would you say Kamala Harris is | |
| Very liberal41% | |
| Liberal | |
| Moderate | |
| Conservative | |
| Very conservative | |
| Not sure9% | |
| OC Manda non one Danala Truma in | |
| 26. Would you say Donald Trump is | |
| Very liberal | |
| Moderate | |
| Conservative | |
| Very conservative | |
| Not sure | |
| | |
| 27. Would you say JD Vance is | |
| Very liberal | |
| Liberal | |
| Moderate | |
| Conservative | |
| Very conservative | |
| Not sure | |



| 28. Do you think that Kamala Harris more often? | |
|---|--|
| Says what she believes | |
| Says what people want to hear41% | |
| Both equally15% | |
| Not sure14% | |
| | |
| 29. Do you think that Donald Trump more often? | |
| Says what he believes46% | |
| Says what people want to hear | |
| Both equally17% | |
| Not sure | |
| | |
| 30. Regardless of whether you agree with her, do you like or dislike Kamala Harris as a person? | |
| Like a lot | |
| Like somewhat | |
| Neither like nor dislike | |
| Dislike somewhat11% | |
| Dislike a lot | |
| Not sure | |
| | |
| 31. Regardless of whether you agree with him, do you like or dislike Donald Trump as a person? | |
| Like a lot | |
| LING & IOL | |
| Like somewhat | |
| | |
| Like somewhat | |
| Like somewhat | |
| Like somewhat | |
| Like somewhat 13% Neither like nor dislike 11% Dislike somewhat 7% Dislike a lot 44% | |
| Like somewhat 13% Neither like nor dislike 11% Dislike somewhat 7% Dislike a lot 44% | |
| Like somewhat | |
| Like somewhat 13% Neither like nor dislike 11% Dislike somewhat .7% Dislike a lot .44% Not sure .2% 32. Would you say Kamala Harris is a strong or a weak leader? | |
| Like somewhat 13% Neither like nor dislike 11% Dislike somewhat 7% Dislike a lot 44% Not sure 2% 32. Would you say Kamala Harris is a strong or a weak leader? Very strong 22% | |
| Like somewhat 13% Neither like nor dislike 11% Dislike somewhat | |
| Like somewhat 13% Neither like nor dislike 11% Dislike somewhat 7% Dislike a lot 44% Not sure 2% 32. Would you say Kamala Harris is a strong or a weak leader? Very strong 22% Somewhat strong 28% Somewhat weak 13% | |
| Like somewhat 13% Neither like nor dislike 11% Dislike somewhat 7% Dislike a lot 44% Not sure 2% 32. Would you say Kamala Harris is a strong or a weak leader? Very strong 22% Somewhat strong 28% Somewhat weak 13% | |
| Like somewhat | |
| Like somewhat | |
| Like somewhat 13% Neither like nor dislike 111% Dislike somewhat 7% Dislike a lot 44% Not sure 22% 32. Would you say Kamala Harris is a strong or a weak leader? Very strong 22% Somewhat strong 28% Somewhat weak 13% Very weak 38% 33. Would you say Donald Trump is a strong or a weak leader? Very strong 45% | |



| 34. Do you think Kamala Harris is qualified to be president? | |
|---|---|
| Qualified to be president49% | |
| Not qualified to be president41% | • |
| Not sure | |
| | |
| 35. Do you think Donald Trump is qualified to be president? | |
| Qualified to be president49% | |
| Not qualified to be president47% | • |
| Not sure | , |
| | |
| 36. Which of the following words do you think describe Kamala Harris? | |
| Cautious19% | |
| Tough | |
| Patriotic | |
| Religious6% | |
| Generous | |
| Confident46% | ı |
| Crazy | ı |
| Timid | |
| Confused32% | |
| Steady35% | |
| Smart | |
| Egotistical25% | |
| Funny | |
| Strong | |
| Weak39% | 1 |
| | |
| 37. Which of the following words do you think don't describe Kamala Harris? | |
| Cautious | |
| Tough | |
| Patriotic | |
| Religious | |
| Generous 18% | |
| Confident | |
| Crazy | |
| Timid | |
| Confused | |
| Steady | |
| Smart | |
| Egolistical | |
| Strong | |
| Marala 2007 | |



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1%
2% |
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| 7%
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| 6% |
| 9% |
| 2% |
| 9% |
| 2% |
| 0% |
| 5% |
| 40/ |
| 4%
8% |
| |



| Yes54% | |
|---|-----------|
| No30% | |
| Not sure16% | |
| | |
| 42. If given the choice between a man and woman running for President who are equally qualified, had Americans wouldn't be willing to vote for the woman candidate? | ow many |
| All of them | |
| Most of them | |
| About half of them25% | |
| Some of them | |
| None of them | |
| Not sure | |
| | |
| 43. Do you think a woman will be elected President of the United States in the next 10 years? | |
| Definitely will | |
| Probably will | |
| Probably will not | |
| Definitely will not | |
| Not sure | |
| Not sure20% | |
| | |
| 44. Do you personally hope that the United States elects a woman President of the United States in the years? | e next 10 |
| Yes53% | |
| No | |
| Not sure | |
| | |
| | |
| 45. Who did you vote for in the election for President in 2020? | |
| 45. Who did you vote for in the election for President in 2020? Joe Biden | |
| • | |
| Joe Biden | |
| Joe Biden 47% Donald Trump 43% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% Other 0% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% Other 0% Did not vote for President 7% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% Other 0% Did not vote for President 7% 46. Generally speaking, do you think of yourself as a? | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% Other 0% Did not vote for President 7% 46. Generally speaking, do you think of yourself as a? Democrat 35% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% Other 0% Did not vote for President 7% 46. Generally speaking, do you think of yourself as a? 35% Democrat 35% Republican 37% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% Other 0% Did not vote for President 7% 46. Generally speaking, do you think of yourself as a? Democrat 35% Republican 37% Independent 22% | |
| Joe Biden 47% Donald Trump 43% Jo Jorgensen 1% Howie Hawkins 0% Other 0% Did not vote for President 7% 46. Generally speaking, do you think of yourself as a? 35% Democrat 35% Republican 37% | |



| 47. Are you? | |
|--|--|
| Male47% | |
| Female53% | |
| | |
| 48. In what year were you born? (recoded) | |
| Under 30 | |
| 30-44 | |
| 45-64 | |
| 65+27% | |
| | |
| 49. What racial or ethnic group best describes you? | |
| White71% | |
| Black12% | |
| Hispanic10% | |
| Other7% | |
| | |
| 50. What is the highest level of education you have completed? | |
| HS or less | |
| Some college | |
| College grad25% | |
| Postgrad15% | |
| | |
| 51. In which census region do you live? | |
| Northeast | |
| Midwest24% | |
| South35% | |
| West24% | |



1. Country Under Control

Do you feel that things in this country these days are:

| | | Ge | ender | | A | ge | Race | | | |
|----------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Under control | 19% | 25% | 14% | 25% | 22% | 16% | 18% | 17% | 27% | 21% |
| Out of control | 73% | 68% | 77% | 70% | 72% | 75% | 73% | 76% | 58% | 71% |
| Not sure | 8% | 7% | 9% | 5% | 6% | 10% | 9% | 7% | 15% | 8% |
| Totals | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |

| | | | Party ID | | | Ideology | ' | | Regio | า | |
|----------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Under control | 19% | 33% | 10% | 17% | 26% | 26% | 7% | 21% | 17% | 20% | 19% |
| Out of control | 73% | 55% | 88% | 76% | 62% | 64% | 90% | 69% | 77% | 73% | 72% |
| Not sure | 8% | 12% | 2% | 7% | 11% | 10% | 2% | 10% | 6% | 7% | 10% |
| Totals | 100% | 100% | 100% | 100% | 99% | 100% | 99% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



2. Change in Personal Finances Over Past Year

Would you say that you and your family are...

| | | Gender | | | A | ge | Race | | | |
|---|---------|--------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Better off financially than you were a year ago | 15% | 16% | 14% | 20% | 18% | 14% | 11% | 14% | 17% | 14% |
| About the same financially as you were a year ago | 39% | 37% | 42% | 49% | 40% | 35% | 39% | 38% | 48% | 40% |
| Worse off financially than you were a year ago | 45% | 46% | 43% | 29% | 41% | 51% | 49% | 48% | 30% | 45% |
| Not sure | 1% | 1% | 1% | 2% | 2% | 0% | 1% | 0% | 5% | 1% |
| Totals | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |

| | | | Party ID | | | Ideology | 1 | | Regio | n | |
|---|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Better off financially than you were a year ago | 15% | 23% | 7% | 15% | 26% | 15% | 7% | 15% | 12% | 16% | 17% |
| About the same financially as you were a year ago | 39% | 52% | 32% | 33% | 47% | 47% | 26% | 40% | 37% | 39% | 42% |
| Worse off financially than you were a year ago | 45% | 24% | 61% | 51% | 26% | 36% | 67% | 45% | 50% | 44% | 40% |
| Not sure | 1% | 1% | 0% | 1% | 1% | 2% | 0% | 1% | 1% | 1% | 2% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 101% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



3. Personal Financial Prospective

Looking ahead, do you think that a year from now you and your household will be...

| | | Ge | ender | | A | ge | Race | | | |
|----------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Better off financially | 28% | 30% | 25% | 40% | 33% | 24% | 20% | 27% | 30% | 28% |
| Just about the same as now | 38% | 38% | 39% | 34% | 37% | 39% | 41% | 37% | 42% | 39% |
| Worse off financially | 16% | 16% | 17% | 17% | 14% | 17% | 17% | 17% | 13% | 18% |
| Not sure | 18% | 16% | 19% | 10% | 16% | 19% | 22% | 18% | 16% | 15% |
| Totals | 100% | 100% | 100% | 101% | 100% | 99% | 100% | 99% | 101% | 100% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |

| | | Party ID | | | Ideology | | | Region | | | |
|----------------------------|---------|----------|-------|-------|----------|-------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Better off financially | 28% | 35% | 21% | 24% | 36% | 25% | 23% | 28% | 23% | 30% | 29% |
| Just about the same as now | 38% | 40% | 41% | 35% | 38% | 42% | 34% | 39% | 41% | 35% | 41% |
| Worse off financially | 16% | 11% | 18% | 22% | 12% | 17% | 20% | 17% | 16% | 16% | 17% |
| Not sure | 18% | 13% | 21% | 19% | 13% | 15% | 23% | 16% | 20% | 19% | 14% |
| Totals | 100% | 99% | 101% | 100% | 99% | 99% | 100% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



4. World View

Which comes closest to your view?

| | Total | Ge | ender | | A | ge | | | Race | |
|--|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Our lives are threatened by terrorists, criminals, and illegal immigrants and our priority should be to protect ourselves. It's a big, beautiful world, mostly full of good people, and we must find a way to embrace each other and not allow | 40% | 44% | 36% | 27% | 31% | 44% | 50% | 44% | 24% | 39% |
| ourselves to become isolated. | 50% | 46% | 53% | 64% | 58% | 48% | 39% | 47% | 66% | 49% |
| Not sure | 10% | 9% | 10% | 10% | 11% | 8% | 11% | 10% | 10% | 12% |
| Totals | 100% | 99% | 99% | 101% | 100% | 100% | 100% | 101% | 100% | 100% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |

| | | | Party ID | | | Ideology | Ī | | Regio | n | |
|--|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Our lives are threatened by terrorists, criminals, and illegal immigrants and our priority should be to protect ourselves. It's a big, beautiful world, mostly full of good people, and we must find a way to embrace each other and not allow | 40% | 11% | 69% | 38% | 9% | 33% | 73% | 33% | 43% | 43% | 38% |
| ourselves to become isolated. | 50% | 78% | 24% | 49% | 84% | 52% | 21% | 55% | 48% | 49% | 51% |
| Not sure | 10% | 10% | 6% | 13% | 8% | 15% | 7% | 12% | 10% | 8% | 12% |
| Totals | 100% | 99% | 99% | 100% | 101% | 100% | 101% | 100% | 101% | 100% | 101% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



5A. Favorability of Individuals — Joe Biden

| | | Ge | ender | | A | ge | Race | | | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very favorable | 24% | 22% | 27% | 9% | 23% | 26% | 32% | 21% | 48% | 23% |
| Somewhat favorable | 15% | 15% | 15% | 28% | 18% | 13% | 8% | 14% | 18% | 19% |
| Neutral | 6% | 4% | 8% | 9% | 9% | 6% | 3% | 5% | 12% | 9% |
| Somewhat unfavorable | 9% | 8% | 9% | 18% | 11% | 6% | 4% | 8% | 5% | 15% |
| Very unfavorable | 45% | 51% | 40% | 35% | 37% | 49% | 53% | 52% | 16% | 34% |
| Don't know | 1% | 0% | 1% | 1% | 1% | 0% | 0% | 0% | 2% | 1% |
| Totals | 100% | 100% | 100% | 100% | 99% | 100% | 100% | 100% | 101% | 101% |
| Unweighted N | (1,168) | (493) | (675) | (137) | (264) | (437) | (330) | (801) | (140) | (157) |

| | | | Party ID | | | ldeology | , | | Regio | n | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 24% | 55% | 4% | 15% | 47% | 27% | 4% | 32% | 19% | 24% | 25% |
| Somewhat favorable | 15% | 27% | 2% | 20% | 27% | 16% | 5% | 12% | 15% | 16% | 16% |
| Neutral | 6% | 7% | 2% | 10% | 6% | 9% | 2% | 7% | 6% | 6% | 6% |
| Somewhat unfavorable | 9% | 7% | 6% | 13% | 9% | 13% | 4% | 9% | 9% | 6% | 12% |
| Very unfavorable | 45% | 4% | 86% | 43% | 9% | 34% | 85% | 39% | 50% | 48% | 41% |
| Don't know | 1% | 1% | 1% | 0% | 0% | 1% | 0% | 1% | 1% | 0% | 1% |
| Totals | 100% | 101% | 101% | 101% | 98% | 100% | 100% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,168) | (434) | (330) | (326) | (374) | (400) | (339) | (203) | (274) | (395) | (296) |



5B. Favorability of Individuals — Kamala Harris

| | | Ge | ender | | A | ge | Race | | | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very favorable | 27% | 23% | 30% | 13% | 29% | 28% | 32% | 23% | 53% | 27% |
| Somewhat favorable | 15% | 14% | 15% | 30% | 16% | 12% | 8% | 14% | 14% | 18% |
| Neutral | 6% | 6% | 6% | 8% | 10% | 5% | 2% | 5% | 8% | 10% |
| Somewhat unfavorable | 9% | 9% | 8% | 20% | 11% | 5% | 5% | 8% | 9% | 12% |
| Very unfavorable | 43% | 48% | 38% | 25% | 32% | 50% | 53% | 50% | 12% | 31% |
| Don't know | 1% | 1% | 2% | 3% | 2% | 0% | 1% | 1% | 5% | 3% |
| Totals | 101% | 101% | 99% | 99% | 100% | 100% | 101% | 101% | 101% | 101% |
| Unweighted N | (1,166) | (493) | (673) | (137) | (263) | (435) | (331) | (799) | (139) | (158) |

| | | | Party ID | | | Ideology | , | | Regio | n | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 27% | 60% | 3% | 17% | 53% | 28% | 3% | 31% | 26% | 24% | 29% |
| Somewhat favorable | 15% | 24% | 3% | 18% | 28% | 14% | 5% | 16% | 13% | 17% | 11% |
| Neutral | 6% | 9% | 2% | 8% | 6% | 8% | 3% | 8% | 5% | 5% | 7% |
| Somewhat unfavorable | 9% | 3% | 10% | 12% | 5% | 15% | 5% | 6% | 9% | 8% | 11% |
| Very unfavorable | 43% | 4% | 81% | 44% | 7% | 33% | 82% | 37% | 46% | 44% | 41% |
| Don't know | 1% | 0% | 1% | 1% | 0% | 1% | 2% | 1% | 1% | 2% | 1% |
| Totals | 101% | 100% | 100% | 100% | 99% | 99% | 100% | 99% | 100% | 100% | 100% |
| Unweighted N | (1,166) | (432) | (330) | (326) | (373) | (400) | (339) | (203) | (274) | (395) | (294) |



5C. Favorability of Individuals — Mark Kelly

| | | Ge | ender | | A | ge | | Race | | | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| Very favorable | 14% | 14% | 14% | 5% | 13% | 16% | 18% | 15% | 21% | 10% | |
| Somewhat favorable | 7% | 8% | 7% | 8% | 8% | 7% | 7% | 6% | 10% | 11% | |
| Neutral | 20% | 23% | 17% | 29% | 22% | 18% | 14% | 18% | 20% | 24% | |
| Somewhat unfavorable | 9% | 12% | 6% | 8% | 7% | 8% | 12% | 10% | 5% | 7% | |
| Very unfavorable | 12% | 14% | 10% | 4% | 10% | 13% | 16% | 12% | 8% | 13% | |
| Don't know | 38% | 29% | 46% | 46% | 40% | 37% | 33% | 39% | 37% | 36% | |
| Totals | 100% | 100% | 100% | 100% | 100% | 99% | 100% | 100% | 101% | 101% | |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (801) | (140) | (158) | |

| | | | Party ID | | | Ideology | , | | Regio | า | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 14% | 31% | 2% | 11% | 33% | 14% | 1% | 20% | 13% | 11% | 17% |
| Somewhat favorable | 7% | 12% | 3% | 7% | 13% | 9% | 2% | 6% | 6% | 9% | 8% |
| Neutral | 20% | 18% | 20% | 23% | 18% | 25% | 17% | 22% | 20% | 19% | 18% |
| Somewhat unfavorable | 9% | 2% | 17% | 7% | 2% | 7% | 17% | 13% | 6% | 8% | 9% |
| Very unfavorable | 12% | 4% | 18% | 12% | 4% | 7% | 22% | 9% | 11% | 13% | 14% |
| Don't know | 38% | 33% | 40% | 40% | 30% | 39% | 41% | 30% | 43% | 41% | 35% |
| Totals | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 99% | 101% | 101% |
| Unweighted N | (1,169) | (433) | (332) | (326) | (373) | (400) | (341) | (203) | (274) | (396) | (296) |



5D. Favorability of Individuals — Josh Shapiro

| | | Ge | ender | | A | ge | | | Race | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very favorable | 12% | 13% | 11% | 5% | 14% | 13% | 14% | 11% | 23% | 10% |
| Somewhat favorable | 10% | 10% | 10% | 12% | 10% | 9% | 10% | 10% | 9% | 8% |
| Neutral | 19% | 20% | 19% | 22% | 20% | 19% | 18% | 18% | 18% | 27% |
| Somewhat unfavorable | 9% | 12% | 7% | 12% | 11% | 7% | 10% | 10% | 6% | 9% |
| Very unfavorable | 13% | 15% | 11% | 14% | 11% | 12% | 15% | 13% | 5% | 14% |
| Don't know | 37% | 30% | 43% | 35% | 35% | 41% | 34% | 37% | 39% | 32% |
| Totals | 100% | 100% | 101% | 100% | 101% | 101% | 101% | 99% | 100% | 100% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (436) | (332) | (801) | (140) | (158) |

| | | | Party ID | | | ldeology | , | | Regio | า | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 12% | 27% | 2% | 7% | 27% | 11% | 2% | 22% | 8% | 9% | 12% |
| Somewhat favorable | 10% | 15% | 5% | 10% | 16% | 10% | 5% | 16% | 7% | 9% | 10% |
| Neutral | 19% | 17% | 21% | 23% | 16% | 25% | 18% | 19% | 16% | 20% | 21% |
| Somewhat unfavorable | 9% | 3% | 16% | 10% | 4% | 9% | 15% | 11% | 9% | 9% | 9% |
| Very unfavorable | 13% | 6% | 19% | 11% | 7% | 7% | 22% | 13% | 14% | 13% | 11% |
| Don't know | 37% | 32% | 37% | 38% | 29% | 38% | 38% | 19% | 46% | 39% | 37% |
| Totals | 100% | 100% | 100% | 99% | 99% | 100% | 100% | 100% | 100% | 99% | 100% |
| Unweighted N | (1,169) | (434) | (331) | (326) | (374) | (400) | (340) | (203) | (274) | (395) | (297) |



5E. Favorability of Individuals — Roy Cooper

| | | Ge | ender | | A | ge | | | Race | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very favorable | 5% | 6% | 4% | 3% | 4% | 5% | 7% | 6% | 6% | 1% |
| Somewhat favorable | 6% | 7% | 5% | 6% | 8% | 6% | 5% | 5% | 10% | 8% |
| Neutral | 23% | 26% | 20% | 31% | 22% | 21% | 23% | 20% | 27% | 36% |
| Somewhat unfavorable | 5% | 7% | 4% | 10% | 6% | 4% | 4% | 6% | 4% | 5% |
| Very unfavorable | 8% | 9% | 7% | 5% | 8% | 7% | 10% | 8% | 8% | 10% |
| Don't know | 52% | 45% | 59% | 44% | 53% | 58% | 50% | 55% | 45% | 40% |
| Totals | 99% | 100% | 99% | 99% | 101% | 101% | 99% | 100% | 100% | 100% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (801) | (140) | (158) |

| | | | Party ID | | | Ideology | 1 | | Regio | า | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 5% | 12% | 1% | 3% | 12% | 5% | 1% | 7% | 3% | 5% | 5% |
| Somewhat favorable | 6% | 10% | 3% | 7% | 12% | 6% | 2% | 6% | 3% | 8% | 7% |
| Neutral | 23% | 25% | 23% | 22% | 22% | 30% | 17% | 31% | 19% | 22% | 23% |
| Somewhat unfavorable | 5% | 3% | 7% | 8% | 5% | 5% | 7% | 7% | 5% | 7% | 2% |
| Very unfavorable | 8% | 3% | 13% | 7% | 3% | 5% | 14% | 4% | 6% | 11% | 7% |
| Don't know | 52% | 48% | 54% | 53% | 47% | 49% | 58% | 45% | 63% | 46% | 56% |
| Totals | 99% | 101% | 101% | 100% | 101% | 100% | 99% | 100% | 99% | 99% | 100% |
| Unweighted N | (1,169) | (434) | (331) | (326) | (374) | (400) | (340) | (203) | (274) | (395) | (297) |



5F. Favorability of Individuals — Andy Beshear

| |
Total Ma | | ender | | A | ge | | Race | | | |
|----------------------|--------------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| Very favorable | 10% | 10% | 9% | 5% | 8% | 9% | 15% | 10% | 15% | 4% | |
| Somewhat favorable | 9% | 9% | 8% | 8% | 11% | 9% | 7% | 8% | 8% | 9% | |
| Neutral | 22% | 25% | 20% | 37% | 24% | 15% | 21% | 20% | 27% | 33% | |
| Somewhat unfavorable | 6% | 7% | 6% | 3% | 5% | 8% | 7% | 7% | 3% | 7% | |
| Very unfavorable | 10% | 11% | 9% | 4% | 8% | 12% | 12% | 10% | 10% | 11% | |
| Don't know | 43% | 37% | 49% | 42% | 44% | 47% | 38% | 44% | 38% | 36% | |
| Totals | 100% | 99% | 101% | 99% | 100% | 100% | 100% | 99% | 101% | 100% | |
| Unweighted N | (1,168) | (494) | (674) | (136) | (264) | (436) | (332) | (801) | (140) | (157) | |

| | | | Party ID | | | ldeology | , | | Regio | n | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 10% | 22% | 1% | 7% | 22% | 9% | 2% | 13% | 11% | 9% | 8% |
| Somewhat favorable | 9% | 13% | 5% | 7% | 16% | 9% | 3% | 11% | 5% | 9% | 9% |
| Neutral | 22% | 23% | 20% | 28% | 22% | 28% | 19% | 28% | 19% | 22% | 23% |
| Somewhat unfavorable | 6% | 2% | 11% | 6% | 2% | 6% | 11% | 7% | 7% | 7% | 5% |
| Very unfavorable | 10% | 4% | 16% | 9% | 3% | 6% | 19% | 6% | 10% | 12% | 9% |
| Don't know | 43% | 37% | 47% | 42% | 35% | 42% | 48% | 36% | 48% | 42% | 46% |
| Totals | 100% | 101% | 100% | 99% | 100% | 100% | 102% | 101% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (434) | (331) | (326) | (374) | (400) | (340) | (203) | (274) | (394) | (297) |



5G. Favorability of Individuals — Amy Klobuchar

| | | Ge | ender | | A | ge | | | Race | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very favorable | 12% | 10% | 13% | 7% | 9% | 11% | 18% | 12% | 18% | 9% |
| Somewhat favorable | 11% | 13% | 9% | 7% | 14% | 12% | 10% | 10% | 13% | 11% |
| Neutral | 20% | 23% | 18% | 28% | 26% | 16% | 16% | 19% | 19% | 27% |
| Somewhat unfavorable | 9% | 11% | 7% | 14% | 5% | 9% | 9% | 9% | 5% | 10% |
| Very unfavorable | 16% | 21% | 13% | 8% | 13% | 18% | 23% | 18% | 12% | 12% |
| Don't know | 31% | 22% | 40% | 36% | 33% | 34% | 24% | 32% | 33% | 31% |
| Totals | 99% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,166) | (494) | (672) | (137) | (264) | (435) | (330) | (799) | (139) | (158) |

| | | | Party ID | | | Ideology | , | | Regio | า | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 12% | 27% | 2% | 7% | 28% | 11% | 1% | 15% | 13% | 10% | 12% |
| Somewhat favorable | 11% | 17% | 6% | 12% | 17% | 14% | 3% | 15% | 10% | 10% | 10% |
| Neutral | 20% | 21% | 20% | 21% | 18% | 28% | 15% | 24% | 16% | 21% | 20% |
| Somewhat unfavorable | 9% | 6% | 10% | 10% | 8% | 5% | 14% | 9% | 9% | 7% | 12% |
| Very unfavorable | 16% | 4% | 28% | 18% | 6% | 9% | 32% | 15% | 17% | 19% | 13% |
| Don't know | 31% | 25% | 34% | 32% | 22% | 32% | 34% | 23% | 35% | 33% | 32% |
| Totals | 99% | 100% | 100% | 100% | 99% | 99% | 99% | 101% | 100% | 100% | 99% |
| Unweighted N | (1,166) | (433) | (330) | (325) | (372) | (400) | (339) | (202) | (274) | (394) | (296) |



5H. Favorability of Individuals — Gretchen Whitmer

| | | Ge | ender | | A | ge | | | Race | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very favorable | 16% | 16% | 17% | 11% | 17% | 15% | 21% | 17% | 22% | 8% |
| Somewhat favorable | 11% | 13% | 9% | 15% | 12% | 10% | 9% | 10% | 14% | 11% |
| Neutral | 18% | 19% | 17% | 30% | 22% | 16% | 10% | 16% | 23% | 31% |
| Somewhat unfavorable | 6% | 7% | 6% | 8% | 4% | 6% | 7% | 7% | 2% | 8% |
| Very unfavorable | 22% | 28% | 16% | 5% | 16% | 26% | 32% | 25% | 11% | 16% |
| Don't know | 27% | 17% | 35% | 30% | 29% | 27% | 21% | 26% | 29% | 26% |
| Totals | 100% | 100% | 100% | 99% | 100% | 100% | 100% | 101% | 101% | 100% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (436) | (332) | (801) | (140) | (158) |

| | | | Party ID | | | Ideology | | | Region | | | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|--|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West | |
| Very favorable | 16% | 33% | 3% | 13% | 37% | 16% | 1% | 20% | 19% | 14% | 14% | |
| Somewhat favorable | 11% | 17% | 5% | 9% | 20% | 11% | 4% | 18% | 9% | 9% | 11% | |
| Neutral | 18% | 18% | 16% | 21% | 16% | 26% | 12% | 20% | 15% | 18% | 20% | |
| Somewhat unfavorable | 6% | 2% | 9% | 7% | 2% | 7% | 10% | 7% | 9% | 5% | 5% | |
| Very unfavorable | 22% | 3% | 40% | 23% | 4% | 10% | 48% | 16% | 24% | 25% | 20% | |
| Don't know | 27% | 26% | 26% | 26% | 22% | 30% | 25% | 19% | 24% | 31% | 29% | |
| Totals | 100% | 99% | 99% | 99% | 101% | 100% | 100% | 100% | 100% | 102% | 99% | |
| Unweighted N | (1,169) | (434) | (331) | (326) | (374) | (400) | (340) | (203) | (274) | (395) | (297) | |



51. Favorability of Individuals — JD Vance

| | | Ge | ender | | Ag | ge | | | Race | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very favorable | 20% | 23% | 17% | 7% | 12% | 21% | 33% | 24% | 5% | 20% |
| Somewhat favorable | 14% | 19% | 10% | 16% | 14% | 16% | 12% | 15% | 8% | 12% |
| Neutral | 13% | 12% | 14% | 18% | 15% | 12% | 10% | 13% | 13% | 15% |
| Somewhat unfavorable | 7% | 7% | 8% | 11% | 8% | 5% | 7% | 7% | 6% | 12% |
| Very unfavorable | 34% | 31% | 36% | 32% | 37% | 33% | 33% | 32% | 48% | 25% |
| Don't know | 12% | 8% | 15% | 17% | 14% | 12% | 6% | 10% | 21% | 15% |
| Totals | 100% | 100% | 100% | 101% | 100% | 99% | 101% | 101% | 101% | 99% |
| Unweighted N | (1,165) | (493) | (672) | (137) | (263) | (436) | (329) | (797) | (140) | (158) |

| | | | Party ID | | | Ideology | , | | Regio | า | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 20% | 1% | 43% | 15% | 3% | 9% | 45% | 16% | 22% | 24% | 15% |
| Somewhat favorable | 14% | 3% | 24% | 18% | 2% | 12% | 27% | 15% | 15% | 13% | 15% |
| Neutral | 13% | 9% | 13% | 19% | 7% | 21% | 11% | 17% | 13% | 12% | 14% |
| Somewhat unfavorable | 7% | 9% | 5% | 9% | 8% | 11% | 4% | 5% | 8% | 8% | 7% |
| Very unfavorable | 34% | 66% | 7% | 27% | 72% | 31% | 6% | 39% | 33% | 30% | 36% |
| Don't know | 12% | 12% | 8% | 13% | 9% | 16% | 8% | 8% | 10% | 13% | 14% |
| Totals | 100% | 100% | 100% | 101% | 101% | 100% | 101% | 100% | 101% | 100% | 101% |
| Unweighted N | (1,165) | (434) | (328) | (326) | (373) | (400) | (337) | (203) | (274) | (393) | (295) |



5J. Favorability of Individuals — Donald Trump

| | | Ge | ender | | Age | | | | Race | | | |
|----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | | |
| Very favorable | 33% | 38% | 28% | 23% | 27% | 37% | 40% | 39% | 11% | 30% | | |
| Somewhat favorable | 11% | 12% | 9% | 9% | 12% | 11% | 11% | 12% | 3% | 10% | | |
| Neutral | 5% | 5% | 5% | 11% | 5% | 3% | 4% | 5% | 6% | 6% | | |
| Somewhat unfavorable | 4% | 5% | 4% | 7% | 4% | 4% | 3% | 3% | 8% | 7% | | |
| Very unfavorable | 46% | 39% | 53% | 49% | 50% | 45% | 43% | 42% | 66% | 46% | | |
| Don't know | 1% | 1% | 1% | 1% | 2% | 0% | 0% | 0% | 6% | 1% | | |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 101% | 100% | 100% | | |
| Unweighted N | (1,168) | (494) | (674) | (137) | (263) | (436) | (332) | (801) | (140) | (157) | | |

| | | | Party ID | | | Ideology | 1 | Region | | | |
|----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very favorable | 33% | 3% | 71% | 24% | 5% | 20% | 69% | 30% | 35% | 39% | 26% |
| Somewhat favorable | 11% | 1% | 15% | 19% | 2% | 16% | 14% | 9% | 10% | 11% | 12% |
| Neutral | 5% | 3% | 4% | 9% | 1% | 7% | 5% | 3% | 5% | 5% | 7% |
| Somewhat unfavorable | 4% | 3% | 3% | 7% | 2% | 7% | 3% | 4% | 5% | 4% | 4% |
| Very unfavorable | 46% | 89% | 8% | 42% | 90% | 50% | 8% | 53% | 45% | 40% | 51% |
| Don't know | 1% | 1% | 0% | 0% | 0% | 1% | 0% | 2% | 0% | 1% | 0% |
| Totals | 100% | 100% | 101% | 101% | 100% | 101% | 99% | 101% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (434) | (331) | (325) | (373) | (400) | (340) | (202) | (274) | (395) | (297) |



6. Approve of Biden Dropping Out

Do you approve or disapprove of Joe Biden's decision to drop out of the 2024 Presidential race?

| | | Ge | ender | | A | ge | Race | | | |
|---------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Strongly approve | 51% | 51% | 51% | 48% | 47% | 53% | 52% | 53% | 39% | 47% |
| Somewhat approve | 25% | 22% | 28% | 30% | 31% | 20% | 23% | 24% | 33% | 24% |
| Somewhat disapprove | 8% | 9% | 7% | 7% | 8% | 8% | 9% | 7% | 10% | 13% |
| Strongly disapprove | 9% | 12% | 7% | 8% | 8% | 11% | 9% | 10% | 4% | 8% |
| Not sure | 7% | 7% | 7% | 7% | 5% | 9% | 7% | 6% | 14% | 7% |
| Totals | 100% | 101% | 100% | 100% | 99% | 101% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |

| | | | Party ID | | | Ideology | , | Region | | | |
|---------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Strongly approve | 51% | 50% | 54% | 48% | 56% | 46% | 50% | 47% | 54% | 49% | 53% |
| Somewhat approve | 25% | 37% | 15% | 22% | 33% | 29% | 14% | 26% | 23% | 24% | 27% |
| Somewhat disapprove | 8% | 5% | 10% | 9% | 5% | 7% | 11% | 8% | 7% | 11% | 6% |
| Strongly disapprove | 9% | 4% | 14% | 10% | 3% | 11% | 14% | 13% | 11% | 8% | 8% |
| Not sure | 7% | 4% | 7% | 11% | 3% | 7% | 10% | 6% | 6% | 9% | 6% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 99% | 100% | 101% | 101% | 100% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



7. Was Biden Unfairly Pressured

Was Joe Biden unfairly pressured to drop out of the election?

| | | Gender | | | A | ge | Race | | | |
|--------------|---------|--------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Yes | 32% | 35% | 29% | 19% | 28% | 33% | 41% | 31% | 31% | 36% |
| No | 48% | 50% | 47% | 58% | 52% | 48% | 39% | 49% | 44% | 44% |
| Not sure | 20% | 15% | 25% | 23% | 20% | 19% | 20% | 20% | 25% | 20% |
| Totals | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (801) | (140) | (158) |

| | | | Party ID | | | Ideology | 1 | | Region | า | |
|--------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Yes | 32% | 28% | 35% | 35% | 25% | 28% | 42% | 34% | 30% | 32% | 31% |
| No | 48% | 49% | 49% | 43% | 56% | 51% | 40% | 45% | 49% | 46% | 53% |
| Not sure | 20% | 23% | 16% | 22% | 20% | 21% | 18% | 21% | 20% | 22% | 17% |
| Totals | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 99% | 100% | 101% |
| Unweighted N | (1,169) | (434) | (332) | (325) | (374) | (400) | (341) | (203) | (273) | (396) | (297) |



8. Should Biden Resign

Joe Biden has decided not to seek reelection. Do you think...?

| | | Ge | ender | | A | ge | | | Race | |
|--|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| He should resign now | 30% | 36% | 25% | 22% | 30% | 33% | 31% | 33% | 15% | 29% |
| He should serve until the end of his term in January | 63% | 58% | 67% | 72% | 63% | 59% | 61% | 60% | 75% | 66% |
| Not sure | 7% | 6% | 8% | 7% | 7% | 7% | 8% | 7% | 10% | 5% |
| Totals | 100% | 100% | 100% | 101% | 100% | 99% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,169) | (493) | (676) | (137) | (264) | (437) | (331) | (801) | (140) | (158) |

| | | | Party ID | ı | | Ideology | , | | Regio | n | |
|--|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| He should resign now | 30% | 6% | 53% | 31% | 9% | 25% | 52% | 30% | 33% | 30% | 28% |
| He should serve until the end of his term in January | 63% | 89% | 37% | 66% | 87% | 69% | 39% | 67% | 59% | 62% | 65% |
| Not sure | 7% | 5% | 9% | 3% | 4% | 6% | 9% | 3% | 8% | 8% | 6% |
| Totals | 100% | 100% | 99% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,169) | (434) | (331) | (326) | (374) | (400) | (340) | (203) | (274) | (395) | (297) |



9. Cover-Up of Biden's Health

Do you think there has been a cover-up of Joe Biden's health?

| | | Ge | ender | | Ag | ge | | Race | | | |
|--------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| Yes | 54% | 61% | 48% | 50% | 48% | 58% | 56% | 59% | 25% | 50% | |
| No | 30% | 27% | 32% | 31% | 34% | 28% | 28% | 27% | 48% | 29% | |
| Not sure | 16% | 11% | 20% | 19% | 18% | 13% | 17% | 14% | 27% | 21% | |
| Totals | 100% | 99% | 100% | 100% | 100% | 99% | 101% | 100% | 100% | 100% | |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (802) | (140) | (158) | |

| | | | Party ID | | | Ideology | , | | Region | n | |
|--------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Yes | 54% | 20% | 85% | 60% | 24% | 47% | 86% | 50% | 54% | 57% | 53% |
| No | 30% | 57% | 9% | 24% | 56% | 32% | 8% | 33% | 28% | 28% | 33% |
| Not sure | 16% | 23% | 7% | 16% | 20% | 20% | 7% | 17% | 18% | 15% | 14% |
| Totals | 100% | 100% | 101% | 100% | 100% | 99% | 101% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,169) | (434) | (332) | (325) | (374) | (400) | (340) | (203) | (274) | (396) | (296) |



10A. Responsible for Cover-Up of Biden's Health — Kamala Harris

| | | Ge | ender | Age | | | | Race | | |
|--------------|-------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| A great deal | 68% | 70% | 66% | 38% | 54% | 79% | 80% | 73% | 30% | 53% |
| Somewhat | 17% | 14% | 20% | 27% | 27% | 9% | 13% | 15% | 15% | 27% |
| A little | 7% | 9% | 6% | 20% | 10% | 5% | 2% | 6% | 9% | 13% |
| Not at all | 4% | 4% | 3% | 9% | 3% | 4% | 2% | 3% | 24% | 0% |
| Not sure | 4% | 3% | 5% | 7% | 6% | 3% | 3% | 3% | 22% | 7% |
| Totals | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (573) | (279) | (294) | (65) | (119) | (231) | (158) | (423) | (39) | (76) |

| | | | Party ID | | Ideology | | | Region | | | |
|--------------|-------|------|----------|-------|----------|-------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| A great deal | 68% | 22% | 78% | 73% | 31% | 57% | 82% | 57% | 78% | 68% | 66% |
| Somewhat | 17% | 36% | 14% | 11% | 33% | 18% | 12% | 18% | 13% | 15% | 21% |
| A little | 7% | 20% | 4% | 8% | 21% | 9% | 3% | 13% | 5% | 7% | 6% |
| Not at all | 4% | 12% | 2% | 5% | 7% | 7% | 1% | 7% | 3% | 5% | 1% |
| Not sure | 4% | 9% | 3% | 4% | 8% | 8% | 2% | 5% | 1% | 5% | 6% |
| Totals | 100% | 99% | 101% | 101% | 100% | 99% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (573) | (82) | (281) | (175) | (88) | (171) | (289) | (90) | (141) | (203) | (139) |



10B. Responsible for Cover-Up of Biden's Health — The news media

| | | Ge | ender | Age | | | | Race | | | |
|--------------|-------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| A great deal | 59% | 65% | 53% | 31% | 48% | 62% | 78% | 63% | 14% | 57% | |
| Somewhat | 20% | 16% | 23% | 28% | 28% | 18% | 11% | 20% | 37% | 8% | |
| A little | 9% | 9% | 10% | 24% | 6% | 9% | 4% | 8% | 21% | 16% | |
| Not at all | 8% | 5% | 11% | 8% | 13% | 8% | 3% | 6% | 24% | 8% | |
| Not sure | 4% | 5% | 4% | 9% | 5% | 4% | 3% | 4% | 4% | 12% | |
| Totals | 100% | 100% | 101% | 100% | 100% | 101% | 99% | 101% | 100% | 101% | |
| Unweighted N | (573) | (279) | (294) | (65) | (119) | (230) | (159) | (423) | (39) | (76) | |

| | | | Party ID | | | Ideology | , | | Region | 1 | |
|--------------|-------|------|----------|-------|------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| A great deal | 59% | 12% | 69% | 64% | 20% | 45% | 76% | 56% | 59% | 64% | 54% |
| Somewhat | 20% | 36% | 16% | 19% | 28% | 26% | 14% | 17% | 21% | 21% | 18% |
| A little | 9% | 24% | 6% | 9% | 24% | 13% | 3% | 11% | 9% | 7% | 10% |
| Not at all | 8% | 20% | 6% | 5% | 23% | 9% | 3% | 11% | 7% | 6% | 8% |
| Not sure | 4% | 8% | 5% | 3% | 6% | 7% | 3% | 5% | 3% | 2% | 9% |
| Totals | 100% | 100% | 102% | 100% | 101% | 100% | 99% | 100% | 99% | 100% | 99% |
| Unweighted N | (573) | (82) | (281) | (175) | (88) | (171) | (289) | (90) | (141) | (202) | (140) |



10C. Responsible for Cover-Up of Biden's Health — The Biden family

| | | Ge | ender | Age | | | | Race | | | |
|--------------|-------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| A great deal | 84% | 87% | 81% | 66% | 78% | 89% | 91% | 86% | 51% | 83% | |
| Somewhat | 9% | 6% | 12% | 21% | 13% | 5% | 5% | 8% | 24% | 8% | |
| A little | 3% | 3% | 3% | 6% | 3% | 2% | 2% | 3% | 5% | 6% | |
| Not at all | 2% | 1% | 2% | 3% | 3% | 1% | 1% | 1% | 5% | 1% | |
| Not sure | 3% | 3% | 2% | 4% | 4% | 3% | 0% | 2% | 15% | 3% | |
| Totals | 101% | 100% | 100% | 100% | 101% | 100% | 99% | 100% | 100% | 101% | |
| Unweighted N | (573) | (279) | (294) | (65) | (119) | (230) | (159) | (423) | (39) | (76) | |

| | | | Party ID | | | Ideology | , | | Region | า | |
|--------------|-------|------|----------|-------|------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| A great deal | 84% | 65% | 88% | 88% | 67% | 77% | 92% | 82% | 86% | 84% | 83% |
| Somewhat | 9% | 20% | 6% | 7% | 20% | 11% | 4% | 9% | 8% | 8% | 10% |
| A little | 3% | 4% | 2% | 3% | 2% | 7% | 1% | 3% | 2% | 4% | 3% |
| Not at all | 2% | 6% | 1% | 1% | 5% | 2% | 1% | 5% | 2% | 2% | 0% |
| Not sure | 3% | 4% | 2% | 1% | 6% | 4% | 1% | 2% | 2% | 2% | 4% |
| Totals | 101% | 99% | 99% | 100% | 100% | 101% | 99% | 101% | 100% | 100% | 100% |
| Unweighted N | (573) | (82) | (281) | (175) | (88) | (171) | (289) | (90) | (140) | (203) | (140) |



10D. Responsible for Cover-Up of Biden's Health — Democrats in Congress

| | | Ge | ender | Age | | | | Race | | | |
|--------------|-------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| A great deal | 61% | 64% | 58% | 43% | 58% | 65% | 68% | 65% | 34% | 58% | |
| Somewhat | 23% | 22% | 25% | 25% | 21% | 22% | 24% | 23% | 27% | 20% | |
| A little | 8% | 8% | 8% | 17% | 10% | 6% | 3% | 6% | 16% | 13% | |
| Not at all | 4% | 3% | 4% | 9% | 6% | 1% | 2% | 3% | 9% | 5% | |
| Not sure | 4% | 4% | 5% | 6% | 5% | 5% | 3% | 3% | 15% | 3% | |
| Totals | 100% | 101% | 100% | 100% | 100% | 99% | 100% | 100% | 101% | 99% | |
| Unweighted N | (574) | (279) | (295) | (65) | (119) | (231) | (159) | (424) | (39) | (76) | |

| | | | Party ID | | | Ideology | , | | Region | า | |
|--------------|-------|------|----------|-------|------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| A great deal | 61% | 30% | 72% | 58% | 34% | 48% | 74% | 56% | 62% | 65% | 58% |
| Somewhat | 23% | 32% | 19% | 27% | 25% | 29% | 21% | 23% | 24% | 20% | 27% |
| A little | 8% | 22% | 4% | 8% | 25% | 10% | 3% | 12% | 6% | 7% | 7% |
| Not at all | 4% | 12% | 2% | 3% | 8% | 5% | 2% | 5% | 4% | 4% | 1% |
| Not sure | 4% | 4% | 3% | 4% | 8% | 7% | 2% | 3% | 4% | 3% | 7% |
| Totals | 100% | 100% | 100% | 100% | 100% | 99% | 102% | 99% | 100% | 99% | 100% |
| Unweighted N | (574) | (82) | (282) | (175) | (88) | (171) | (290) | (90) | (141) | (203) | (140) |



10E. Responsible for Cover-Up of Biden's Health — White House staff

| | | Ge | ender | Age | | | | Race | | | |
|--------------|-------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| A great deal | 77% | 81% | 73% | 51% | 71% | 83% | 88% | 83% | 45% | 54% | |
| Somewhat | 14% | 13% | 16% | 36% | 15% | 10% | 8% | 12% | 22% | 33% | |
| A little | 4% | 3% | 6% | 10% | 6% | 3% | 2% | 3% | 11% | 12% | |
| Not at all | 1% | 1% | 1% | 0% | 1% | 1% | 2% | 1% | 2% | 1% | |
| Not sure | 3% | 2% | 4% | 2% | 6% | 3% | 1% | 2% | 20% | 0% | |
| Totals | 99% | 100% | 100% | 99% | 99% | 100% | 101% | 101% | 100% | 100% | |
| Unweighted N | (572) | (278) | (294) | (65) | (118) | (231) | (158) | (423) | (38) | (76) | |

| | | | Party ID | | | Ideology | 1 | | Regio | า | |
|--------------|-------|------|----------|-------|------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| A great deal | 77% | 55% | 83% | 78% | 61% | 66% | 88% | 71% | 85% | 75% | 79% |
| Somewhat | 14% | 29% | 10% | 16% | 27% | 20% | 7% | 22% | 12% | 15% | 11% |
| A little | 4% | 8% | 3% | 4% | 5% | 6% | 3% | 5% | 2% | 4% | 6% |
| Not at all | 1% | 3% | 1% | 1% | 1% | 2% | 1% | 1% | 1% | 1% | 1% |
| Not sure | 3% | 5% | 2% | 2% | 6% | 5% | 1% | 2% | 1% | 5% | 3% |
| Totals | 99% | 100% | 99% | 101% | 100% | 99% | 100% | 101% | 101% | 100% | 100% |
| Unweighted N | (572) | (81) | (281) | (175) | (88) | (170) | (289) | (90) | (141) | (201) | (140) |



11. Best Democratic Candidate

Who do you think is the best choice to replace Joe Biden as the Democratic candidate for President?

| | | Ge | ender | | A | ge | | | Race | |
|------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 50% | 48% | 51% | 55% | 55% | 48% | 45% | 45% | 77% | 53% |
| Gretchen Whitmer | 3% | 3% | 3% | 3% | 7% | 2% | 1% | 4% | 2% | 3% |
| Gavin Newsom | 6% | 7% | 6% | 15% | 6% | 3% | 4% | 6% | 3% | 11% |
| Pete Buttigieg | 4% | 4% | 4% | 5% | 4% | 4% | 3% | 4% | 1% | 7% |
| Josh Shapiro | 5% | 5% | 4% | 7% | 4% | 4% | 4% | 4% | 7% | 3% |
| Joe Manchin | 10% | 14% | 7% | 3% | 5% | 13% | 16% | 13% | 2% | 10% |
| Other | 22% | 20% | 24% | 12% | 19% | 26% | 26% | 25% | 8% | 13% |
| Totals | 100% | 101% | 99% | 100% | 100% | 100% | 99% | 101% | 100% | 100% |
| Unweighted N | (1,141) | (491) | (650) | (133) | (259) | (426) | (323) | (779) | (138) | (156) |

| | | Party ID | | | Ideology | | | Region | | | |
|------------------|---------|----------|-------|-------|----------|-------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 50% | 77% | 28% | 44% | 70% | 56% | 27% | 58% | 46% | 49% | 49% |
| Gretchen Whitmer | 3% | 3% | 3% | 3% | 5% | 3% | 2% | 2% | 4% | 4% | 2% |
| Gavin Newsom | 6% | 5% | 7% | 5% | 5% | 7% | 6% | 6% | 7% | 4% | 8% |
| Pete Buttigieg | 4% | 5% | 3% | 4% | 6% | 4% | 2% | 2% | 5% | 3% | 5% |
| Josh Shapiro | 5% | 2% | 6% | 6% | 4% | 4% | 5% | 10% | 2% | 4% | 4% |
| Joe Manchin | 10% | 1% | 17% | 16% | 1% | 9% | 21% | 9% | 14% | 9% | 10% |
| Other | 22% | 6% | 36% | 23% | 9% | 17% | 37% | 13% | 23% | 25% | 23% |
| Totals | 100% | 99% | 100% | 101% | 100% | 100% | 100% | 100% | 101% | 98% | 101% |
| Unweighted N | (1,141) | (431) | (320) | (314) | (372) | (388) | (330) | (198) | (268) | (388) | (287) |



12. Likelihood of Voting in 2024

How likely are you to vote in the presidential election in November 2024?

| | | Gender | | | A | ge | Race | | | |
|-----------------------|---------|--------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Definitely will vote | 84% | 83% | 85% | 69% | 79% | 87% | 92% | 87% | 74% | 74% |
| Probably will vote | 10% | 11% | 9% | 22% | 12% | 7% | 5% | 8% | 13% | 16% |
| Even chance | 4% | 3% | 4% | 6% | 4% | 4% | 2% | 3% | 9% | 7% |
| Probably won't vote | 1% | 2% | 1% | 1% | 3% | 2% | 1% | 1% | 2% | 3% |
| Definitely won't vote | 1% | 1% | 1% | 2% | 2% | 1% | 0% | 1% | 2% | 1% |
| Totals | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,168) | (494) | (674) | (136) | (264) | (437) | (331) | (800) | (140) | (158) |

| | | | Party ID | | | Ideology | • | | Regio | on | | | |
|-----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|--|--|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West | | |
| Definitely will vote | 84% | 86% | 90% | 77% | 89% | 77% | 89% | 82% | 86% | 83% | 84% | | |
| Probably will vote | 10% | 10% | 7% | 13% | 8% | 13% | 7% | 9% | 9% | 10% | 10% | | |
| Even chance | 4% | 3% | 2% | 6% | 2% | 7% | 2% | 4% | 3% | 4% | 5% | | |
| Probably won't vote | 1% | 0% | 0% | 3% | 1% | 2% | 0% | 3% | 2% | 1% | 1% | | |
| Definitely won't vote | 1% | 0% | 1% | 1% | 1% | 2% | 1% | 2% | 0% | 2% | 1% | | |
| Totals | 100% | 99% | 100% | 100% | 101% | 101% | 99% | 100% | 100% | 100% | 101% | | |
| Unweighted N | (1,168) | (433) | (331) | (326) | (373) | (400) | (340) | (203) | (274) | (394) | (297) | | |



13. Voting Enthusiasm

Compared to other Presidential elections, are you more or less enthusiastic about voting this year than usual? *Among likely voters*

| | | Ge | ender | | A | ge | | | Race | |
|-------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| More enthusiastic | 53% | 56% | 50% | 45% | 42% | 57% | 60% | 55% | 45% | 47% |
| About the same | 34% | 35% | 33% | 34% | 42% | 32% | 30% | 33% | 39% | 39% |
| Less enthusiastic | 13% | 9% | 17% | 22% | 15% | 11% | 10% | 12% | 16% | 14% |
| Totals | 100% | 100% | 100% | 101% | 99% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,154) | (488) | (666) | (133) | (260) | (431) | (330) | (793) | (135) | (157) |

| | | | Party ID | | | Ideology | 1 | | Regio | n | |
|-------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| More enthusiastic | 53% | 53% | 60% | 42% | 60% | 38% | 62% | 54% | 50% | 55% | 50% |
| About the same | 34% | 34% | 32% | 39% | 28% | 45% | 29% | 35% | 32% | 33% | 37% |
| Less enthusiastic | 13% | 13% | 8% | 19% | 12% | 18% | 9% | 12% | 17% | 12% | 13% |
| Totals | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 101% | 99% | 100% | 100% |
| Unweighted N | (1,154) | (431) | (330) | (322) | (371) | (392) | (338) | (200) | (273) | (387) | (294) |



14. Generic Congressional Vote

In the election for the U.S. House of Representatives in the district where you live, which party's candidate will you vote for?

Among likely voters

| | | Ge | ender | | A | ge | | | Race | |
|--------------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| The Democratic Party candidate | 44% | 37% | 50% | 48% | 52% | 41% | 39% | 38% | 74% | 47% |
| The Republican Party candidate | 44% | 52% | 38% | 34% | 36% | 47% | 54% | 52% | 12% | 38% |
| Other | 1% | 2% | 1% | 1% | 3% | 1% | 0% | 1% | 2% | 1% |
| I will not vote in this race | 2% | 2% | 2% | 4% | 1% | 2% | 1% | 1% | 4% | 3% |
| Not sure | 9% | 8% | 9% | 13% | 8% | 9% | 5% | 8% | 8% | 11% |
| Totals | 100% | 101% | 100% | 100% | 100% | 100% | 99% | 100% | 100% | 100% |
| Unweighted N | (1,155) | (489) | (666) | (133) | (260) | (431) | (331) | (794) | (135) | (157) |

| | | | Party ID | | | Ideology | , | | Regio | n | |
|--------------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| The Democratic Party candidate | 44% | 94% | 2% | 36% | 88% | 48% | 5% | 52% | 40% | 40% | 48% |
| The Republican Party candidate | 44% | 1% | 94% | 38% | 4% | 34% | 88% | 34% | 48% | 50% | 40% |
| Other | 1% | 1% | 0% | 2% | 2% | 1% | 1% | 3% | 1% | 0% | 2% |
| I will not vote in this race | 2% | 1% | 0% | 5% | 1% | 2% | 2% | 2% | 2% | 2% | 1% |
| Not sure | 9% | 4% | 3% | 19% | 5% | 15% | 4% | 10% | 9% | 7% | 9% |
| Totals | 100% | 101% | 99% | 100% | 100% | 100% | 100% | 101% | 100% | 99% | 100% |
| Unweighted N | (1,155) | (431) | (331) | (322) | (371) | (392) | (339) | (200) | (273) | (388) | (294) |



15. 2024 Vote Intent - Harris or Trump

If the Democratic candidate for President is Kamala Harris and the Republican candidate is Donald Trump, who would you vote for in November?

Among likely voters

| | | Ge | ender | | A | ge | | | Race | |
|------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 44% | 36% | 51% | 47% | 51% | 42% | 40% | 39% | 72% | 44% |
| Donald Trump | 46% | 54% | 40% | 36% | 38% | 51% | 53% | 54% | 12% | 40% |
| Robert F. Kennedy, Jr. | 4% | 5% | 3% | 8% | 5% | 3% | 2% | 3% | 8% | 5% |
| Jill Stein | 1% | 1% | 1% | 3% | 1% | 0% | 0% | 1% | 1% | 2% |
| Cornel West | 0% | 0% | 0% | 0% | 0% | 1% | 0% | 0% | 1% | 1% |
| Other | 0% | 0% | 0% | 0% | 0% | 0% | 1% | 0% | 0% | 1% |
| I would not vote | 1% | 1% | 1% | 2% | 1% | 0% | 1% | 1% | 0% | 3% |
| Not sure | 3% | 2% | 3% | 4% | 3% | 3% | 2% | 2% | 5% | 5% |
| Totals | 99% | 99% | 99% | 100% | 99% | 100% | 99% | 100% | 99% | 101% |
| Unweighted N | (1,154) | (489) | (665) | (133) | (260) | (430) | (331) | (794) | (135) | (157) |

| | | | Party ID | | | Ideology | , | | Region | า | |
|------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 44% | 91% | 4% | 37% | 87% | 47% | 7% | 50% | 43% | 40% | 47% |
| Donald Trump | 46% | 3% | 92% | 45% | 5% | 39% | 88% | 38% | 49% | 51% | 43% |
| Robert F. Kennedy, Jr. | 4% | 3% | 2% | 8% | 2% | 6% | 3% | 6% | 4% | 3% | 4% |
| Jill Stein | 1% | 1% | 0% | 2% | 3% | 1% | 0% | 1% | 1% | 1% | 1% |
| Cornel West | 0% | 1% | 0% | 1% | 0% | 1% | 0% | 0% | 0% | 0% | 1% |
| Other | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 1% | 0% | 0% |
| I would not vote | 1% | 0% | 1% | 2% | 0% | 2% | 1% | 1% | 1% | 0% | 2% |
| Not sure | 3% | 1% | 0% | 5% | 2% | 5% | 1% | 3% | 2% | 3% | 3% |
| Totals | 99% | 100% | 99% | 100% | 99% | 101% | 100% | 99% | 101% | 98% | 101% |
| Unweighted N | (1,154) | (431) | (331) | (321) | (371) | (391) | (339) | (199) | (273) | (388) | (294) |



16. Satisfied with Harris or Trump

If the Democratic and Republican candidates were Kamala Harris and Donald Trump, how satisfied would you be with your choices in this election?

| | | Ge | ender | | A | ge | | | Race | |
|-----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very satisfied | 42% | 42% | 42% | 21% | 34% | 48% | 53% | 43% | 46% | 35% |
| Somewhat satisfied | 32% | 31% | 32% | 45% | 35% | 28% | 25% | 30% | 32% | 40% |
| Somewhat dissatisfied | 15% | 16% | 15% | 20% | 18% | 15% | 12% | 16% | 14% | 12% |
| Very dissatisfied | 11% | 11% | 11% | 14% | 13% | 8% | 10% | 11% | 8% | 12% |
| Totals | 100% | 100% | 100% | 100% | 100% | 99% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,169) | (494) | (675) | (136) | (264) | (437) | (332) | (801) | (140) | (158) |

| | | Party ID | | | | Ideology | 1 | Region | | | |
|-----------------------|---------|----------|-------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very satisfied | 42% | 42% | 53% | 29% | 42% | 30% | 54% | 42% | 41% | 47% | 37% |
| Somewhat satisfied | 32% | 35% | 26% | 34% | 33% | 37% | 26% | 31% | 31% | 32% | 32% |
| Somewhat dissatisfied | 15% | 16% | 12% | 19% | 16% | 19% | 11% | 16% | 18% | 14% | 15% |
| Very dissatisfied | 11% | 6% | 9% | 17% | 10% | 14% | 10% | 11% | 11% | 7% | 16% |
| Totals | 100% | 99% | 100% | 99% | 101% | 100% | 101% | 100% | 101% | 100% | 100% |
| Unweighted N | (1,169) | (433) | (332) | (326) | (373) | (400) | (341) | (203) | (274) | (395) | (297) |



17. Likely to Win Between Harris and Trump

Who is most likely to win the election for President?

| | | Ge | ender | | A | ge | | | Race | |
|--------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Definitely Kamala Harris | 15% | 12% | 17% | 5% | 16% | 15% | 18% | 10% | 36% | 20% |
| Probably Kamala Harris | 14% | 13% | 15% | 16% | 15% | 15% | 12% | 14% | 15% | 12% |
| Equal chance | 10% | 10% | 10% | 15% | 12% | 9% | 8% | 9% | 11% | 13% |
| Probably Donald Trump | 18% | 20% | 17% | 24% | 17% | 17% | 18% | 19% | 8% | 19% |
| Definitely Donald Trump | 33% | 39% | 27% | 27% | 29% | 36% | 35% | 38% | 12% | 31% |
| Not sure | 10% | 7% | 13% | 13% | 11% | 9% | 9% | 10% | 18% | 5% |
| Totals | 100% | 101% | 99% | 100% | 100% | 101% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (801) | (140) | (158) |

| | | | Party ID | | | Ideology | • | | Region | า | |
|--------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Definitely Kamala Harris | 15% | 33% | 1% | 9% | 25% | 18% | 2% | 18% | 11% | 14% | 17% |
| Probably Kamala Harris | 14% | 27% | 2% | 14% | 30% | 13% | 3% | 18% | 15% | 12% | 14% |
| Equal chance | 10% | 14% | 3% | 14% | 15% | 13% | 4% | 11% | 11% | 7% | 13% |
| Probably Donald Trump | 18% | 10% | 22% | 24% | 11% | 20% | 23% | 14% | 18% | 19% | 21% |
| Definitely Donald Trump | 33% | 3% | 67% | 29% | 5% | 26% | 63% | 27% | 34% | 37% | 29% |
| Not sure | 10% | 13% | 5% | 12% | 15% | 10% | 5% | 12% | 12% | 10% | 7% |
| Totals | 100% | 100% | 100% | 102% | 101% | 100% | 100% | 100% | 101% | 99% | 101% |
| Unweighted N | (1,169) | (434) | (332) | (326) | (374) | (400) | (340) | (203) | (273) | (396) | (297) |



18. Does Harris Have a Better Chance Than Biden

Do you think Kamala Harris has a better or worse chance than Joe Biden to defeat Donald Trump in the election for President?

| | | Ge | ender | | A | ge | | | Race | |
|---------------------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Harris is more likely to defeat Trump | 34% | 29% | 38% | 34% | 39% | 33% | 31% | 31% | 48% | 33% |
| About the same | 25% | 26% | 23% | 20% | 22% | 25% | 30% | 27% | 21% | 25% |
| Harris is less likely to defeat Trump | 33% | 37% | 30% | 35% | 29% | 34% | 35% | 36% | 15% | 35% |
| Not sure | 8% | 7% | 9% | 11% | 9% | 8% | 4% | 6% | 16% | 8% |
| Totals | 100% | 99% | 100% | 100% | 99% | 100% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (801) | (140) | (158) |

| | | | Party ID | | | Ideology | | | Region | | | |
|---------------------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|--|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West | |
| Harris is more likely to defeat Trump | 34% | 64% | 6% | 30% | 65% | 35% | 8% | 40% | 34% | 28% | 38% | |
| About the same | 25% | 19% | 31% | 26% | 16% | 24% | 32% | 19% | 27% | 27% | 23% | |
| Harris is less likely to defeat Trump | 33% | 10% | 59% | 32% | 11% | 31% | 55% | 32% | 33% | 37% | 31% | |
| Not sure | 8% | 7% | 4% | 12% | 8% | 10% | 5% | 9% | 7% | 8% | 8% | |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | |
| Unweighted N | (1,169) | (434) | (332) | (326) | (374) | (400) | (340) | (203) | (273) | (396) | (297) | |



19. Prefer Biden or Harris as Democratic Candidate

Would you personally rather have had Joe Biden or Kamala Harris as the Democratic candidate for President?

| | | Ge | ender | | A | ge | | | Race | |
|--------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Prefer Biden over Harris | 23% | 26% | 20% | 24% | 21% | 25% | 22% | 23% | 19% | 29% |
| Prefer Harris over Biden | 31% | 30% | 32% | 44% | 39% | 27% | 23% | 29% | 43% | 35% |
| No difference | 37% | 38% | 36% | 25% | 31% | 41% | 45% | 40% | 28% | 28% |
| Not sure | 8% | 6% | 11% | 6% | 9% | 8% | 10% | 8% | 11% | 8% |
| Totals | 99% | 100% | 99% | 99% | 100% | 101% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (494) | (674) | (137) | (264) | (436) | (331) | (800) | (140) | (158) |

| | | | Party ID | | | Ideology | 1 | | Regio | n | |
|--------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Prefer Biden over Harris | 23% | 15% | 29% | 28% | 13% | 25% | 32% | 22% | 23% | 25% | 22% |
| Prefer Harris over Biden | 31% | 53% | 10% | 29% | 58% | 30% | 11% | 33% | 33% | 27% | 35% |
| No difference | 37% | 22% | 53% | 37% | 18% | 37% | 52% | 36% | 38% | 39% | 33% |
| Not sure | 8% | 10% | 7% | 5% | 11% | 7% | 6% | 8% | 5% | 10% | 10% |
| Totals | 99% | 100% | 99% | 99% | 100% | 99% | 101% | 99% | 99% | 101% | 100% |
| Unweighted N | (1,168) | (434) | (331) | (326) | (374) | (400) | (339) | (203) | (273) | (396) | (296) |



20. Legal Abortions

When do you think abortion should be legal?

| | Total | Ge | ender | | A | ge | | | Race | |
|---|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Abortion should always be legal. There should be no restrictions on abortion. | 31% | 25% | 36% | 42% | 41% | 25% | 22% | 28% | 41% | 32% |
| Abortion should be legal, but with some restrictions (such as for minors or late-term abortions). | 32% | 34% | 31% | 25% | 30% | 35% | 35% | 32% | 33% | 29% |
| Abortion should only be legal in special circumstances, such as when the life of the mother is in danger. | 30% | 36% | 24% | 30% | 20% | 34% | 34% | 32% | 24% | 34% |
| Abortion should be illegal. It should never be allowed. | 7% | 5% | 9% | 4% | 8% | 6% | 9% | 8% | 2% | 6% |
| Totals | 100% | 100% | 100% | 101% | 99% | 100% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,165) | (494) | (671) | (137) | (262) | (435) | (331) | (801) | (138) | (156) |

| | | | Party ID | | | Ideology | , | | Region | า | |
|---|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Abortion should always be legal. There should be no restrictions on abortion. | 31% | 55% | 10% | 24% | 64% | 26% | 7% | 32% | 29% | 27% | 36% |
| Abortion should be legal, but with some restrictions (such as for minors or late-term abortions). | 32% | 33% | 28% | 40% | 30% | 46% | 23% | 40% | 28% | 32% | 32% |
| Abortion should only be legal in special circumstances, such as when the life of the mother is in danger. | 30% | 12% | 48% | 31% | 6% | 24% | 55% | 24% | 35% | 31% | 28% |
| Abortion should be illegal. It should never be allowed. | 7% | 1% | 14% | 6% | 1% | 4% | 15% | 3% | 8% | 10% | 4% |
| Totals | 100% | 101% | 100% | 101% | 101% | 100% | 100% | 99% | 100% | 100% | 100% |
| Unweighted N | (1,165) | (431) | (331) | (326) | (372) | (399) | (339) | (202) | (274) | (395) | (294) |



21A. Trust Harris or Trump to Handle — The economy

| | | Ge | ender | | A | ge | | | Race | |
|---------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 41% | 37% | 45% | 44% | 45% | 40% | 39% | 36% | 65% | 42% |
| Donald Trump | 51% | 58% | 45% | 40% | 44% | 55% | 57% | 57% | 19% | 49% |
| No difference | 8% | 6% | 10% | 16% | 11% | 5% | 4% | 7% | 16% | 9% |
| Totals | 100% | 101% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (493) | (675) | (136) | (264) | (436) | (332) | (800) | (140) | (158) |

| | | | Party ID | | | Ideology | 1 | | Regio | า | |
|---------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 41% | 86% | 4% | 35% | 85% | 43% | 5% | 48% | 39% | 38% | 45% |
| Donald Trump | 51% | 7% | 94% | 53% | 8% | 45% | 92% | 46% | 54% | 54% | 46% |
| No difference | 8% | 8% | 2% | 12% | 7% | 11% | 3% | 6% | 7% | 9% | 9% |
| Totals | 100% | 101% | 100% | 100% | 100% | 99% | 100% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (433) | (331) | (326) | (374) | (399) | (340) | (203) | (274) | (395) | (296) |



21B. Trust Harris or Trump to Handle — Immigration

| | | Ge | ender | | A | ge | | | Race | |
|---------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 40% | 33% | 46% | 43% | 44% | 38% | 37% | 35% | 62% | 42% |
| Donald Trump | 52% | 59% | 45% | 42% | 43% | 57% | 58% | 58% | 21% | 50% |
| No difference | 8% | 8% | 9% | 14% | 13% | 5% | 5% | 7% | 17% | 7% |
| Totals | 100% | 100% | 100% | 99% | 100% | 100% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,169) | (493) | (676) | (136) | (264) | (437) | (332) | (801) | (140) | (158) |

| | | | Party ID | | | Ideology | • | | Regio | n | |
|---------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 40% | 83% | 3% | 36% | 79% | 43% | 7% | 48% | 38% | 36% | 41% |
| Donald Trump | 52% | 8% | 94% | 54% | 10% | 47% | 91% | 43% | 54% | 55% | 51% |
| No difference | 8% | 9% | 3% | 10% | 11% | 11% | 2% | 9% | 8% | 8% | 8% |
| Totals | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 99% | 100% |
| Unweighted N | (1,169) | (433) | (332) | (326) | (374) | (399) | (341) | (203) | (274) | (396) | (296) |



21C. Trust Harris or Trump to Handle — Foreign policy

| | | Ge | ender | | A | ge | | | Race | |
|---------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 42% | 35% | 47% | 39% | 45% | 41% | 40% | 38% | 61% | 40% |
| Donald Trump | 49% | 56% | 42% | 40% | 41% | 53% | 55% | 55% | 19% | 50% |
| No difference | 10% | 10% | 10% | 21% | 14% | 6% | 5% | 8% | 20% | 10% |
| Totals | 101% | 101% | 99% | 100% | 100% | 100% | 100% | 101% | 100% | 100% |
| Unweighted N | (1,168) | (493) | (675) | (136) | (264) | (436) | (332) | (800) | (140) | (158) |

| | | | Party ID | | | Ideology | ' | | Region | า | |
|---------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 42% | 86% | 4% | 36% | 83% | 46% | 6% | 50% | 40% | 36% | 45% |
| Donald Trump | 49% | 5% | 92% | 49% | 8% | 41% | 89% | 41% | 51% | 53% | 46% |
| No difference | 10% | 9% | 4% | 15% | 9% | 14% | 5% | 9% | 9% | 11% | 9% |
| Totals | 101% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (433) | (331) | (326) | (374) | (398) | (341) | (203) | (274) | (395) | (296) |



21D. Trust Harris or Trump to Handle — Abortion

| | | Ge | ender | | Ą | ge | Race | | | |
|---------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 51% | 44% | 57% | 58% | 59% | 47% | 44% | 46% | 73% | 52% |
| Donald Trump | 37% | 42% | 32% | 29% | 31% | 41% | 41% | 42% | 14% | 36% |
| No difference | 12% | 14% | 11% | 13% | 10% | 12% | 14% | 12% | 13% | 12% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 99% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (493) | (675) | (136) | (264) | (436) | (332) | (801) | (139) | (158) |

| | | | Party ID | | | Ideology | 1 | | Region | า | |
|---------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 51% | 92% | 12% | 50% | 92% | 57% | 12% | 59% | 49% | 46% | 53% |
| Donald Trump | 37% | 4% | 75% | 29% | 5% | 27% | 72% | 31% | 38% | 43% | 32% |
| No difference | 12% | 4% | 14% | 21% | 3% | 16% | 15% | 10% | 13% | 11% | 15% |
| Totals | 100% | 100% | 101% | 100% | 100% | 100% | 99% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (432) | (332) | (326) | (373) | (399) | (341) | (202) | (274) | (396) | (296) |



21E. Trust Harris or Trump to Handle — Crime

| | | Ge | ender | | A | ge | Race | | | |
|---------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 40% | 33% | 46% | 38% | 44% | 40% | 38% | 36% | 63% | 39% |
| Donald Trump | 49% | 58% | 42% | 44% | 41% | 53% | 55% | 55% | 21% | 50% |
| No difference | 11% | 9% | 12% | 18% | 16% | 7% | 7% | 9% | 16% | 11% |
| Totals | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (492) | (676) | (136) | (264) | (437) | (331) | (800) | (140) | (158) |

| | | | Party ID | D Ideology | | | Region | | | | |
|---------------|---------|-------|----------|------------|-------|-------|--------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 40% | 84% | 5% | 34% | 81% | 42% | 5% | 48% | 39% | 36% | 42% |
| Donald Trump | 49% | 6% | 90% | 54% | 8% | 43% | 91% | 42% | 51% | 54% | 47% |
| No difference | 11% | 10% | 6% | 13% | 12% | 15% | 4% | 10% | 11% | 10% | 12% |
| Totals | 100% | 100% | 101% | 101% | 101% | 100% | 100% | 100% | 101% | 100% | 101% |
| Unweighted N | (1,168) | (432) | (332) | (326) | (373) | (399) | (341) | (203) | (274) | (396) | (295) |



21F. Trust Harris or Trump to Handle — The environment

| | | Ge | ender | | A | ge | Race | | | |
|---------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 50% | 45% | 55% | 54% | 55% | 49% | 44% | 45% | 71% | 54% |
| Donald Trump | 36% | 41% | 32% | 27% | 30% | 40% | 42% | 42% | 12% | 35% |
| No difference | 14% | 14% | 13% | 18% | 14% | 11% | 13% | 13% | 17% | 12% |
| Totals | 100% | 100% | 100% | 99% | 99% | 100% | 99% | 100% | 100% | 101% |
| Unweighted N | (1,167) | (492) | (675) | (136) | (264) | (437) | (330) | (800) | (139) | (158) |

| | | | Party ID | | | ldeology | ' | | Region | า | |
|---------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 50% | 93% | 10% | 48% | 91% | 56% | 12% | 58% | 49% | 44% | 54% |
| Donald Trump | 36% | 1% | 75% | 31% | 6% | 24% | 73% | 31% | 38% | 42% | 30% |
| No difference | 14% | 6% | 15% | 21% | 3% | 20% | 15% | 11% | 13% | 14% | 16% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,167) | (433) | (331) | (325) | (373) | (399) | (340) | (202) | (274) | (395) | (296) |



21G. Trust Harris or Trump to Handle — Appointments to the Supreme Court

| | | Ge | ender | | Ą | ge | Race | | | |
|---------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Kamala Harris | 46% | 39% | 52% | 51% | 53% | 43% | 41% | 41% | 69% | 48% |
| Donald Trump | 44% | 51% | 38% | 32% | 35% | 49% | 53% | 51% | 14% | 37% |
| No difference | 10% | 9% | 10% | 18% | 11% | 8% | 6% | 8% | 17% | 15% |
| Totals | 100% | 99% | 100% | 101% | 99% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,167) | (493) | (674) | (136) | (264) | (435) | (332) | (801) | (140) | (156) |

| | | | Party ID | ı | | Ideology | 1 | Region | | | |
|---------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Kamala Harris | 46% | 93% | 6% | 39% | 91% | 51% | 6% | 53% | 44% | 41% | 50% |
| Donald Trump | 44% | 3% | 86% | 44% | 7% | 33% | 85% | 40% | 47% | 47% | 40% |
| No difference | 10% | 4% | 8% | 18% | 2% | 16% | 8% | 7% | 9% | 12% | 10% |
| Totals | 100% | 100% | 100% | 101% | 100% | 100% | 99% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,167) | (433) | (331) | (326) | (373) | (399) | (340) | (203) | (274) | (395) | (295) |



22. Trump Too Old

Is Trump too old to be President?

| | | Ge | ender | | Ag | ge | | | Race | |
|--------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Yes | 45% | 42% | 49% | 54% | 51% | 41% | 42% | 41% | 69% | 44% |
| No | 47% | 52% | 43% | 36% | 41% | 53% | 51% | 53% | 19% | 44% |
| Not sure | 8% | 6% | 8% | 10% | 8% | 6% | 7% | 6% | 13% | 12% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |

| | | | Party ID | ID Ideology | | | Region | | | | |
|--------------|---------|-------|----------|-------------|-------|-------|--------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Yes | 45% | 82% | 11% | 45% | 81% | 50% | 13% | 52% | 45% | 40% | 49% |
| No | 47% | 10% | 86% | 46% | 12% | 40% | 83% | 40% | 48% | 52% | 43% |
| Not sure | 8% | 8% | 4% | 10% | 7% | 10% | 4% | 8% | 7% | 7% | 8% |
| Totals | 100% | 100% | 101% | 101% | 100% | 100% | 100% | 100% | 100% | 99% | 100% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



23. Is Trump a Threat to Democracy

Is Donald Trump a threat to democracy?

| | | Ge | ender | | Ą | ge | Race | | | |
|--------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Yes | 48% | 41% | 54% | 54% | 53% | 46% | 43% | 42% | 80% | 49% |
| No | 46% | 53% | 39% | 32% | 39% | 50% | 54% | 52% | 11% | 43% |
| Not sure | 6% | 5% | 7% | 14% | 7% | 4% | 3% | 6% | 9% | 9% |
| Totals | 100% | 99% | 100% | 100% | 99% | 100% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,166) | (493) | (673) | (137) | (263) | (436) | (330) | (799) | (139) | (158) |

| | | | Party ID | | | Ideology | | | Region | | | |
|--------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|--|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West | |
| Yes | 48% | 91% | 10% | 43% | 91% | 51% | 11% | 52% | 46% | 45% | 52% | |
| No | 46% | 4% | 87% | 48% | 7% | 38% | 85% | 39% | 48% | 50% | 42% | |
| Not sure | 6% | 4% | 3% | 10% | 2% | 11% | 4% | 9% | 6% | 5% | 6% | |
| Totals | 100% | 99% | 100% | 101% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | |
| Unweighted N | (1,166) | (432) | (332) | (324) | (373) | (398) | (341) | (203) | (272) | (396) | (295) | |



24. Joe Biden Ideology

Would you say Joe Biden is...

| | | Ge | ender | | A | ge | | | Race | |
|-------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very liberal | 35% | 40% | 31% | 19% | 24% | 41% | 46% | 41% | 14% | 24% |
| Liberal | 26% | 25% | 27% | 27% | 34% | 24% | 22% | 26% | 26% | 27% |
| Moderate | 24% | 22% | 26% | 31% | 25% | 22% | 22% | 22% | 30% | 25% |
| Conservative | 5% | 5% | 5% | 13% | 6% | 3% | 3% | 3% | 12% | 10% |
| Very conservative | 2% | 2% | 2% | 1% | 3% | 1% | 1% | 1% | 4% | 2% |
| Not sure | 8% | 6% | 10% | 9% | 8% | 9% | 6% | 7% | 15% | 12% |
| Totals | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,166) | (494) | (672) | (136) | (262) | (436) | (332) | (800) | (140) | (157) |

| | | | Party ID | | | Ideology | • | Region | | | |
|-------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very liberal | 35% | 8% | 66% | 31% | 9% | 21% | 72% | 28% | 42% | 39% | 28% |
| Liberal | 26% | 35% | 19% | 26% | 39% | 27% | 17% | 27% | 27% | 24% | 29% |
| Moderate | 24% | 43% | 4% | 26% | 42% | 34% | 3% | 32% | 20% | 20% | 28% |
| Conservative | 5% | 5% | 2% | 8% | 6% | 7% | 3% | 3% | 3% | 8% | 5% |
| Very conservative | 2% | 2% | 1% | 1% | 1% | 3% | 1% | 2% | 2% | 1% | 2% |
| Not sure | 8% | 6% | 8% | 7% | 3% | 9% | 5% | 7% | 8% | 9% | 8% |
| Totals | 100% | 99% | 100% | 99% | 100% | 101% | 101% | 99% | 102% | 101% | 100% |
| Unweighted N | (1,166) | (432) | (331) | (326) | (372) | (398) | (341) | (203) | (272) | (395) | (296) |



25. Kamala Harris Ideology

Would you say Kamala Harris is...

| | | Ge | ender | | A | ge | | | Race | |
|-------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very liberal | 41% | 47% | 36% | 24% | 32% | 47% | 52% | 48% | 15% | 29% |
| Liberal | 28% | 25% | 30% | 36% | 34% | 24% | 22% | 27% | 28% | 28% |
| Moderate | 18% | 17% | 18% | 24% | 20% | 15% | 15% | 13% | 31% | 26% |
| Conservative | 3% | 3% | 3% | 7% | 3% | 2% | 1% | 3% | 6% | 4% |
| Very conservative | 1% | 2% | 1% | 1% | 3% | 1% | 1% | 1% | 6% | 1% |
| Not sure | 9% | 6% | 12% | 9% | 8% | 11% | 9% | 8% | 14% | 12% |
| Totals | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (436) | (332) | (801) | (140) | (158) |

| | | | Party ID | | | Ideology | • | Region | | | |
|-------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very liberal | 41% | 10% | 75% | 39% | 12% | 27% | 81% | 34% | 46% | 45% | 35% |
| Liberal | 28% | 49% | 10% | 26% | 54% | 27% | 9% | 30% | 28% | 22% | 34% |
| Moderate | 18% | 28% | 5% | 20% | 25% | 28% | 4% | 20% | 15% | 18% | 18% |
| Conservative | 3% | 3% | 1% | 4% | 5% | 4% | 1% | 3% | 1% | 5% | 2% |
| Very conservative | 1% | 2% | 1% | 1% | 1% | 2% | 2% | 2% | 0% | 2% | 2% |
| Not sure | 9% | 8% | 8% | 10% | 4% | 12% | 5% | 10% | 10% | 9% | 9% |
| Totals | 100% | 100% | 100% | 100% | 101% | 100% | 102% | 99% | 100% | 101% | 100% |
| Unweighted N | (1,169) | (434) | (331) | (326) | (374) | (399) | (341) | (202) | (274) | (396) | (297) |



26. Donald Trump Ideology

Would you say Donald Trump is...

| | | Ge | ender | | Ą | ge | | | Race | |
|-------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very liberal | 3% | 2% | 4% | 4% | 2% | 4% | 2% | 2% | 8% | 2% |
| Liberal | 1% | 2% | 1% | 1% | 2% | 1% | 1% | 1% | 3% | 3% |
| Moderate | 13% | 18% | 9% | 17% | 16% | 12% | 10% | 13% | 9% | 17% |
| Conservative | 33% | 35% | 31% | 31% | 23% | 37% | 38% | 37% | 14% | 33% |
| Very conservative | 35% | 33% | 37% | 41% | 41% | 29% | 34% | 35% | 39% | 30% |
| Not sure | 14% | 10% | 18% | 6% | 15% | 17% | 15% | 12% | 28% | 15% |
| Totals | 99% | 100% | 100% | 100% | 99% | 100% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (494) | (674) | (136) | (264) | (436) | (332) | (800) | (140) | (158) |

| | | | Party ID | | | Ideology | • | | Regio | า | |
|-------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very liberal | 3% | 5% | 2% | 3% | 2% | 5% | 3% | 3% | 3% | 3% | 3% |
| Liberal | 1% | 2% | 0% | 2% | 1% | 3% | 1% | 1% | 2% | 2% | 1% |
| Moderate | 13% | 4% | 20% | 15% | 4% | 21% | 15% | 18% | 12% | 11% | 14% |
| Conservative | 33% | 17% | 47% | 38% | 19% | 29% | 51% | 23% | 36% | 35% | 34% |
| Very conservative | 35% | 51% | 24% | 27% | 60% | 24% | 26% | 38% | 33% | 35% | 35% |
| Not sure | 14% | 21% | 7% | 14% | 14% | 19% | 4% | 17% | 14% | 14% | 13% |
| Totals | 99% | 100% | 100% | 99% | 100% | 101% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (434) | (332) | (325) | (374) | (399) | (341) | (203) | (273) | (395) | (297) |



27. JD Vance Ideology

Would you say JD Vance is...

| | | Ge | ender | | A | ge | | | Race | |
|-------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very liberal | 1% | 1% | 1% | 1% | 2% | 1% | 1% | 1% | 3% | 1% |
| Liberal | 2% | 3% | 1% | 7% | 2% | 2% | 0% | 1% | 6% | 5% |
| Moderate | 11% | 13% | 9% | 15% | 15% | 7% | 10% | 11% | 13% | 13% |
| Conservative | 28% | 33% | 23% | 21% | 19% | 33% | 33% | 32% | 13% | 23% |
| Very conservative | 36% | 33% | 39% | 36% | 39% | 33% | 37% | 37% | 31% | 30% |
| Not sure | 22% | 16% | 26% | 21% | 23% | 24% | 19% | 18% | 34% | 29% |
| Totals | 100% | 99% | 99% | 101% | 100% | 100% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,167) | (494) | (673) | (136) | (264) | (435) | (332) | (799) | (140) | (158) |

| | | | Party ID | | | Ideology | • | | Region | า | |
|-------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very liberal | 1% | 2% | 1% | 0% | 1% | 1% | 1% | 1% | 0% | 2% | 1% |
| Liberal | 2% | 1% | 1% | 6% | 1% | 2% | 3% | 2% | 1% | 3% | 1% |
| Moderate | 11% | 5% | 17% | 12% | 4% | 18% | 12% | 12% | 11% | 11% | 11% |
| Conservative | 28% | 11% | 43% | 29% | 12% | 20% | 50% | 29% | 32% | 28% | 22% |
| Very conservative | 36% | 57% | 22% | 30% | 67% | 29% | 22% | 34% | 36% | 33% | 43% |
| Not sure | 22% | 25% | 16% | 23% | 15% | 31% | 12% | 22% | 20% | 23% | 21% |
| Totals | 100% | 101% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,167) | (433) | (331) | (325) | (374) | (398) | (340) | (202) | (274) | (394) | (297) |



28. Does Harris Say What She Believes

Do you think that Kamala Harris more often...?

| | | Ge | ender | | A | ge | | | Race | |
|-------------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Says what she believes | 30% | 25% | 34% | 22% | 31% | 27% | 36% | 26% | 45% | 35% |
| Says what people want to hear | 41% | 48% | 35% | 34% | 38% | 44% | 44% | 47% | 15% | 36% |
| Both equally | 15% | 13% | 16% | 19% | 16% | 15% | 12% | 14% | 24% | 15% |
| Not sure | 14% | 13% | 15% | 25% | 14% | 14% | 8% | 14% | 16% | 14% |
| Totals | 100% | 99% | 100% | 100% | 99% | 100% | 100% | 101% | 100% | 100% |
| Unweighted N | (1,167) | (492) | (675) | (137) | (264) | (436) | (330) | (800) | (140) | (157) |

| | Total De | | Party ID | | | Ideology | 1 | Region | | | |
|-------------------------------|----------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Says what she believes | 30% | 58% | 7% | 27% | 54% | 33% | 8% | 33% | 28% | 27% | 33% |
| Says what people want to hear | 41% | 11% | 71% | 43% | 12% | 37% | 69% | 40% | 44% | 41% | 39% |
| Both equally | 15% | 19% | 12% | 14% | 19% | 15% | 12% | 11% | 16% | 17% | 14% |
| Not sure | 14% | 13% | 10% | 17% | 16% | 15% | 11% | 16% | 12% | 15% | 14% |
| Totals | 100% | 101% | 100% | 101% | 101% | 100% | 100% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,167) | (434) | (331) | (325) | (374) | (400) | (338) | (203) | (273) | (395) | (296) |



29. Does Trump Say What He Believes

Do you think that Donald Trump more often...?

| | | Ge | ender | | A | ge | | | Race | |
|-------------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Says what he believes | 46% | 49% | 43% | 40% | 38% | 51% | 49% | 51% | 23% | 40% |
| Says what people want to hear | 32% | 30% | 33% | 34% | 39% | 27% | 30% | 30% | 36% | 37% |
| Both equally | 17% | 15% | 19% | 21% | 16% | 16% | 18% | 15% | 28% | 18% |
| Not sure | 6% | 6% | 6% | 5% | 7% | 7% | 2% | 4% | 13% | 6% |
| Totals | 101% | 100% | 101% | 100% | 100% | 101% | 99% | 100% | 100% | 101% |
| Unweighted N | (1,168) | (494) | (674) | (137) | (264) | (435) | (332) | (800) | (140) | (158) |

| | Total De | | Party ID | | | Ideology | 1 | Region | | | |
|-------------------------------|----------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Says what he believes | 46% | 16% | 79% | 43% | 18% | 38% | 77% | 43% | 44% | 51% | 42% |
| Says what people want to hear | 32% | 56% | 7% | 31% | 59% | 34% | 7% | 34% | 33% | 28% | 34% |
| Both equally | 17% | 20% | 13% | 20% | 18% | 19% | 15% | 19% | 17% | 17% | 16% |
| Not sure | 6% | 7% | 2% | 6% | 5% | 9% | 2% | 5% | 6% | 5% | 8% |
| Totals | 101% | 99% | 101% | 100% | 100% | 100% | 101% | 101% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (434) | (331) | (326) | (374) | (400) | (340) | (203) | (274) | (394) | (297) |



30. Harris Likability

Regardless of whether you agree with her, do you like or dislike Kamala Harris as a person?

| | | Ge | ender | | A | ge | Race | | | |
|--------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Like a lot | 23% | 19% | 27% | 14% | 26% | 22% | 28% | 19% | 48% | 26% |
| Like somewhat | 16% | 15% | 17% | 23% | 19% | 15% | 11% | 15% | 19% | 19% |
| Neither like nor dislike | 15% | 15% | 16% | 26% | 17% | 13% | 11% | 14% | 15% | 18% |
| Dislike somewhat | 11% | 12% | 9% | 12% | 12% | 8% | 12% | 12% | 8% | 10% |
| Dislike a lot | 31% | 35% | 27% | 18% | 24% | 37% | 37% | 36% | 6% | 23% |
| Not sure | 4% | 3% | 4% | 7% | 3% | 5% | 3% | 4% | 4% | 4% |
| Totals | 100% | 99% | 100% | 100% | 101% | 100% | 102% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (493) | (675) | (137) | (264) | (437) | (330) | (800) | (140) | (158) |

| | | | Party ID | | | Ideology | , | | Regio | n | |
|--------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Like a lot | 23% | 51% | 4% | 13% | 45% | 24% | 5% | 25% | 19% | 22% | 28% |
| Like somewhat | 16% | 30% | 3% | 15% | 29% | 17% | 3% | 22% | 18% | 14% | 13% |
| Neither like nor dislike | 15% | 10% | 15% | 22% | 13% | 20% | 13% | 12% | 15% | 19% | 12% |
| Dislike somewhat | 11% | 3% | 16% | 13% | 6% | 12% | 14% | 8% | 10% | 11% | 13% |
| Dislike a lot | 31% | 3% | 59% | 32% | 5% | 21% | 62% | 27% | 34% | 32% | 29% |
| Not sure | 4% | 3% | 3% | 5% | 3% | 5% | 2% | 6% | 3% | 3% | 6% |
| Totals | 100% | 100% | 100% | 100% | 101% | 99% | 99% | 100% | 99% | 101% | 101% |
| Unweighted N | (1,168) | (434) | (332) | (325) | (374) | (399) | (340) | (203) | (273) | (396) | (296) |



31. Trump Likability

Regardless of whether you agree with him, do you like or dislike Donald Trump as a person?

| | | Ge | ender | | A | ge | Race | | | |
|--------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Like a lot | 24% | 27% | 22% | 17% | 21% | 27% | 27% | 28% | 11% | 23% |
| Like somewhat | 13% | 16% | 10% | 18% | 9% | 12% | 14% | 14% | 5% | 13% |
| Neither like nor dislike | 11% | 12% | 10% | 11% | 15% | 9% | 10% | 11% | 11% | 9% |
| Dislike somewhat | 7% | 10% | 5% | 9% | 5% | 9% | 7% | 6% | 9% | 9% |
| Dislike a lot | 44% | 35% | 51% | 45% | 48% | 41% | 42% | 40% | 61% | 43% |
| Not sure | 2% | 1% | 2% | 1% | 2% | 3% | 0% | 1% | 3% | 2% |
| Totals | 101% | 101% | 100% | 101% | 100% | 101% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,166) | (494) | (672) | (137) | (263) | (436) | (330) | (800) | (140) | (156) |

| | | | Party ID | | | Ideology | , | | Regio | า | |
|--------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Like a lot | 24% | 1% | 53% | 16% | 3% | 15% | 48% | 18% | 23% | 32% | 18% |
| Like somewhat | 13% | 4% | 20% | 15% | 1% | 12% | 24% | 15% | 13% | 14% | 10% |
| Neither like nor dislike | 11% | 5% | 13% | 17% | 4% | 15% | 12% | 7% | 15% | 10% | 11% |
| Dislike somewhat | 7% | 5% | 6% | 10% | 4% | 10% | 8% | 6% | 7% | 6% | 9% |
| Dislike a lot | 44% | 85% | 6% | 41% | 86% | 46% | 8% | 51% | 41% | 38% | 50% |
| Not sure | 2% | 1% | 2% | 1% | 1% | 2% | 0% | 3% | 2% | 0% | 2% |
| Totals | 101% | 101% | 100% | 100% | 99% | 100% | 100% | 100% | 101% | 100% | 100% |
| Unweighted N | (1,166) | (431) | (331) | (326) | (372) | (400) | (340) | (202) | (274) | (396) | (294) |



32. Harris Leadership Abilities

Would you say Kamala Harris is a strong or a weak leader?

| | | Ge | ender | Age | | | | | Race | Race | |
|-----------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| Very strong | 22% | 16% | 26% | 16% | 24% | 22% | 23% | 16% | 50% | 26% | |
| Somewhat strong | 28% | 24% | 30% | 44% | 32% | 23% | 20% | 27% | 31% | 28% | |
| Somewhat weak | 13% | 13% | 12% | 20% | 11% | 13% | 9% | 12% | 11% | 19% | |
| Very weak | 38% | 46% | 31% | 19% | 32% | 43% | 48% | 45% | 9% | 26% | |
| Totals | 101% | 99% | 99% | 99% | 99% | 101% | 100% | 100% | 101% | 99% | |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (802) | (139) | (158) | |

| | | Party ID | | | Ideology | | | Region | | | |
|-----------------|---------|----------|-------|-------|----------|-------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very strong | 22% | 46% | 3% | 13% | 42% | 19% | 6% | 21% | 20% | 21% | 24% |
| Somewhat strong | 28% | 44% | 10% | 30% | 45% | 34% | 8% | 36% | 25% | 26% | 27% |
| Somewhat weak | 13% | 6% | 14% | 19% | 8% | 16% | 13% | 11% | 14% | 12% | 13% |
| Very weak | 38% | 3% | 73% | 39% | 6% | 30% | 73% | 31% | 41% | 41% | 36% |
| Totals | 101% | 99% | 100% | 101% | 101% | 99% | 100% | 99% | 100% | 100% | 100% |
| Unweighted N | (1,169) | (433) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (395) | (297) |



33. Trump Leadership Abilities

Would you say Donald Trump is a strong or a weak leader?

| | | Ge | ender | | A | ge | | | Race | |
|-----------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Very strong | 45% | 51% | 39% | 33% | 38% | 49% | 52% | 50% | 17% | 42% |
| Somewhat strong | 16% | 15% | 17% | 28% | 17% | 12% | 13% | 15% | 22% | 21% |
| Somewhat weak | 9% | 8% | 9% | 10% | 11% | 9% | 5% | 8% | 13% | 7% |
| Very weak | 31% | 26% | 34% | 29% | 35% | 30% | 29% | 28% | 49% | 30% |
| Totals | 101% | 100% | 99% | 100% | 101% | 100% | 99% | 101% | 101% | 100% |
| Unweighted N | (1,166) | (493) | (673) | (137) | (263) | (437) | (329) | (801) | (138) | (157) |

| | | Party ID | | | | Ideology | Ī | Region | | | |
|-----------------|---------|----------|-------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Very strong | 45% | 10% | 85% | 38% | 10% | 34% | 83% | 39% | 47% | 49% | 39% |
| Somewhat strong | 16% | 13% | 11% | 25% | 13% | 22% | 12% | 15% | 16% | 15% | 18% |
| Somewhat weak | 9% | 15% | 2% | 8% | 15% | 11% | 1% | 10% | 9% | 8% | 9% |
| Very weak | 31% | 63% | 3% | 29% | 62% | 32% | 4% | 36% | 28% | 28% | 33% |
| Totals | 101% | 101% | 101% | 100% | 100% | 99% | 100% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,166) | (431) | (331) | (326) | (374) | (399) | (340) | (203) | (273) | (395) | (295) |



34. Presidential Qualifications - Kamala Harris

Do you think Kamala Harris is qualified to be president?

| | | Ge | ender | | A | ge | | | Race | |
|-------------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Qualified to be president | 49% | 43% | 55% | 60% | 55% | 46% | 43% | 43% | 78% | 53% |
| Not qualified to be president | 41% | 49% | 35% | 24% | 34% | 46% | 52% | 48% | 12% | 36% |
| Not sure | 9% | 8% | 10% | 16% | 11% | 8% | 5% | 9% | 11% | 11% |
| Totals | 99% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,167) | (494) | (673) | (137) | (264) | (436) | (330) | (800) | (140) | (157) |

| | | | Party ID | | | Ideology | ' | | Regio | n | |
|-------------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Qualified to be president | 49% | 90% | 13% | 45% | 89% | 53% | 15% | 55% | 46% | 46% | 53% |
| Not qualified to be president | 41% | 5% | 78% | 43% | 7% | 34% | 78% | 36% | 45% | 44% | 38% |
| Not sure | 9% | 5% | 9% | 11% | 4% | 13% | 8% | 9% | 9% | 10% | 9% |
| Totals | 99% | 100% | 100% | 99% | 100% | 100% | 101% | 100% | 100% | 100% | 100% |
| Unweighted N | (1,167) | (434) | (332) | (324) | (374) | (399) | (339) | (203) | (273) | (395) | (296) |



35. Presidential Qualifications - Donald Trump

Do you think Donald Trump is qualified to be president?

| | | Ge | ender | | A | ge | | | Race | |
|-------------------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Qualified to be president | 49% | 56% | 43% | 43% | 41% | 53% | 55% | 55% | 23% | 48% |
| Not qualified to be president | 47% | 40% | 53% | 48% | 55% | 45% | 43% | 42% | 71% | 46% |
| Not sure | 4% | 4% | 4% | 9% | 4% | 2% | 3% | 3% | 6% | 6% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (494) | (674) | (137) | (264) | (437) | (330) | (802) | (139) | (157) |

| | | | Party ID | | | Ideology | , | | Regio | n | |
|-------------------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Qualified to be president | 49% | 7% | 91% | 50% | 8% | 40% | 90% | 42% | 49% | 55% | 45% |
| Not qualified to be president | 47% | 91% | 7% | 45% | 89% | 53% | 8% | 55% | 47% | 40% | 52% |
| Not sure | 4% | 2% | 1% | 5% | 3% | 7% | 2% | 3% | 5% | 5% | 4% |
| Totals | 100% | 100% | 99% | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 101% |
| Unweighted N | (1,168) | (432) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (395) | (296) |



36. Words that Describe Kamala Harris

Which of the following words do you think describe Kamala Harris?

| | | Ge | ender | | A | ge | | Race | | | |
|--------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|--|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic | |
| Cautious | 19% | 18% | 20% | 23% | 22% | 18% | 15% | 17% | 29% | 20% | |
| Tough | 30% | 24% | 36% | 29% | 33% | 30% | 30% | 28% | 47% | 33% | |
| Patriotic | 28% | 24% | 32% | 22% | 29% | 27% | 32% | 26% | 39% | 27% | |
| Religious | 6% | 5% | 7% | 5% | 3% | 8% | 6% | 3% | 22% | 6% | |
| Generous | 20% | 16% | 24% | 19% | 26% | 19% | 19% | 16% | 39% | 21% | |
| Confident | 46% | 36% | 54% | 51% | 49% | 43% | 43% | 40% | 74% | 46% | |
| Crazy | 26% | 31% | 21% | 17% | 21% | 30% | 29% | 30% | 8% | 18% | |
| Timid | 14% | 19% | 10% | 12% | 13% | 18% | 13% | 15% | 9% | 17% | |
| Confused | 32% | 41% | 25% | 15% | 25% | 38% | 42% | 39% | 9% | 24% | |
| Steady | 35% | 29% | 40% | 32% | 40% | 30% | 37% | 32% | 52% | 28% | |
| Smart | 46% | 39% | 53% | 48% | 54% | 44% | 42% | 41% | 69% | 52% | |
| Egotistical | 25% | 31% | 19% | 15% | 18% | 27% | 33% | 29% | 7% | 17% | |
| Funny | 20% | 17% | 22% | 24% | 19% | 19% | 18% | 19% | 27% | 14% | |
| Strong | 36% | 27% | 43% | 38% | 39% | 33% | 35% | 31% | 64% | 36% | |
| Weak | 39% | 48% | 32% | 23% | 33% | 44% | 48% | 46% | 10% | 33% | |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) | |



| | | Party ID | | | Ideology | | | Region | | | | |
|--------------|---------|----------|-------|-------|----------|-------|-------|-----------|---------|-------|-------|--|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West | |
| Cautious | 19% | 27% | 11% | 20% | 24% | 22% | 12% | 24% | 19% | 19% | 17% | |
| Tough | 30% | 62% | 5% | 25% | 61% | 31% | 5% | 34% | 28% | 31% | 29% | |
| Patriotic | 28% | 55% | 8% | 21% | 53% | 28% | 7% | 35% | 27% | 23% | 31% | |
| Religious | 6% | 12% | 2% | 4% | 8% | 6% | 3% | 5% | 7% | 6% | 5% | |
| Generous | 20% | 42% | 3% | 16% | 37% | 21% | 7% | 23% | 19% | 20% | 20% | |
| Confident | 46% | 83% | 12% | 41% | 82% | 47% | 14% | 51% | 41% | 46% | 46% | |
| Crazy | 26% | 2% | 49% | 25% | 4% | 18% | 51% | 21% | 27% | 27% | 25% | |
| Timid | 14% | 5% | 24% | 15% | 5% | 14% | 24% | 12% | 15% | 17% | 13% | |
| Confused | 32% | 5% | 59% | 34% | 7% | 23% | 63% | 26% | 36% | 34% | 30% | |
| Steady | 35% | 67% | 8% | 30% | 66% | 35% | 10% | 36% | 33% | 31% | 40% | |
| Smart | 46% | 86% | 12% | 40% | 82% | 51% | 13% | 54% | 44% | 41% | 50% | |
| Egotistical | 25% | 3% | 43% | 29% | 5% | 17% | 47% | 25% | 22% | 28% | 21% | |
| Funny | 20% | 37% | 8% | 11% | 36% | 18% | 9% | 27% | 19% | 18% | 18% | |
| Strong | 36% | 71% | 7% | 29% | 68% | 38% | 8% | 45% | 31% | 36% | 35% | |
| Weak | 39% | 4% | 75% | 40% | 6% | 32% | 75% | 37% | 42% | 41% | 37% | |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) | |



37. Words that Don't Describe Kamala Harris

Which of the following words do you think don't describe Kamala Harris?

| | | Gender | | | A | ge | Race | | | |
|--------------|---------|--------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Cautious | 14% | 13% | 15% | 8% | 13% | 14% | 17% | 16% | 8% | 9% |
| Tough | 28% | 35% | 22% | 17% | 25% | 29% | 36% | 33% | 11% | 19% |
| Patriotic | 27% | 32% | 22% | 17% | 22% | 30% | 33% | 31% | 12% | 22% |
| Religious | 28% | 32% | 24% | 25% | 24% | 30% | 29% | 30% | 8% | 25% |
| Generous | 18% | 20% | 17% | 16% | 15% | 20% | 21% | 21% | 8% | 10% |
| Confident | 22% | 28% | 16% | 13% | 22% | 22% | 26% | 25% | 9% | 18% |
| Crazy | 36% | 30% | 41% | 38% | 35% | 35% | 37% | 33% | 41% | 38% |
| Timid | 34% | 27% | 39% | 34% | 32% | 33% | 36% | 32% | 41% | 30% |
| Confused | 33% | 27% | 38% | 33% | 37% | 32% | 32% | 32% | 39% | 28% |
| Steady | 22% | 28% | 16% | 12% | 17% | 24% | 29% | 26% | 3% | 17% |
| Smart | 28% | 35% | 21% | 16% | 20% | 34% | 33% | 33% | 3% | 24% |
| Egotistical | 29% | 25% | 33% | 28% | 32% | 28% | 30% | 28% | 39% | 23% |
| Funny | 20% | 24% | 17% | 15% | 19% | 22% | 23% | 24% | 8% | 16% |
| Strong | 31% | 38% | 25% | 18% | 25% | 33% | 41% | 37% | 7% | 27% |
| Weak | 33% | 27% | 38% | 35% | 34% | 33% | 31% | 30% | 47% | 27% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |



| | | Party ID | | | Ideology | | | Region | | | |
|--------------|---------|----------|-------|-------|----------|-------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Cautious | 14% | 11% | 18% | 11% | 11% | 10% | 19% | 16% | 15% | 12% | 13% |
| Tough | 28% | 5% | 51% | 30% | 6% | 19% | 55% | 24% | 32% | 29% | 26% |
| Patriotic | 27% | 4% | 48% | 32% | 4% | 18% | 56% | 24% | 29% | 27% | 28% |
| Religious | 28% | 14% | 37% | 33% | 17% | 21% | 44% | 30% | 28% | 25% | 30% |
| Generous | 18% | 3% | 32% | 19% | 6% | 12% | 35% | 14% | 20% | 17% | 21% |
| Confident | 22% | 2% | 41% | 21% | 3% | 17% | 42% | 16% | 24% | 21% | 24% |
| Crazy | 36% | 67% | 10% | 32% | 70% | 36% | 10% | 41% | 34% | 30% | 42% |
| Timid | 34% | 58% | 14% | 31% | 62% | 30% | 17% | 37% | 34% | 29% | 38% |
| Confused | 33% | 61% | 10% | 28% | 63% | 33% | 9% | 37% | 30% | 29% | 39% |
| Steady | 22% | 3% | 41% | 22% | 3% | 15% | 44% | 17% | 25% | 22% | 22% |
| Smart | 28% | 2% | 55% | 26% | 3% | 19% | 57% | 25% | 32% | 27% | 27% |
| Egotistical | 29% | 55% | 8% | 25% | 57% | 29% | 8% | 29% | 33% | 25% | 32% |
| Funny | 20% | 7% | 31% | 25% | 7% | 18% | 34% | 18% | 25% | 16% | 24% |
| Strong | 31% | 3% | 61% | 29% | 3% | 23% | 63% | 27% | 37% | 30% | 30% |
| Weak | 33% | 65% | 6% | 29% | 67% | 34% | 6% | 38% | 31% | 28% | 37% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



38. Words that Describe Donald Trump

Which of the following words do you think describe Donald Trump?

| | | Ge | ender | | Ą | ge | Race | | | |
|--------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Cautious | 8% | 10% | 6% | 12% | 6% | 7% | 9% | 8% | 11% | 5% |
| Tough | 45% | 50% | 40% | 29% | 33% | 53% | 54% | 50% | 17% | 38% |
| Patriotic | 47% | 51% | 43% | 37% | 40% | 52% | 52% | 53% | 15% | 42% |
| Religious | 19% | 20% | 17% | 18% | 15% | 17% | 24% | 21% | 7% | 20% |
| Generous | 28% | 32% | 24% | 15% | 23% | 30% | 37% | 33% | 10% | 21% |
| Confident | 55% | 61% | 51% | 50% | 48% | 60% | 59% | 62% | 25% | 49% |
| Crazy | 47% | 43% | 51% | 54% | 54% | 44% | 42% | 43% | 70% | 47% |
| Timid | 3% | 3% | 3% | 4% | 3% | 3% | 3% | 2% | 8% | 2% |
| Confused | 33% | 29% | 36% | 26% | 36% | 33% | 34% | 30% | 55% | 24% |
| Steady | 27% | 31% | 23% | 15% | 21% | 31% | 34% | 33% | 7% | 17% |
| Smart | 41% | 46% | 36% | 32% | 35% | 44% | 46% | 46% | 17% | 35% |
| Egotistical | 62% | 60% | 65% | 59% | 62% | 65% | 62% | 62% | 66% | 56% |
| Funny | 26% | 31% | 21% | 28% | 25% | 26% | 25% | 29% | 14% | 24% |
| Strong | 48% | 55% | 41% | 41% | 37% | 53% | 54% | 55% | 15% | 43% |
| Weak | 27% | 23% | 30% | 22% | 33% | 23% | 27% | 24% | 45% | 25% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |



| | | Party ID | | | Ideology | | | Region | | | | |
|--------------|---------|----------|-------|-------|----------|-------|-------|-----------|---------|-------|-------|--|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West | |
| Cautious | 8% | 2% | 14% | 8% | 1% | 5% | 15% | 8% | 9% | 9% | 5% | |
| Tough | 45% | 13% | 73% | 51% | 14% | 34% | 79% | 40% | 46% | 47% | 43% | |
| Patriotic | 47% | 13% | 82% | 47% | 16% | 35% | 85% | 44% | 49% | 52% | 40% | |
| Religious | 19% | 4% | 34% | 18% | 7% | 9% | 38% | 15% | 22% | 21% | 15% | |
| Generous | 28% | 1% | 55% | 28% | 3% | 14% | 60% | 19% | 31% | 31% | 25% | |
| Confident | 55% | 26% | 83% | 58% | 32% | 43% | 86% | 44% | 62% | 57% | 54% | |
| Crazy | 47% | 84% | 11% | 46% | 86% | 54% | 10% | 56% | 43% | 43% | 51% | |
| Timid | 3% | 4% | 0% | 4% | 4% | 3% | 1% | 5% | 2% | 4% | 2% | |
| Confused | 33% | 68% | 2% | 30% | 69% | 32% | 4% | 40% | 33% | 28% | 33% | |
| Steady | 27% | 2% | 53% | 26% | 4% | 16% | 56% | 17% | 30% | 33% | 24% | |
| Smart | 41% | 7% | 77% | 37% | 7% | 31% | 77% | 36% | 40% | 45% | 38% | |
| Egotistical | 62% | 86% | 35% | 67% | 89% | 67% | 38% | 66% | 63% | 56% | 69% | |
| Funny | 26% | 9% | 42% | 26% | 12% | 17% | 44% | 29% | 23% | 26% | 25% | |
| Strong | 48% | 10% | 88% | 45% | 11% | 40% | 86% | 43% | 51% | 50% | 44% | |
| Weak | 27% | 54% | 2% | 24% | 56% | 26% | 4% | 31% | 26% | 24% | 28% | |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) | |



39. Words that Don't Describe Donald Trump

Which of the following words do you think don't describe Donald Trump?

| | | Ge | ender | | A | ge | | | Race | |
|--------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Cautious | 40% | 40% | 39% | 39% | 44% | 40% | 36% | 42% | 27% | 28% |
| Tough | 16% | 15% | 17% | 15% | 20% | 18% | 12% | 16% | 24% | 12% |
| Patriotic | 26% | 24% | 27% | 20% | 28% | 26% | 26% | 25% | 33% | 22% |
| Religious | 34% | 33% | 36% | 28% | 36% | 37% | 33% | 33% | 43% | 29% |
| Generous | 35% | 30% | 39% | 39% | 39% | 34% | 30% | 31% | 48% | 33% |
| Confident | 10% | 7% | 12% | 6% | 11% | 12% | 9% | 9% | 19% | 8% |
| Crazy | 26% | 30% | 23% | 13% | 18% | 30% | 37% | 31% | 3% | 24% |
| Timid | 49% | 52% | 46% | 43% | 43% | 53% | 52% | 55% | 26% | 38% |
| Confused | 32% | 38% | 26% | 18% | 22% | 37% | 42% | 37% | 6% | 25% |
| Steady | 29% | 25% | 32% | 31% | 34% | 26% | 26% | 29% | 29% | 22% |
| Smart | 32% | 30% | 34% | 33% | 37% | 32% | 28% | 30% | 41% | 34% |
| Egotistical | 10% | 12% | 9% | 5% | 9% | 11% | 14% | 12% | 3% | 14% |
| Funny | 25% | 21% | 29% | 20% | 28% | 27% | 25% | 25% | 28% | 22% |
| Strong | 24% | 22% | 26% | 26% | 25% | 24% | 21% | 22% | 34% | 20% |
| Weak | 38% | 45% | 32% | 31% | 30% | 41% | 44% | 43% | 16% | 36% |
| Unweighted N | (1,170) | (494) | (676) | (137) | (264) | (437) | (332) | (802) | (140) | (158) |



| | | | Party ID | | | Ideology | , | | Region | า | |
|--------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Cautious | 40% | 47% | 32% | 39% | 52% | 36% | 34% | 38% | 43% | 37% | 42% |
| Tough | 16% | 31% | 3% | 15% | 34% | 15% | 4% | 19% | 15% | 15% | 18% |
| Patriotic | 26% | 50% | 4% | 26% | 51% | 28% | 5% | 28% | 26% | 23% | 28% |
| Religious | 34% | 58% | 12% | 35% | 61% | 38% | 12% | 36% | 35% | 29% | 40% |
| Generous | 35% | 65% | 6% | 32% | 70% | 36% | 5% | 39% | 33% | 31% | 39% |
| Confident | 10% | 20% | 1% | 8% | 18% | 11% | 2% | 15% | 7% | 8% | 13% |
| Crazy | 26% | 1% | 53% | 26% | 3% | 15% | 57% | 22% | 30% | 27% | 25% |
| Timid | 49% | 37% | 61% | 50% | 42% | 42% | 64% | 46% | 56% | 48% | 45% |
| Confused | 32% | 4% | 60% | 30% | 4% | 22% | 64% | 28% | 36% | 34% | 28% |
| Steady | 29% | 52% | 7% | 30% | 56% | 31% | 6% | 36% | 29% | 25% | 29% |
| Smart | 32% | 62% | 4% | 32% | 67% | 34% | 4% | 36% | 30% | 29% | 36% |
| Egotistical | 10% | 2% | 21% | 9% | 2% | 7% | 20% | 13% | 10% | 10% | 8% |
| Funny | 25% | 43% | 10% | 26% | 42% | 30% | 9% | 29% | 27% | 22% | 26% |
| Strong | 24% | 46% | 3% | 25% | 49% | 25% | 4% | 31% | 21% | 22% | 25% |
| Weak | 38% | 6% | 69% | 40% | 8% | 30% | 71% | 36% | 41% | 39% | 35% |
| Unweighted N | (1,170) | (434) | (332) | (326) | (374) | (400) | (341) | (203) | (274) | (396) | (297) |



40. Gender of Harris VP Pick

If Kamala Harris becomes the Democratic nominee for president, do you think that as her vice presidential running mate, she should choose a man or a woman?

| | | Ge | ender | | A | ge | | | Race | |
|-----------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Should choose a man | 27% | 24% | 30% | 31% | 25% | 26% | 28% | 26% | 27% | 26% |
| Should choose a woman | 4% | 3% | 6% | 7% | 8% | 4% | 1% | 3% | 9% | 8% |
| Doesn't matter | 60% | 65% | 55% | 56% | 55% | 62% | 63% | 62% | 55% | 58% |
| Not sure | 9% | 8% | 10% | 6% | 12% | 9% | 8% | 9% | 10% | 8% |
| Totals | 100% | 100% | 101% | 100% | 100% | 101% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (494) | (674) | (137) | (264) | (437) | (330) | (800) | (140) | (158) |

| | = | | Party ID | | | Ideology | 7 | Region | | | |
|-----------------------|---------|-------|----------|-------|-------|----------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Should choose a man | 27% | 35% | 22% | 22% | 37% | 27% | 20% | 27% | 25% | 25% | 32% |
| Should choose a woman | 4% | 6% | 2% | 5% | 6% | 5% | 3% | 4% | 3% | 6% | 4% |
| Doesn't matter | 60% | 51% | 67% | 64% | 52% | 58% | 69% | 59% | 62% | 62% | 55% |
| Not sure | 9% | 8% | 9% | 9% | 6% | 10% | 8% | 10% | 10% | 8% | 9% |
| Totals | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (434) | (332) | (325) | (374) | (399) | (340) | (203) | (272) | (396) | (297) |



41. Ready for Woman President

Do you think America is ready to elect a woman president?

| | | Ge | ender | | A | ge | Race | | | |
|--------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Yes | 54% | 53% | 55% | 55% | 60% | 51% | 53% | 52% | 58% | 55% |
| No | 30% | 31% | 28% | 32% | 27% | 32% | 28% | 31% | 23% | 32% |
| Not sure | 16% | 15% | 17% | 13% | 13% | 17% | 19% | 17% | 19% | 12% |
| Totals | 100% | 99% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 99% |
| Unweighted N | (1,169) | (494) | (675) | (137) | (264) | (437) | (331) | (801) | (140) | (158) |

| | | Party ID Ideology | | | | Region | | | | | |
|--------------|---------|-------------------|-------|-------|-------|--------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Yes | 54% | 77% | 30% | 56% | 75% | 56% | 35% | 60% | 55% | 50% | 55% |
| No | 30% | 9% | 52% | 27% | 11% | 28% | 47% | 23% | 27% | 36% | 27% |
| Not sure | 16% | 13% | 18% | 17% | 14% | 16% | 18% | 17% | 18% | 13% | 18% |
| Totals | 100% | 99% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 99% | 100% |
| Unweighted N | (1,169) | (434) | (332) | (326) | (374) | (400) | (340) | (203) | (273) | (396) | (297) |



42. Are Americans Willing to Vote for a Woman

If given the choice between a man and woman running for President who are equally qualified, how many Americans wouldn't be willing to vote for the woman candidate?

| | | Ge | ender | | A | ge | | | Race | |
|--------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| All of them | 2% | 2% | 2% | 2% | 3% | 2% | 2% | 2% | 4% | 5% |
| Most of them | 14% | 15% | 14% | 21% | 14% | 15% | 10% | 14% | 21% | 15% |
| About half of them | 25% | 24% | 26% | 25% | 23% | 24% | 26% | 24% | 27% | 25% |
| Some of them | 41% | 43% | 39% | 41% | 40% | 38% | 44% | 44% | 30% | 34% |
| None of them | 2% | 2% | 2% | 1% | 1% | 3% | 2% | 1% | 1% | 3% |
| Not sure | 16% | 14% | 18% | 10% | 19% | 17% | 16% | 15% | 17% | 19% |
| Totals | 100% | 100% | 101% | 100% | 100% | 99% | 100% | 100% | 100% | 101% |
| Unweighted N | (1,167) | (494) | (673) | (137) | (263) | (436) | (331) | (800) | (140) | (158) |

| | | Party ID Ideology | | | • | Region | | | | | |
|--------------------|---------|-------------------|-------|-------|-------|--------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| All of them | 2% | 2% | 3% | 1% | 2% | 2% | 3% | 2% | 0% | 3% | 3% |
| Most of them | 14% | 14% | 17% | 11% | 11% | 17% | 15% | 10% | 15% | 16% | 14% |
| About half of them | 25% | 21% | 28% | 25% | 23% | 28% | 24% | 26% | 19% | 28% | 25% |
| Some of them | 41% | 50% | 31% | 45% | 53% | 36% | 36% | 45% | 48% | 36% | 37% |
| None of them | 2% | 1% | 4% | 1% | 1% | 1% | 3% | 1% | 2% | 2% | 3% |
| Not sure | 16% | 12% | 18% | 17% | 10% | 16% | 19% | 17% | 15% | 14% | 19% |
| Totals | 100% | 100% | 101% | 100% | 100% | 100% | 100% | 101% | 99% | 99% | 101% |
| Unweighted N | (1,167) | (434) | (331) | (325) | (374) | (398) | (340) | (203) | (273) | (395) | (296) |



43. Woman Elected President

Do you think a woman will be elected President of the United States in the next 10 years?

| | | Ge | ender | Age | | | | Race | | |
|---------------------|---------|-------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Definitely will | 21% | 17% | 25% | 13% | 23% | 21% | 25% | 18% | 44% | 23% |
| Probably will | 41% | 44% | 38% | 47% | 42% | 41% | 36% | 42% | 26% | 41% |
| Probably will not | 14% | 17% | 12% | 22% | 11% | 15% | 11% | 14% | 12% | 21% |
| Definitely will not | 4% | 5% | 3% | 3% | 4% | 5% | 2% | 4% | 1% | 5% |
| Not sure | 20% | 18% | 21% | 14% | 20% | 18% | 25% | 22% | 17% | 11% |
| Totals | 100% | 101% | 99% | 99% | 100% | 100% | 99% | 100% | 100% | 101% |
| Unweighted N | (1,168) | (493) | (675) | (137) | (264) | (436) | (331) | (801) | (140) | (157) |

| | | Party ID Ide | | | ldeology | , | Region | | | | |
|---------------------|---------|--------------|-------|-------|----------|-------|--------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Definitely will | 21% | 42% | 6% | 16% | 35% | 24% | 7% | 26% | 16% | 23% | 22% |
| Probably will | 41% | 40% | 38% | 43% | 44% | 37% | 42% | 37% | 45% | 39% | 42% |
| Probably will not | 14% | 5% | 24% | 14% | 6% | 14% | 21% | 10% | 13% | 17% | 14% |
| Definitely will not | 4% | 2% | 7% | 2% | 1% | 4% | 6% | 6% | 4% | 4% | 2% |
| Not sure | 20% | 12% | 24% | 24% | 13% | 21% | 24% | 20% | 22% | 18% | 20% |
| Totals | 100% | 101% | 99% | 99% | 99% | 100% | 100% | 99% | 100% | 101% | 100% |
| Unweighted N | (1,168) | (433) | (332) | (326) | (373) | (400) | (340) | (203) | (273) | (396) | (296) |



44. Hope Woman Elected President

Do you personally hope that the United States elects a woman President of the United States in the next 10 years?

| | | Gender | | | A | ge | Race | | | |
|--------------|---------|--------|--------|-------|-------|-------|-------|-------|-------|----------|
| | Total | Male | Female | 18-29 | 30-44 | 45-64 | 65+ | White | Black | Hispanic |
| Yes | 53% | 43% | 62% | 59% | 66% | 47% | 47% | 48% | 74% | 56% |
| No | 22% | 27% | 17% | 21% | 17% | 23% | 25% | 25% | 12% | 19% |
| Not sure | 25% | 30% | 21% | 20% | 17% | 30% | 29% | 27% | 14% | 25% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 100% | 100% | 100% |
| Unweighted N | (1,168) | (494) | (674) | (136) | (263) | (437) | (332) | (800) | (140) | (158) |

| | | Party ID Ideology | | | | Region | | | | | |
|--------------|---------|-------------------|-------|-------|-------|--------|-------|-----------|---------|-------|-------|
| | Total | Dem | Rep | Ind | Lib | Mod | Con | Northeast | Midwest | South | West |
| Yes | 53% | 93% | 19% | 47% | 92% | 56% | 19% | 58% | 50% | 52% | 54% |
| No | 22% | 1% | 46% | 16% | 2% | 15% | 44% | 16% | 24% | 27% | 17% |
| Not sure | 25% | 6% | 35% | 37% | 6% | 29% | 38% | 27% | 26% | 21% | 28% |
| Totals | 100% | 100% | 100% | 100% | 100% | 100% | 101% | 101% | 100% | 100% | 99% |
| Unweighted N | (1,168) | (434) | (331) | (325) | (374) | (399) | (340) | (203) | (274) | (395) | (296) |

METHODOLOGY

YouGov interviewed 1,170 U.S. registered voters between July 22-23, 2024 for The Times, and the SAY24 project for Stanford, Arizona State, and Yale Universities.

This sample was weighted according to gender, age, race, and education based on the U.S. Census American Community Survey, and the U.S. Census Current Population Survey, as well as 2020 Presidential vote and 2022 baseline partisan identification. Respondents were selected to be representative of U.S. registered voters . The weights range from 0.2 to 3.3, with a mean of 1 and a standard deviation of 0.5.

The margin of error for a percentage based upon the entire sample is ± 3.2 points. The margin of error is larger for subsamples and differences of percentages.

EXHIBIT 9

Early In-Person Voting

mcsl.org/elections-and-campaigns/early-in-person-voting

Related Topic: Elections

NCSL does not run elections and cannot provide legal advice. If you are a voter looking for assistance, please contact your local election official. You can find your local election official's website and contact information by using this database from the US Vote Foundation .

As of August 2024, forty-seven states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands offer early in-person voting to all voters (this includes states with all-mail elections). Three states—Alabama, Mississippi and New Hampshire—do not offer early inperson voting, though they may provide options for eligible absentee voters.

In referring to early in-person voting, states use different terminology, including early voting, in-person absentee voting and advance voting. NCSL categorizes a state as having early in-person voting if the option is available to all voters. NCSL distinguishes between "early voting," which functions similarly to Election Day voting, and "in-person absentee voting," which is when a voter requests, completes and signs an absentee ballot in a polling place. From the voter's perspective, however, the experiences of early voting and in-person absentee voting are essentially the same.

Additionally, eight states and Washington, D.C., run elections primarily by mail, though all retain some early in-person voting options for voters who need or prefer it.

Early in-person voting periods vary by state:

- Length: Early voting periods range in length from three to 46 days; the average is 20 days.
- Start date: Early in-person voting may begin as early as 50 days before the election, or as late as the Friday before the election. The average start date is 27 days before the election.
- End date: Early voting typically ends just a few days before Election Day.
- Weekend early voting: Of the states that allow early in-person voting (excluding the states that run elections primarily by mail), 27 allow some weekend early voting.
- Saturday: 22 states offer voting on Saturday. Seven other states (California, Florida, Kansas, Massachusetts, North Carolina, North Dakota and Vermont) allow local election officials to decide whether to offer Saturday voting.

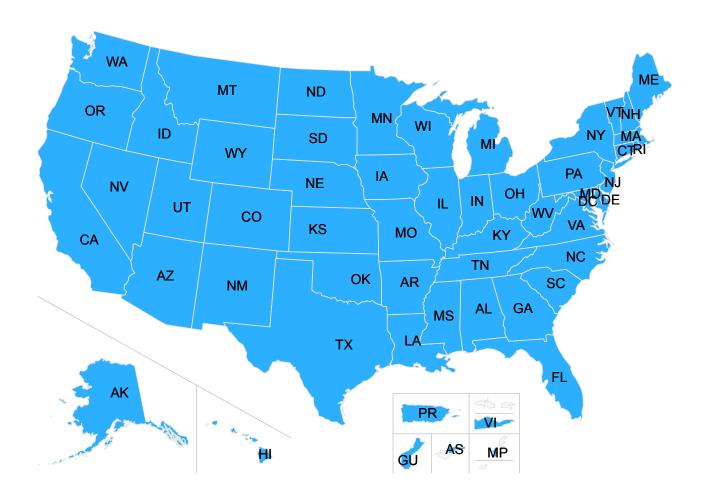
 Sunday: Nine states (Alaska, Connecticut, Delaware, Illinois, Maryland, Michigan, New Jersey, New York and Ohio) allow for Sunday voting. Eight states (California, Kansas, Massachusetts, North Carolina, North Dakota, Vermont, Virginia and Utah) allow local election officials to offer Sunday voting. Florida mandates that early voting must begin 10 days before the election, including Sundays, and end on the third day before the election for state and federal elections. Local election officials have the discretion to allow early voting on the Sunday before the election.

Statutes and information about locations, days and hours (if available) are listed below. This information applies primarily to statewide general elections. Early voting periods for municipal or primary elections may be different.

For further information on pre-Election Day voting, including voting by mail, visit NCSL's Voting Outside the Polling Place webpage.

Early In-Person Voting Options

Early In-Person Voting Options



End of interactive chart.

- Early Voting (EV)
- In-Person Absentee
- All-Mail with EV Options

| | | Early | | | |
|-----------------|---------------------|--------|-----------|------------------|------------|
| | Early Voting | Voting | | Hours and | |
| State/Territory | Begins | Ends | Locations | Days | Statute(s) |

| Alaska | Fifteen days
before
election | Day of
election | Elections supervisors' offices. Other locations as designated by election director. | Normal business hours on weekdays, 10 a.m4 p.m. on the Saturday before an election, | AS
§15.20.064
AS
§15.20.045 |
|----------|------------------------------------|--|--|--|--------------------------------------|
| | | | | 12 p.m4 p.m.
on the Sunday
before an
election | |
| Arizona | Twenty-seven days before election | Friday
before
election | Recorder's office. Any other locations in the county the recorder deems necessary. | Not specified | ARS §16-
541
ARS §16-
542 |
| Arkansas | Fifteen days
before
election | 5 p.m.
Monday
before
election | Offices of county clerk. Other locations as determined by county board of election commissioners. | 8 a.m6 p.m. on weekdays, 10 a.m4 p.m. on the Saturday before the election, until 5 p.m. the Monday before the election | AR Code
§7-5-418 |

| California | Twenty-nine days before election Note: California conducts elections primarily by mail. | Day of election | County election officials' offices. Satellite locations as determined by county election officials. | Varies from county to county | Elec. Code
§ 3000.5
Elec. Code
§3001
Elec. Code
§3018 |
|-------------|--|--------------------------------|--|--|--|
| Colorado | Voter service and polling centers must be open 15 days before an election. Note: Colorado conducts elections primarily by mail. | Day of election | Determined by county election officials. | Every day but
Sunday during
the early voting
period. Normal
business hours
(but may be
expanded by
county board of
commissioners). | C.R.S. §1-
5-102 |
| Connecticut | Fifteen days
before
election | Two days
before
election | Registrar of
voters shall
designate
locations | 10 a.m. to 6 p.m. 8 a.m. to 8 p.m. on the Tuesday and Thursday before the election. | CT Public
Act No. 23-
5 |

| Delaware | Ten days
before an
election | Sunday
before
election | Determined by
State Election
Commissioner
at least 30 days
before and
election | Early voting locations must be open for 8 hours each day. Locations are to open at 7 a.m. for at least 5 days in the early voting period. Locations are required to be open until 7 p.m. | Del. Code
Ann. tit. 15,
§ 5402,
5403,
5404 |
|-------------------------|---|--------------------------------|--|--|--|
| District of
Columbia | Twelve days before election Note: D.C. conducts elections primarily by mail. | Saturday
before
election | No fewer than eight early voting centers, with at least one early voting center available in a central location within each election ward. | 8:30 a.m7 p.m. Sunday excluded. | DC ST § 1-
1001.09 |

| Florida | Ten days before election. May be offered 11 to 15 days before an election that contains state and federal races, at the discretion of the elections supervisor. | Three days before election. May end two days before an election that contains state and federal races, at the discretion of the elections supervisor. | Main or branch offices of elections supervisors. Other sites designated by the elections supervisor (locations must provide all voters in that area with equal opportunity to vote). | No less than eight or more than 12 hours per day. Election supervisors may choose to provide additional days of early voting, including weekends. | Fla. Stat.
§101.657 |
|---------|--|--|---|--|------------------------|
| Georgia | Fourth Monday prior to a primary or election; as soon as possible prior to a runoff | Friday immediately prior to a primary, election or runoff | Board of registrars' offices. Other sites as designated by boards of registrars (must be a government building generally accessible to the public). | Normal business hours on weekdays, 9 a.m4 p.m. on the second Saturday prior to primary or election. Election officials may provide for early voting beyond regular business hours. | GA ST §
21-2-385 |
| Guam | Thirty days
before
election | Five days
before
election | Any
Commission
office | Not specified | GU ST T. 3,
§ 10107 |

| Hawaii | Ten business days prior to Election Day. Note: Hawaii conducts elections primarily by mail. | 7 p.m. on
Election
Day | Voter Service
Centers | Monday-
Saturday 8 a.m.
to 4:30 p.m. | HRS § 11-
131
HRS § 11-
109 |
|--------|--|---|----------------------------|--|--|
| Idaho | Third Monday
before
election (in-
person
absentee) | 5 p.m.,
Friday
before
election | Determined by county clerk | Not specified | ID Code
§34-1006
ID Code
§34-1002 |

Illinois

Fortieth day before election for temporary polling locations and 15th day before election for permanent locations

End of the day before election day

An election authority may establish permanent and temporary polling places for early voting at locations throughout the election authority's jurisdiction, including but not limited to:

Municipal clerk's office

Township clerk's office

Road district clerk's office

County or local public agency office.

Early voting locations must be provided at public universities.

Permanent early voting locations must remain open from the 15tth day before an election during the hours of 8:30 a.m.-4:30 p.m. or 9 a.m.-5 p.m. on weekdays.

10 ILCS

5/19A-15

10 ILCS

5/19A-20

Beginning eight days before an election, they must remain open 8:30 a.m.-7 p.m. or 9 a.m. -7 p.m. on weekdays, 9 a.m.-Noon on Saturdays and holidays, and 10 a.m.-4 p.m. on Sundays.

voting locations must stay open at least eight hours on any holiday and a total of at least 14 hours on the final weekend during the early voting period.

Election authorities may decide the days and hours for

Permanent early

temporary early voting locations, beginning the fortieth day before an election.

| Indiana | Twenty-eight days before election (inperson absentee) | Noon, day
before
election | Office of circuit court clerk. County election board may adopt a resolution to authorize the circuit court clerk to establish satellite offices for early voting. | The office of the circuit court clerk must permit inperson absentee voting for at least seven hours on each of the two Saturdays preceding election day, but a county with fewer than 20,000 voters may reduce this to a minimum of four hours on each of the two Saturdays preceding | Ind. Code
§3-11-4-1
Ind. Code
3-11-10-26 |
|---------|---|---------------------------------|--|---|---|

| Iowa | Twenty days before election (in- person absentee) | 5 p.m., day
before
election | Commissioners' offices Satellite locations may be established by commissioner. Satellite location must be established upon receipt of a petition signed by at least 100 eligible electors requesting a specific location. | A satellite station established by petition must be open at least one day for a minimum of six hours. | IA Code
§53.10
IA Code
§53.11(b) |
|----------|---|-----------------------------------|---|--|---|
| Kansas | Twenty days before election or Tuesday before election (varies by county) | Noon, day
before
election | Offices of county election officers. County election officers may designate satellite locations. | Not specified | KSA §25-
1119
KSA §25-
1122a
KSA §25-
1123 |
| Kentucky | Thursday
before
election. | Saturday
before
election. | Offices of county clerks or any other locations designated by the county board of elections. | Eight hours between 6 a.m. 8 p.m. on the Friday, Saturday and Sunday immediately preceding the election. | KY ST §
117.076 |
| | | | | | |

| Louisiana | Fourteen
days before
election | Seven days
before
election | Registrars' offices. Registrar may provide alternate location in the courthouse or a public building in the immediate vicinity thereof. One branch office of the registrar, as long as it is in a public building. | 8:30 a.m6 p.m., Monday through Saturday. Holidays excluded. | LA R.S.
18:1303
LA R.S.
18:1309 |
|-----------|---|---|--|--|--|
| Maine | In-person
absentee
voting
available as
soon as
absentee
ballots are
ready (30-45
days before
election) | Three business days before election, unless the voter has an acceptable excuse. | Municipal
clerks' offices | During regular
business hours
on days when
clerks' offices
are open. | ME ST T.
21-A § 753-
A
ME ST T.
21-A § 754-
A |

| Maryland | On the second Thursday before an election | Thursday
before an
election | Established by State Board of Elections in collaboration with local boards. Number required depends on county population and ranges from one to five per county. | 7 a.m8 p.m. | MD Election
Law §10-
301.1 |
|---------------|--|------------------------------------|---|---|----------------------------------|
| Massachusetts | Seventeen
days before
election for
state biennial
elections; 10
days before
election for
presidential
or state
primaries. | Four days
before an
election | Early voting sites, which includes the local election office. Additional locations may be provided at the discretion of the city or town registrar. | Regular business hours and on weekends; hours vary by size of jurisdiction. City or town clerks may provide additional hours at their discretion. | M.G.L.A. 54
§25B |

| Michigan | Nine days
before an
election | Sunday
before an
election | Early voting sites may serve more than six precincts and may serve voters from more than one municipality. | During regular business hours and for at least eight hours during the Saturday and Sunday immediately prior to the election. Local election officials have the authority to make in-person absentee voting available for additional times and places beyond what is required. | MI CONST
Art. 2, § 4 |
|-----------|---|---------------------------------|--|--|--|
| Minnesota | Forty-six days
before
election (in-
person
absentee). | 5 p.m. the day before election | Elections offices or any other location designated by county auditor. | Monday through Friday regular business hours. 10 a.m3 p.m. on Saturday before election; 10 a.m5 p.m. on the day before Election Day. | M.S.A.
§203B.081
M.S.A.
§203B.085 |

| Missouri | The second
Tuesday
before an
election (in-
person
absentee). | Not
specified. | Locations designated by the election authority. | Not specified. | MO ST
115.277 |
|----------|---|---------------------|---|----------------|--|
| Montana | Thirty days
before
election (in-
person
absentee). | Day before election | Elections
offices | Not specified | M.C.A. §13-
13-205 |
| Nebraska | Thirty days before each election. | Election
Day | County clerk or election commissioners' offices | Not specified | NE ST §
32-808
NE ST §32-
938
NE ST 32-
942 |

| Nevada | Third Saturday preceding election Note: Nevada conducts elections primarily by mail. | Friday
before
election | Permanent places for early voting as designated by county clerk. Branch polling places for early voting as designated by county clerk. There are special requirements for early voting sites on Native American reservations. | Monday through Friday for at least eight hours a day, to be established by the clerk. Any Saturday that falls within the early voting period for at least four hours, to be established by the clerk. A clerk may choose to offer Sunday hours as well. | N.R.S.
§293.356
N.R.S.
293.3564
N.R.S.
293.3568 |
|--------|---|------------------------------|---|---|--|
| | | | | | |

| New Jersey | Ten days before the election, but in-person absentee voting begins forty-five days before the election. | Sunday before election | Each county board of elections shall designate at least three, but not more than five, public locations within each county, except that the county board shall designate at least five, but not more than seven public locations for early voting if the number of registered voters in the county is at least 150,000 but less than 300,000, and shall designate at least seven, but not more than 10 public locations for early voting if the number of registered voters in the county is at least seven, but not more than 10 public locations for early voting if the number of registered voters in the county is 300,000 or | Monday through Saturday 10 a.m8 p.m. Sunday 10 a.m6 p.m. | NJ ST
19:15A-1 |
|------------|---|------------------------|--|---|-------------------|

more.

New Mexico

Twenty-eight days before an election at a clerk's office; on the third Saturday before an election for alternate locations

Saturday before election Clerks' offices and:

In counties with more than 150,000 voters, clerks must establish at least 15 additional locations.

In counties with 50,000-150,000 voters, clerks must establish at least four additional locations;

and in counties with 10,000-50,000 voters, clerks must establish at least one alternate location.

Hours are set by the clerk, and must begin no earlier than 7 a.m. and end no

later than 9 p.m.

Each alternate location must be open for at least eight consecutive hours on each day of early voting, and may be closed on Sundays and Mondays.

N. M. S. A. 1978, § 1-6-5.7

New York Tenth day Second day At least one before before an early voting election election location for every full increment of 50,000 registered voters in each county, but not more than seven are required. Counties with fewer than 50,000 registered voters shall have at least one early voting location. Counties and the city of New York may choose to establish more than the minimum required. Early voting sites

Open for at least eight hours between 7

a.m.-8 p.m. each weekday during the early voting

period.

At least one early voting site shall be open until 8 p.m. on at least two weekdays in each calendar week during the early voting period.

Open for at least five hours between 9 a.m. and 6 p.m. on each Saturday, Sunday and legal holiday during the early voting period.

Boards of elections may establish a greater number of hours for voting during the early voting period beyond what is required.

shall be located

so that voters

have adequate

and equitable

access.

| North Carolina | Third Thursday before election | 3 p.m. on
the last
Saturday
before
election | Office of county board of elections. The county board of elections may choose to offer additional locations, subject to approval by the state board of elections. All sites must be open during the same days and hours. | Monday through Friday during regular business hours at the county board of elections. A county board may conduct early voting on weekends. If the county board of elections opens early voting sites on Saturdays or Sundays during the early voting period, then all sites shall be open for the same number of hours uniformly throughout the county on those days. There are exceptions for counties with islands that contain no bridges to the mainland. | N.C.G.S.A.
§163-227.2 |
|----------------|------------------------------------|---|---|---|--------------------------|
| North Dakota | Fifteen days
before
election | Day before election | At the discretion of county auditor | The county auditor chooses and publishes the hours. | NDCC
§16.1-07-
15 |

| Ohio | Twenty-nine days before election. | 2 p.m.
Monday
before
election | Main office of board of elections. Board may conduct voting at a branch office only under certain conditions. | 8 a.m5 p.m. Monday through Friday, with some extended evening hours in the week prior to the election 8 a.m4 p.m. on Saturday 1-5 p.m. on the Sunday before Election Day. | O.R.C. §
3509.051
O.R.C. §
3509.01 |
|----------|---|--|--|---|---|
| Oklahoma | Wednesday preceding an election (in-person absentee). | 2 p.m. on
the
Saturday
before
election | At a location designated by the county election board. For counties of more than 25,000 registered voters or with an area of more than 1,500 square miles, more than one location may be designated. | 8 a.m6 p.m. on
Wednesday,
Thursday and
Friday
8 a.m2 p.m. on
Saturday. | OK ST T.
26 § 14-
115.4 |

| Oregon | Drop sites must open the Friday before an election, but may open as soon as ballots are available (18 days before). Note: Oregon conducts elections primarily by mail. | Day of election | Election offices or other staffed locations (libraries, city halls, etc.) or outdoor mailboxes (drive-by or walking traffic). | Normal business hours. | OR ST
§254.470 |
|--------------|---|---|---|-------------------------------|----------------------|
| Pennsylvania | Counties will begin preparing inperson mail/absentee ballots after the official candidate list is certified, no earlier than 50 days before the election. The timing of availability of ballots may vary by county. | 5 p.m. first Tuesday prior to day of election | Local board of elections | During regular business hours | 25 P.S. §
3146.2a |

| Puerto Rico | Not specified | On or
before
election
day | Voting centers
set up by the
Commission | Not specified | PR ST T. 16
§ 4739 |
|----------------|---|---|---|--|--|
| Rhode Island | Twenty days before election. | Day before election | At local boards of canvassers | During regular business hours | RI ST §17-
20-2.2 |
| South Carolina | Two weeks
before
Election Day | Day before election | At early voting centers | 8:30 a.m. to 6 p.m. for statewide general elections; 8:30 a.m. to 5 p.m. for any elections that are not statewide general elections. | SC Code §
7-13-25 |
| South Dakota | Forty-six days
before
election (in-
person
absentee). | 5 p.m. the
day before
the
election | Office of the person in charge of elections | Regular office
hours | S.D.C.L.
§12-19-1.2
S.D.C.L12-
19-2.1 |

| Tennessee | Twenty days before election | Five days before election (seven days for a presidential preference primary) | County election commission office or other location(s) designated by the county election commission. | Offices must be open a minimum of three consecutive hours on weekdays and Saturdays between 8 a.m6 p.m. during the early voting period. On at least three days, offices must be open between 4:30-7 p.m., and on at least one Saturday from 8 a.m4 p.m. in counties with a population of over 150,000. | TN ST §2-6-102(a)(1) TN ST § 2-6-103 |
|-----------|--------------------------------------|--|--|---|--|
| Texas | Seventeen
days before
election | Four days prior to election | In a room in the offices of the county clerk, or elsewhere as determined by the clerk Each county has one main early voting center. | During business hours on weekdays unless: Fewer than 1,000 voters, in which case three hours per day, or more than 100,000 voters, in which case 12 hours per day during the last week. | Tex. Elec. Code §85.001 Tex. Elec. Code §85.002 |

| U | Jtah | Fourteen days before election Note: Utah conducts elections primarily by mail. | Friday before election, though an election official may choose to extend the early voting period to the day before the election | In government offices as determined by election officer | At least four days per week, and on the last day of the early voting period. The election officer may elect to conduct early voting on a Saturday, Sunday or holiday. | Utah Code
§20A-3-
601 |
|---|---------|--|---|--|--|--|
| V | /ermont | Forty-five days before election Note: Vermont conducts elections primarily by mail. | 5 p.m. day
before
election | Offices of town clerks Clerks may make "mobile polling stations" available. | Not specified | VT ST T. 17
§ 2531
VT ST T. 17
§ 2532a
VT ST T. 17
§ 2537 |

| U.S. Virgin
Islands | Fourteen days before an election | Three days before an election | Permanent main or branch office of the supervisor of elections for the district. The supervisor of elections may also designate public or government- owned facilities. However, these sites must be geographically located so as to provide all electors in the district an equal opportunity to cast a ballot, insofar as is practicable. | No less than eight hours and no more than 12 hours per day at each site. | VI ST T. 18
§ 664 |
|------------------------|----------------------------------|-------------------------------|---|--|----------------------|

| Forty-five
days before
election | 5 p.m. Saturday before election | Office of the general registrar. Additional locations in public buildings may be provided at local discretion. | Regular business hours. A minimum of eight hours between 8 a.m5 p.m. on the two Saturdays before the election. The electoral board or general registrar may provide early voting on the two Sundays before the election, as well. | VA Code
Ann. §
24.2-701.1 |
|---|--|--|--|--|
| Eighteen days before an election. Note: Washington conducts elections primarily by | 8 p.m. on
day of
election. | Election offices or other locations designated by the county auditor. | Normal business hours. | WA ST
29A.40.160 |
| | Eighteen days before an election. Note: Washington conducts elections | Eighteen days before an election. Eighteen day of an election. Note: Washington conducts elections primarily by | days before election before registrar. election Additional locations in public buildings may be provided at local discretion. Eighteen 8 p.m. on days before an election. election. locations designated by the county auditor. | days before election Before election Before election Before election Additional locations in public buildings may be provided at local discretion. Before the election. The electoral board or general registrar may provide early voting on the two Sundays before the election, as well. Eighteen days before an election. Note: Washington conducts elections primarily by Business hours. A minimum of eight hours between 8 a.m5 p.m. on the two Saturdays before the election. Normal business hours. Normal business hours. Normal business hours. Normal business hours. |

| West Virginia | Thirteen days before election | Three days
before
election | Courthouse or the annex next to the courthouse County commission may designate additional areas, subject to requirements prescribed by the Secretary of State. | Must be open 9
a.m5 p.m. on
Saturdays
through early
voting period. | W.V. Code
§3-3-3 |
|---------------|---|--|---|--|--|
| Wisconsin | Fourteen days preceding the election (inperson absentee). | Sunday
preceding
the
election | Clerks' offices | A municipality shall specify the hours. | Wis. Code
§6.86(1)(b) |
| Wyoming | Twenty-eight days before election (in-person absentee). | Day before election | County clerks' offices Courthouse or other public building | Must be open regular hours on normal business days. | Wyo. Stat.
§22-9-105
Wyo. Stat.
§22-9-125
Wyo. Stat.
§ 22-9-107 |

States and Territories with Early In-Person Voting

Note

Our organization does not run elections and cannot provide legal advice. If you are a voter looking for assistance, please contact your local election official. You can find your local election official's website and contact information by using this database from the US Vote

Foundation.

NCSL on Voting Outside the Polling Place NCSL

Early Voting Information Center

Related Resources

Updated September 09, 2024

NCSL Election Resources

The NCSL elections team provides a variety of resources on election issues, including but not limited to 50-state surveys on state laws, legislation databases, a monthly elections newsletter, enactment summaries and other publications.

Elections

Updated September 25, 2024

With a Good Plan, There's No Need to Worry When Election Emergencies Strike

How do election officials cope with emergencies? By following state laws; looking ahead with continuity of operations plans, also known as COOPs; focusing on practical measures such as protecting supplies, equipment, power and internet connectivity; and building relationships with partners who can assist when needed.

Elections
State Legislatures News

EXHIBIT 10



ELECTION ADMINISTRATION AND VOTING SURVEY 2020 COMPREHENSIVE REPORT

A REPORT FROM THE
U.S. ELECTION ASSISTANCE COMMISSION
TO THE 117TH CONGRESS



Executive Summary

Since 2004, the U.S. Election Assistance Commission (EAC) has conducted the Election Administration and Voting Survey (EAVS) following each federal general election. The EAVS asks all 50 U.S. states, the District of Columbia, and five U.S. territories—American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands—to provide data about the ways Americans vote and how elections are administered. Since 2008, this project has included a separate survey, the Election Administration Policy Survey (Policy Survey), that collects information about state election laws, policies, and practices.

The EAVS provides the most comprehensive source of state and local jurisdiction-level data about election administration in the United States. These data play a vital role in helping election officials, policymakers, and other election stakeholders identify trends, anticipate and respond to changing voter needs, invest resources to improve election administration and the voter experience, and better secure U.S. elections infrastructure. The EAVS data make it possible to examine the details of the U.S. election infrastructure and to produce a generalizable understanding of core aspects of the election process and the management challenges faced by election officials. The survey provides policymakers and the public with critical information every two years about how federal elections are conducted, and it helps the EAC fulfill its congressionally mandated reporting requirements. The EAVS is also invaluable to election officials who use the data to manage election oversight, conduct issue analysis and strategic planning, and create training and promotional materials. The EAC also uses EAVS data to create clearinghouse resources to advance the agency's mission and to better support election officials and voters as well as to inform lawmakers and national-level stakeholders about the impact of federal voting laws and the changing landscape of U.S. elections.

The 2020 general election was heavily affected by the COVID-19 pandemic. The pandemic and the ensuing public health emergency necessitated a variety of changes to existing election practices to accommodate social distancing and to slow the spread of the virus among voters, poll workers, and election officials and staff. In response, many states took action to expand the availability of inperson voting before Election Day and mail voting. Because of its status as the most comprehensive survey of election administration in the United States, the 2020 EAVS serves as a record of the extraordinary efforts by the nation's election officials and poll workers to ensure that the 2020 general election was conducted in a safe and secure manner. To this end, the EAC is pleased to present to the 117th Congress its report on the 2020 EAVS.

This report describes in detail how the 2020 federal general election was administered and how voters cast their ballots. Data from the EAVS and the accompanying Election Administration Policy Survey (Policy Survey) are used to provide an overview of each of the following aspects of the election process:

• Turnout, voting methods, polling places, poll workers, and election technology are covered in Chapter 1, "Overview of Election Administration and Voting in the 2020 General Election";



- Key laws, rules, policies, and procedures that govern U.S. elections are covered in Chapter 2, "Election Law and Procedure: The Policy Survey";
- Voter registration and list maintenance are covered in Chapter 3, "Voter Registration: The NVRA and Beyond";
- Voting by individuals covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) is described in Chapter 4, "Military and Overseas Voting in 2020: UOCAVA"; and
- Finally, the methodology of the EAVS and a description of the survey questions are discussed in Chapter 5, "Survey Methodology and Procedures."

Voting and Election Administration Findings

The 2020 EAVS confirms that the 2020 general election saw the highest turnout of any federal general election recorded by the EAVS to date, with 67.7% of the citizen voting age population (CVAP) casting ballots that were counted, an increase of 6.7 percentage points from 2016 levels. Nearly every state saw an increase in turnout compared to the 2016 EAVS. Furthermore, more than 209 million people were active registered voters for the 2020 general election, which represents an all-time high, and more than 161 million voters cast ballots that were counted for this election.

This election also saw sweeping changes in how voters cast their ballots. In the 2016 EAVS, 54.5% of voters cast their ballots in person on Election Day, and in the 2018 EAVS, 58.2% of voters did so. In 2020, only 30.5% of voters cast their ballots in person on Election Day. The percentage of the electorate that voted a mailed ballot increased to 43.1% of the electorate, nearly a 20-percentage-point increase from 2016 levels. Jurisdiction-level analysis shows that the largest increases in mail voting rates occurred in jurisdictions in states that newly instituted all-mail elections in 2020 and in jurisdictions in states that removed requirements to provide an excuse to request a mailed ballot. Although the total number of mailed ballots transmitted in 2020 was more than double the number transmitted in 2016, the percentages of mailed ballots that were returned by voters, that were counted, and that were rejected did not change significantly at the national level.

States reported a total of 132,556 polling places at which 775,101 poll workers assisted voters with in-person early and Election Day voting. The data also show a shift in the age distribution of poll workers, with the percentage of poll workers ages 18 to 25 and 26 to 40 increasing to 6.2% and 15.0%, respectively, and the percentage of poll workers ages 61 to 70 and 71 and older decreasing, to 27.3% and 20.1%, respectively. Jurisdictions also reported that poll worker recruitment was less difficult in 2020 than it was in 2016. In survey comments, many jurisdictions cited cross-cutting effects on their recruitment efforts. Jurisdictions reported that the COVID-19 pandemic made it difficult to retain long-time, older poll workers and caused last-minute poll worker shortages, but the efforts of the EAC, state election offices, and other organizations to encourage qualified individuals to serve as poll workers were cited as helping contribute to an oversupply of poll workers in some areas.

States reported that the use of electronic poll books (or e-poll books) increased since the 2018 EAVS, and 17 states used e-poll books in all of their jurisdictions. Scanners and ballot marking devices (BMD) continued to be the most common types of voting equipment used, and the use of

direct-recording electronic (DRE) machines that were not equipped with a voter-verified paper audit trail (DRE without VVPAT) also continued to decline. In 2020, only 32 jurisdictions across the country relied solely on voting machines with no paper backup.

Election Administration Policy Survey Findings

To provide context to the data that states report in the EAVS, the EAC collects information about states' election policies. Two-thirds of states reported having top-down registration systems hosted on a single, central platform or mainframe that is maintained by the state with information supplied by local jurisdictions; the remaining one-third of states reported having bottom-up or hybrid databases. To keep their voter registration rolls accurate and up to date, most states reported sharing information with motor vehicle agencies, government entities that maintain death records, and agencies that maintain felony or prison records. The percentage of states offering both sameday registration (51.8%) and online registration (80.4%) increased since the 2018 Policy Survey.

The Policy Survey also recorded an increase in state policies that make it safer for voters to cast a ballot or to reduce potential lines and crowds at in-person polling places. In 2020, a total of 14 states reported having all-mail elections, in which all registered voters or all active registered voters were automatically sent a mailed ballot—10 of these states conducted all-mail elections statewide, whereas four of the states did so only in select jurisdictions. This was an increase from the 2018 Policy Survey, which found that three states administered their elections entirely by mail and four states had all-mail elections in select local jurisdictions. In addition, 69.6% of states did not require voters to provide an excuse to be able to vote a mailed ballot (seven states had removed the excuse requirement since the 2018 Policy Survey), and 51.8% of states reported that there were some circumstances under which voters could receive ballots electronically. However, the Policy Survey did not collect information on whether policy changes made for the 2020 general election were permanent or temporary, or whether the changes were made in direct response to the COVID-19 pandemic.

Nearly all states reported that voting systems must be tested and certified before approval, with the most common certification requirements being testing by an EAC-accredited voting system test laboratory (VSTL), certification according to the EAC-adopted Voluntary Voting System Guidelines (VVSG), and both state and federal certification. In 2020, of the 40 states that reported using e-poll books, 55% required testing and certification to the state's specifications before purchasing the e-poll books.

In the post-election period, 78.6% of states reported that they required a tabulation audit to verify the voting equipment used to count ballots worked properly. Of these states, about three-quarters required a traditional tabulation audit (which examines a sample of ballots from a fixed percentage of randomly selected voting districts or voting machines), whereas about one-fifth of the states required a risk-limiting tabulation audit (in which statistical methods are used to select the audit sample size). All states reported having a mechanism for conducting election recounts, although the circumstances under which a recount would be conducted varied by state.



The National Voter Registration Act (NVRA) Findings

The 2020 EAVS data show the active voter registration rate for the 2020 general election was 88.2% of the CVAP, which represents an increase of 3.5 percentage points since the 2016 EAVS. More than 103 million voter registration applications were submitted between the close of registration for the 2018 general election and the close of registration for the 2020 general election, which represents a 33.8% increase in the number of registration applications received in the period leading up to the 2016 general election. Of the registration applications received, the most common outcome was an update to the voter's existing registration record that did not involve a cross-jurisdiction change of address. This type of update accounted for nearly half of the registration applications received. New and valid registrations that resulted in the creation of a new voter registration record within the jurisdiction accounted for nearly one-third of the applications received.

As with previous iterations of the EAVS, state motor vehicle departments accounted for the largest share of these registration applications (39.3%). The second-most common source of these applications was online registration, which accounted for 28.2% of applications. Online registration also saw the fastest growth of any registration source tracked by the EAVS.

The 29 states and territories that allow same-day voter registration (SDR) reported receiving more than 1.6 million SDRs during the voting period for the 2020 general election, approximately double the number received during the 2018 EAVS. SDR allows individuals to register to vote on the same day that they cast their ballot for an election. Nationwide, more SDRs were received on Election Day than were received during early voting.

Pursuant to the NVRA requirements, states reported sending more than 28 million confirmation notices and removing more than 18 million voter registration records from their voter registration rolls between the close of registration for the 2018 general election and the close of registration for the 2020 general election. The most common reasons cited for removing voter registration records were failure to respond to a confirmation notice and to vote in the two most recent federal general elections, moving from the jurisdiction in which the voter was registered to vote, and the voter's death.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) **Findings**

States reported transmitting more than 1.2 million ballots to UOCAVA voters—a population that includes members of the uniformed services absent from their voting residence, their eligible family members, and U.S. citizens living overseas who receive special protections under the federal UOCAVA law. Of those transmitted ballots, more than 900,000 were returned by voters and nearly 890,000 were counted in the election.

Continuing a trend that began with the 2016 EAVS, in 2020, overseas citizens made up a larger proportion of the UOCAVA population than did uniformed services members and their eligible family members. In 2020, overseas citizens accounted for 57.4% of registered UOCAVA voters, and

uniformed services members accounted for 42.3%. Three states—California, Florida, and Washington—accounted for slightly more than 40% of all the registered UOCAVA voters reported nationwide.

Among uniformed services voters, postal mail transmission was the most common method reported (accounting for nearly half of the ballots transmitted to uniformed services voters), whereas overseas citizens more commonly received their ballots through email (accounting for 70.9% of ballots transmitted to overseas citizens).

Nearly 98% of UOCAVA ballots returned by voters were reported as counted, with just over 2% of returned ballots reported as rejected. Nationwide, more than 33,000 Federal Write-In Absentee Ballots (FWAB) were reported as received. This form may be submitted by UOCAVA voters as an emergency backup ballot in case their official ballot is not received by local election officials in time to be counted. The FWAB allowed nearly 24,000 UOCAVA voters to have their votes counted in the 2020 general election.



This report by the U.S. Election Assistance Commission is the result of a contract to collect and analyze data for the 2020 Election Administration and Voting Survey. The contract was performed by Fors Marsh Group LLC, an applied research company based in Arlington, VA.

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633 3rd Street NW, Suite 200
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www.eac.gov

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Chapter 1. Overview of Election Administration and Voting in the 2020 General Election

Key Findings

The 2020 Election Administration and Voting Survey (EAVS) collected data on ballots cast, voter registration, overseas and military voting, voting technology, and other important issues related to voting and election administration. The 2020 general election was especially impacted by the COVID-19 pandemic, which caused drastic changes to how the election was administered and how voters cast their ballots. Notable findings from the 2020 EAVS include:

- More than 209 million people were active registered voters for the 2020 general election, an all-time high for the EAVS.
- Voter turnout for the 2020 general election reached the highest level documented in any EAVS thus far, at 67.7% of the citizen voting age population (CVAP). Turnout increased 6.7 percentage points from 2016 levels, and nearly all states reported an increase in turnout. More than 161 million voters cast ballots that were counted for the 2020 election.
- For the first time, a majority of voters cast their ballots before Election Day. Slightly more than 43% of voters participated with a mailed ballot, and 30.6% of ballots were cast through inperson voting before Election Day. Ballots cast on Election Day at a physical polling place comprised 30.5% of the turnout for the 2020 general election.
- The number of mailed ballots transmitted to voters more than doubled from 2016 to 2020, and the percentage of mailed ballots that were returned by voters, that were counted, and that were rejected held steady with 2016 levels.
- The COVID-19 pandemic appears to have been associated with a change in both poll worker
 recruitment and the resulting age distribution of the poll worker workforce. States reported
 that the ages of their poll workers skewed younger during the 2020 general election compared
 to during the 2016 general election. However, states and jurisdictions reported that recruiting
 poll workers for this election was slightly easier due to national and state efforts that
 encouraged voters to serve as poll workers.
- The most common types of election equipment that were used were paper ballot scanners and ballot marking devices (BMD). The use of direct-recording electronic machines that were not equipped with a voter-verified paper audit trail (DRE without VVPAT) continued to decline among jurisdictions since the 2018 general election, and the use of electronic poll books (e-poll books) continued to increase. More than 30% of jurisdictions reported using e-poll books (an increase of more than 5 percentage points from 2018), and 17 states reported that all jurisdictions used e-poll books.



Election Administration in the United States

The United States is notable for having a largely decentralized system for administering federal elections. Local jurisdictions have the primary responsibility of administering state and federal elections and of tabulating, reporting, and certifying results. The U.S. Constitution and various federal laws govern specific aspects of federal elections, and a small number of federal agencies—such as the U.S. Election Assistance Commission (EAC) and the Federal Voting Assistance Program (FVAP)—play a supportive role in election administration. Broad legal and procedural authority rests with the states,¹ territories, the District of Columbia, and local jurisdictions. As a result, a wide variation exists among and within state election policies and practices, and the policies and practices are constantly evolving. Nevertheless, U.S. elections generally follow a standard process. As shown in Figure 1, the election process can be viewed as a cycle.

- 1. The legal and procedural framework for elections is generally established in advance of a general election. This framework includes determining voter eligibility rules; how, when, and where voters may cast their ballots; and what technology will be used to support elections. Supported by state election offices, most of these policies and procedures are implemented by election officials at the local level (e.g., county, township, municipality).
- 2. To participate in elections, eligible citizens typically must register to vote, pursuant to the eligibility rules established by federal law and by their state. 2 In many states, voters must register in advance of a set registration deadline; in others, eligible individuals may register and cast a ballot on the same day, whether during an early voting period or on Election Day. Depending on state policy, eligible citizens may have multiple avenues for submitting their registration applications, including by mail, fax, or email; online registration websites; in person at an election office, at a motor vehicle office, at other state government agency offices, or at an armed forces recruitment office; or through a registration drive. States are also required to periodically examine their voter registration rolls and remove the records of voters who are no longer eligible, for instance, because the voter no longer resides in the state or jurisdiction in which they are registered, the voter has failed to respond to a notice sent to them by mail and has not voted in the two most recent federal general elections, the voter is deceased, or the voter has received a criminal conviction that disqualifies them from voting. The voter may also directly inform the election office of a change in residency, which begins the process of designating a voter as inactive and ultimately removing them from the voter registration roll. The process of updating voter registration rolls and removing ineligible voters is referred to as list maintenance.
- 3. When a federal general election is approaching, voting begins well in advance of Election Day for many voters, including eligible military voters and overseas citizens who are absent from their voting residence, for whom the right to participate in federal elections is protected under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). In addition, all

¹ Throughout this report, unless otherwise specified, the term "state" can be understood to apply to the 50 U.S. states, the District of Columbia, and five U.S. territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that submit Election Administration Policy Survey and EAVS data.

² North Dakota is the only state that does not require citizens to register before casting a ballot in an election.

states provide avenues for voters to cast ballots before Election Day. This may include voting a mailed ballot, casting a ballot in person at a dedicated early voting site, or receiving and casting a ballot at an election office. Some states allow any eligible voter to cast their ballot before Election Day, whereas others restrict early voting and mail voting only to certain segments of the population, such as voters who are absent from their home jurisdiction on Election Day, voters with illnesses or disabilities, voters over a certain age, or voters who provide a statutorily valid excuse. The voting options that are available to voters and the timelines for mail voting and in-person early voting vary by state and by local jurisdiction.



Figure 1. The U.S. Election Process

4. Voters who do not cast ballots beforehand may vote on Election Day at in-person voting sites staffed by poll workers. In most states, individuals whose eligibility cannot be verified at the



time of voting may cast a provisional ballot. Election officials then investigate the eligibility of individuals who cast provisional ballots to determine whether their ballots should be counted, either in full or in part, or rejected.

- 5. After the polls close on Election Day, the process of counting ballots to determine the final election results begins. This may also be referred to as tabulation or canvassing. State policies vary on when counting may begin—some states may begin pre-processing mailed ballots (e.g., opening envelopes, verifying the mail voter's eligibility to cast a ballot, removing ballots from secrecy envelopes to prepare them for counting) before Election Day, whereas other states require that in-person polls must be closed before any ballots can be counted. Depending on state law and on what equipment is used to process the ballots, ballot counting may take several days to complete.
- 6. Once the unofficial results of the election are known, state and local election officials review the results for accuracy and certify them as final. After this is complete, many states conduct audits of their election results and voting equipment to ensure that the established election procedures were followed and that the equipment functioned correctly. Certain election races may also be recounted if the margin of victory is close; if a candidate, party, or other authorized group requests a recount; or if a court orders a recount to be conducted.

The election process can be viewed as a cycle in the sense that the experiences from previous elections are used to inform decision-making for the legal and procedural framework for subsequent elections. Often, the successful approaches and innovations implemented in one state or local jurisdiction during an election are adopted by other states or localities in subsequent elections.

The COVID-19 pandemic was declared in March 2020 and impacted nearly all aspects of the 2020 voting process, from dates and deadlines to how voters were able to register to vote, options to cast a ballot, and how long it took to count the ballots. In some cases, certain state policies, such as those concerning mail and absentee voting, were expanded temporarily for the 2020 election cycle to address the COVID-19 restrictions.³ Throughout the election, state and local election administrators, staff, and poll workers worked heroically to ensure voters were able to exercise their right to vote in a safe and secure manner.

The Election Administration and Voting Survey (EAVS)

Since 2004, the EAC has conducted the EAVS following each federal general election.⁴ The EAVS asks all 50 U.S. states, the District of Columbia, and the five U.S. territories—American Samoa,

³ The 2020 Policy Survey and EAVS did not collect information on when a policy change was made, why it was made, or whether the change was temporary or permanent.

⁴ The EAVS does not collect data on primary elections, run-off elections, or special elections. The data provided by states were only for the November 3, 2020, federal general election.

Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands⁵—to provide data about the ways in which Americans vote and how elections are administered.

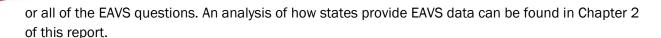
The EAVS provides the most comprehensive source of state and local jurisdiction-level data about election administration in the United States. These data play a vital role in helping election officials, policymakers, and other election stakeholders identify trends, anticipate and respond to changing voter needs, invest resources to improve election administration and the voter experience, and better secure U.S. elections infrastructure. The EAVS data make it possible to examine the details of the U.S. elections infrastructure and to produce a generalizable understanding of the core aspects of the election process and the management challenges faced by election officials. The survey provides policymakers and the public with critical information every two years about how federal elections are conducted, and it helps the EAC fulfill its congressionally mandated reporting requirements. The EAVS is also invaluable to election officials themselves. These officials use the EAVS to manage election oversight, conduct issue analysis and strategic planning, and create training and promotional materials.

The EAC also uses the EAVS data to create research and clearinghouse resources to advance the agency's mission and to better support election officials and voters as well as to inform lawmakers and national-level stakeholders about the impact of federal voting laws and the changing landscape of U.S. elections. The EAVS helps the EAC meet its mandate under the Help America Vote Act (HAVA) to serve as a national clearinghouse and resource for the compilation of information and to review procedures with respect to the administration of federal elections. The EAVS sections related to voter registration and UOCAVA voting allow states to satisfy their data reporting requirements established, respectively, by the National Voter Registration Act (NVRA) and UOCAVA. The EAVS also helps FVAP fulfill its obligations under UOCAVA to reduce obstacles to ensure military and overseas voting success by collecting data about how UOCAVA voters participate in elections.

The EAVS data collection effort consists of two separately administered surveys: the Policy Survey and the EAVS. The Policy Survey, which is due in advance of each federal general election, collects data on state election policies and procedures to provide context for the quantitative data included in each state's EAVS submission. The EAVS, which is due after each federal general election is complete, collects data on voter registration, UOCAVA voters, mail voting, in-person voting and polling operations, provisional ballots, voter participation, and election technology. Complete details about the methodology of the 2020 Policy Survey and the EAVS, including an outline of the survey questionnaires, the data collection templates, the data validation process, and technical assistance provided to respondents, can be found in Chapter 5, "Survey Methodology and Procedures," of this report.

Providing EAVS data is frequently a joint task undertaken by state and local jurisdiction election officials. Although 25 states and territories were able to provide all EAVS data from their centralized election database, 31 states and territories relied on local jurisdictions to provide responses to some

⁵ Puerto Rico provides EAVS data only in presidential election years, as it does not hold elections for federal candidates in midterm election years. American Samoa did not participate in the 2016 EAVS. The Northern Mariana Islands participated in the EAVS for the first time in 2020.



Chapter 1 of this report covers turnout and modes of voting in the 2020 general election, polling places and poll workers, and election technology. This chapter also comprises a non-exhaustive overview of the data provided by states and jurisdictions in the EAVS. State election policies and practices are featured in Chapter 2, "Election Law and Procedure: The Policy Survey." Voter registration is covered in greater detail in Chapter 3, "Voter Registration: The NVRA and Beyond." UOCAVA voting is discussed further in Chapter 4, "Military and Overseas Voting in the 2020 General Election: UOCAVA."

Overall EAVS Response Rates

The analysis in this report is based on information and data submitted and certified by the 50 U.S. states, five territories, and the District of Columbia. These 56 entities comprised 6,460 jurisdictions.6 The state-level response rate was 100% (56 of 56 entities provided data), and the jurisdiction-level response rate was 100% (6,460 of 6,460 jurisdictions provided data).7 During the data collection period, efforts were made to maximize the completeness and accuracy of the data reported. These efforts are outlined in the methodology of this report (Chapter 5). Instances when a state's data were not included in a calculation because of missing data or data quality issues are described in the footnotes and table notes that accompany the analysis in this report.

Turnout in the 2020 General Election

According to the EAVS data submitted by states, there were 228,004,364 voters who were registered to vote in the United States as of November 3, 2020. Of this total, 209,441,338 were considered active voters, which means they had no additional processing requirements to fulfill before voting, and 18,523,963 were considered inactive voters, which means they required address verification under the provisions of the NVRA before they would be permitted to vote.8 As a percentage of the 2019 CVAP estimate calculated by the U.S. Census Bureau, 88.2% of voting age

⁶ What constitutes a jurisdiction for EAVS reporting is defined by how each state chose to provide data. For the 2020 EAVS, most states reported data on the county level (or county equivalent, such as parishes for Louisiana). Illinois, Maryland, Missouri, and Virginia reported data for independent cities in addition to counties. The territories, the District of Columbia, and Alaska each reported as a single jurisdiction. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Wisconsin reported data on the township level. Maine also reported its UOCAVA data in Section B as a separate jurisdiction, because this information was only collected at the state level. Michigan reported data for the county level, but most election administration activities take place in the 1,520 local election jurisdictions in the state. Two jurisdictions in Wisconsin were consolidated or annexed into other jurisdictions partway through 2020. See Appendix A in Chapter 5 of this report for a breakdown of the number of jurisdictions reported in each state and the response rate by survey section for each state.

⁷ Appendix A of Chapter 5 of this report contains an analysis of state-level response rates to each section of the EAVS. 8 The total number of registered voters was collected in item A1a of the EAVS. The total number of active voters was collected in item A1b. The total number of inactive voters was collected in item A1c. According to the 2020 Policy Survey, six states (Guam, Idaho, North Dakota, New Hampshire, the U.S. Virgin Islands, and Wyoming) did not distinguish between active and inactive voters in their registration records. These states were not required to provide data in item A1c of the EAVS. Casewise deletion at the state level was used in this calculation.

Calculating Turnout Rates

When assessing election administration, one primary outcome of interest is voter turnout, which is calculated by dividing the number of people who participated in an election by the number of people who could have participated. The EAVS provides a measure of the total number of voters who cast a ballot that was counted in an election (item F1a) for the numerator in this equation. However, multiple denominators can be used:

Number of registered voters or active voters. The number of people a state reports as registered
and eligible to vote (A1a in the EAVS). Some states separately report the number of active voters
who have no additional processing requirements to fulfill before voting (A1b in the EAVS). This
number is available for states and sub-state EAVS jurisdictions.

$$\frac{F1a \ of \ EAVS}{A1a \ or \ A1b \ of \ EAVS} \times 100 \ = \ Registration \ Turnout \ Rate$$

• Citizen voting age population (CVAP). The estimate of the total number of U.S. citizens 18 years of age or older based on the U.S. Census Bureau's ACS. This number is available for states and most sub-state EAVS jurisdictions but not for U.S. territories, except for Puerto Rico.

$$\frac{F1a \ of \ EAVS}{CVAP} \times 100 = CVAP \ Turnout \ Rate$$

 Voting Eligible Population (VEP). The measure of the CVAP minus those who are ineligible to vote (such as persons with disqualifying felony convictions) and persons who are in the military or citizens living overseas. This number is available for states, but not territories or for sub-state jurisdictions.

$$\frac{F1a \ of \ EAVS}{VEP} \times 100 \ = \ VEP \ Turnout \ Rate$$

Relying on the number of registered or active voters can be problematic for calculating turnout because it is often challenging for states to keep voter registration rolls fully up to date (see Chapter 3 of this report for a discussion of list maintenance practices). Using VEP as the denominator in turnout calculations would somewhat overrepresent voter turnout—since EAVS data explicitly include persons covered by UOCAVA—and would restrict the ability to estimate turnout for sub-state jurisdictions. Although each denominator has its limitations, the EAC uses CVAP to calculate turnout in this report because of its availability for the majority of jurisdictions that report EAVS data and because it provides a more accurate picture of the population covered by the EAVS. Appendix D of Chapter 5 of this report contains recommendations on how to calculate additional EAVS rates.

citizens were registered as active voters for the 2020 general election.9 This is an increase of 3.6 percentage points from the 2016 CVAP active voter registration rate of 84.6%. Further details about

⁹ This report uses the 1-year American Community Survey (ACS) state estimate for 2019 instead of the 5-year estimate to ensure that the CVAP is as current as possible. The CVAP estimates for 2020 were not available by the time this report was finalized. The active CVAP registration rate was calculated as the total number of active voters (A1b of the EAVS) divided by CVAP. American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands were not included in this calculation because the U.S. Census Bureau does not calculate a CVAP for these territories. North Dakota was not included



voter registration, including how voters registered to vote, the use of same-day voter registration (SDR), and list maintenance, can be found in Chapter 3 of this report.

States also reported that a total of 161,303,109 voters cast ballots that were counted for the 2020 general election. This represents a CVAP turnout rate of 67.7% nationwide. 10 Turnout for the 2020 general election increased 6.7 percentage points from the 2016 CVAP turnout rate of 61%.11 Despite many election administration challenges related to the COVID-19 pandemic, the 2020 election had the highest turnout rate of any EAVS to date.

Figure 2 shows that nearly all states experienced higher turnout rates in 2020 than they did for the 2016 general election. Twenty-one states had more than 70% of their CVAP cast a ballot that was counted for the 2020 general election; only four states had turnout over 70% for the 2016 election. In addition, three states—Utah, Hawaii, and Texas—had turnout increases of more than 10 percentage points compared to the 2016 general election. The states with the highest turnout increases tended to be those that made mail voting easy for voters. Hawaii and Utah had both enacted all-mail elections in 2019, and Nevada, New Jersey, and Vermont did the same as a temporary measure in response to the COVID-19 pandemic. Arizona, California, Montana, and Washington had already been conducting their elections predominantly or entirely by mail before 2020. Michigan automatically sent mailed ballot request forms to all registered voters for the 2020 general election. These states, along with Georgia, Tennessee, and Texas, each had turnout increases of more than 8 percentage points from 2016 to 2020. Only one U.S. territory—Puerto Rico—reported a decrease in turnout since the 2016 general election.

Another notable finding from the 2020 EAVS was a change in how voters cast their ballots. Historically, the majority of voters have cast their ballots in person at a physical polling place on Election Day. This method of voting was used by 54.5% of voters in 2016 and by 58.2% of voters in 2018. However, in 2020, the percentage of these voters fell to 30.5%. 12 For the first time in EAVS history, a majority of voters did not cast their ballots in person on Election Day; in 2020, Election Day in-person voting was less commonly used than mail voting or in-person early voting. The nationwide number of voters who vote in person on Election Day has likewise been steadily decreasing, from 72,393,400 in 2016 to 67,133,886 in 2018 and to 47,148,389 in 2020. This is despite an overall

in this calculation because this state does not have voter registration. Casewise deletion at the state level was used in this calculation.

¹⁰ The total number of voters who cast a ballot that was counted was reported in item F1a of the EAVS. The CVAP turnout rate was calculated by dividing F1a by CVAP. American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands were not included in this calculation because the U.S. Census Bureau does not calculate CVAP for these territories. Casewise deletion at the state level was used in this calculation.

 $^{^{11}}$ For the 2020 EAVS, the question about voter participation was reworded. In 2016, this question collected data on ballots cast (independent of outcome), whereas in 2020, it collected data on ballots cast and counted. Thus, it is likely that the 2016 turnout calculation was higher than it would have been if the 2020 question wording had been used, thus, underestimating the true turnout change from 2016 to 2020.

¹² Election Day in-person turnout was calculated by dividing the total number of Election Day in-person voters who cast a ballot that was counted (item F1b of the EAVS) by the total number of voters who cast a ballot that was counted (item F1a). Oregon and Washington did not report any in-person Election Day voters because these states conduct their elections almost entirely by mail. Casewise deletion at the state level was used in this calculation.

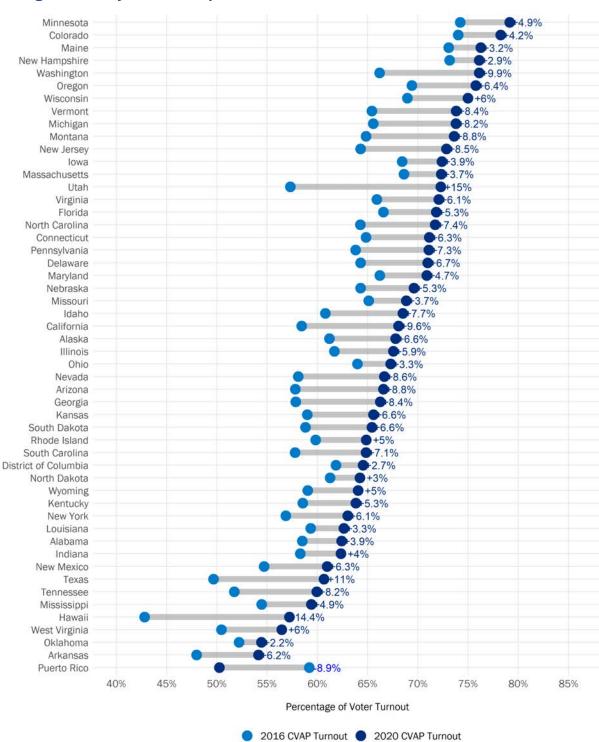


Figure 2. Nearly All States Experienced Turnout Increases in the 2020 General Election

Source: The CVAP turnout was calculated as F1a/CVAP x 100 for both 2016 and 2020. American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands were not included, as CVAP is not available for these territories. Casewise deletion was used at the state level in calculating turnout. Change between 2016 and 2020 is measured in percentage points.

increase in 2020 in the number of states with a policy that allows for vote centers (either on a statewide level or in certain jurisdictions), which allow voters to cast their ballots at any polling location or vote center within their jurisdiction rather than at an assigned polling location. Twenty-one states reported allowing vote centers for the 2020 general election compared to 17 states in 2018.¹³

The percentage of voters who used a mailed ballot to vote surged, from 24.5% in 2016 and 25.6% in 2018 to 43.1% in 2020. The number of voters who used in-person early voting also increased from previous years, although the increase was not as large. In 2016, 25.3% of voters cast their ballots early in person, and 22% did so in 2018, compared to 30.6% for the 2020 general election. The

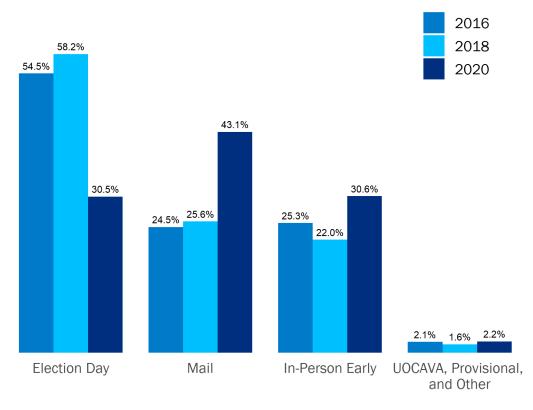


Figure 3. Mail Voting Was the Most Common Way for Voters to Cast Their Ballots in 2020

Mode of Turnout

Source: Election Day turnout was calculated as F1b/F1a x 100 for all years. Mail turnout was calculated as (F1d+F1g)/F1a x 100 for all years. In-person early turnout was calculated as F1f/F1a x 100 for all years. UOCAVA, provisional, and other turnout was calculated as (F1c+F1e+F1h)/F1a x 100 for all years. Casewise deletion was used at the state level (percentages for each mode of voting were calculated independently, and only states that reported data for a given mode were included in the analysis), and because of this, percentages do not sum to 100%.

¹³ Information on vote center policies was provided in Q13 of the 2018 Policy Survey and Q25 of the 2020 Policy Survey. Six states that did not offer vote centers in 2018 did so in 2020, and two states that offered vote centers in 2018 did not in 2020.

EAVS data confirm that the ways voters cast their ballots changed because of the COVID-19 pandemic. Many states took steps to reduce crowding at in-person polling places on Election Day by expanding the use of mail and early voting, and the EAVS data also confirm that voters made use of these options. Figure 3 shows the most commonly used modes of voting for the 2016, 2018, and 2020 general elections.

Voting by Mail

All states and territories and the District of Columbia offer their citizens the opportunity to cast their ballots by mail in federal general elections, although the number of citizens who cast their ballots using this method and the circumstances under which citizens can vote a mailed ballot vary widely among states. Some states use the term "absentee voting" instead of "mail voting." ¹⁴ For purposes of this report, mail voting refers to the process by which:

- 1. An individual receives a ballot in the mail before the election. In some states or jurisdictions, election offices automatically send a mailed ballot to all registered voters (often referred to as "all-mail elections"), whereas others automatically send mailed ballots only to individuals on a permanent mail voting list. In other states, individuals must file an application to request a ballot for each election for which they wish to vote a mailed ballot.¹⁵
- 2. The individual marks the mailed ballot with their preferences at home instead of at an election office or polling location.
- 3. The individual returns the voted ballot to election officials, typically by sending the voted ballot through the mail, by returning the voted ballot to an in-person voting site or election office, or by depositing the voted ballot in a secure designated drop box. ¹⁶ The options voters have for returning voted mailed ballots are dictated by state policy.

The 2020 Policy Survey results show that many states made changes to their mail voting policies since the 2018 general election. However, the Policy Survey did not record precisely when these changes were made, the reason behind the policy changes, or whether the policy changes were permanent or temporary. In 2020, 39 states did not require an excuse for voters to request a mailed ballot; six of these states and one territory (Delaware, Massachusetts, Michigan, Missouri, South Carolina, Virginia, and the U.S. Virgin Islands) required an excuse in 2018 but not in 2020. In addition, 14 states conducted all-mail elections. Ten states (California, Colorado, the District of Columbia, Hawaii, New Jersey, Nevada, Oregon, Utah, Vermont, and Washington) conducted all-mail elections on a statewide basis, and four states did so in select jurisdictions (Idaho, Minnesota, Montana, and Nebraska). However, states and jurisdictions that conducted their elections by mail

¹⁴ In recognition of the fact that many states no longer require a person to be absent from their election jurisdiction in order to be permitted to cast a ballot by mail, the EAVS uses the term "mail voting."

¹⁵ In some states, applications to vote by mail are valid for multiple elections, such as for the duration of a two-year election cycle or for all elections within a calendar year. The 2020 EAVS and Policy Survey did not collect data on how long mailed ballot applications are valid for.

 $^{^{16}}$ The 2 020 EAVS did not collect information on which states used drop boxes, how many drop boxes were in use, or how many ballots were returned via drop boxes.

typically also offered some form of in-person voting. For a more thorough look at the policies surrounding mail voting, please see Chapter 2, "Election Law and Procedure: The Policy Survey."

States reported that 69,486,968 ballots were cast using a mailed ballot and counted for the 2020 general election, more than double the number of ballots cast using a mailed ballot for the 2016 general election (33,140,080).¹⁷ The mailed ballot voting turnout rate increased by nearly 20 percentage points, from 24.5% in 2016 to 43.1% in 2020.

Table 1. Jurisdictions Saw Large Increases in Mail Turnout From 2018 to 2020

| Type of Jurisdiction | 2018 Average
Mail Turnout | 2020 Average
Mail Turnout | Turnout
Change |
|---|------------------------------|------------------------------|-------------------|
| Jurisdiction was in a state that introduced a statewide all-mail election in 2020 | 9.9% | 72.0% | 62.1% |
| Jurisdiction was in a state that required an excuse for mail voting in 2018 but did not in 2020 | 5.9% | 30.8% | 24.9% |
| Jurisdiction was in a state that did not conduct all-mail elections in either 2018 or 2020 | 11.4% | 30.6% | 19.2% |
| Jurisdiction was in a state that did not change its excuse policy for mail voting from 2018 to 2020 | 10.2% | 25.8% | 15.6% |

Source: The mail turnout rate for both 2018 and 2020 was calculated as (F1d+F1g)/F1a x 100. Jurisdictions' classification on their state's all-mail election policy was based on their state's responses to Q9a of the 2018 Policy Survey and Q18a of the 2020 Policy Survey; jurisdictions in states that had all-vote-by-mail elections in select jurisdictions only were excluded from the analysis of mail voting policies. Jurisdictions' policies on whether to require an excuse for mail voting were based on their state's responses to Q8 of the 2018 Policy Survey and Q17 of the 2020 Policy Survey; jurisdictions in states that conduct all-mail elections, either statewide or in select jurisdictions, were excluded from the analysis of mail voting excuse policies. Casewise deletion was used at the jurisdiction level (only jurisdictions that reported data in F1d and/or F1g as well as reported data in F1a in both 2018 and 2020 were included in the analysis). All mail turnout increases from 2018 to 2020 were statistically significant at p < 0.001.

Jurisdiction-level analysis also shows large increases in mail voting from the 2018 to the 2020 general elections across a variety of policy configurations, particularly where mail voting was made more widely available. These increases are shown in Table 1. The largest increases occurred in states that did not have all-mail elections in 2018 but implemented this type of voting on a statewide level in 2020. Jurisdictions in these states had an average mail turnout level of 9.9% in 2018, which increased to 72% for the 2020 general election—an increase of 62.1 percentage points. The next largest increase occurred in jurisdictions whose states removed the requirement to provide an excuse in order to request a mailed ballot in 2020. These jurisdictions had an average mail turnout rate of 5.9% in 2018 and 30.8% in 2020, an increase of 24.9 percentage points. States that did not change their policies on all-mail elections or excuse-required mailed ballot voting also saw increases

¹⁷ The total number of mail votes was calculated by adding the number of voters who cast a mailed ballot and whose ballots were counted (item F1d of the EAVS) and the number of voters who cast a mailed ballot in a jurisdiction that conducts elections entirely by mail and whose ballots were counted (item F1g of EAVS). Mail turnout was calculated by dividing this figure by the total number of ballots that were cast and counted (item F1a of EAVS). Casewise deletion at the state level was used in these calculations.

in their mail voting rates from 2018 to 2020, but these average increases were smaller, at 19.2 percentage points and 15.6 percentage points, respectively.

States reported transmitting a total of 90,687,978 mailed ballots to non-UOCAVA voters for the November 2020 general election, of which 70,551,227 were returned by voters. This means that 77.8% of the transmitted mailed ballots were returned by voters, and of the returned ballots, 98.8% were counted and 0.8% were rejected. 18 Although the number of mailed ballots that were transmitted more than doubled since 2016—when 41,651,526 transmitted mailed ballots were reported—the mailed ballot return, count, and rejection rates were not significantly different between the 2016 and 2020 general elections at the national level. 19

Table 2 shows the most common reasons reported for rejecting mailed ballots in the 2020 general election. In this election, rejections for having a non-matching signature accounted for nearly one-third (32.8%) of the total rejected mailed ballots. The next most common reason (22.5%) was "other," which comprised reasons such as the voter was not eligible to vote in the jurisdiction, the ballot was missing an important document (such as an affidavit or certification), the document was incomplete or insufficient, there were identifying marks on the ballot, the ballot was missing a secrecy envelope or was outside of the secrecy envelope, or a combination of reasons. ²⁰ Other common reasons for rejection included that the voter had already voted in person (13.5%), the ballot was received after the state's deadline for submitting a mailed ballot (12.1%), and there was no voter signature on the mailed ballot or the mailed ballot envelope (12.1%).

Additional information about mail voting in the 2020 general election, including statistics by state, can be found in Appendix A of this chapter.

¹⁸ The mailed ballot return rate was calculated by dividing the total number of mailed ballots returned by voters (item C1b of EAVS) by the total number of mailed ballots transmitted (item C1a of EAVS). The mailed ballot count rate was calculated by dividing the number of counted mailed ballots (item C3a) by the total number of mailed ballots returned by voters (item C1b). The mailed ballot rejection rate was calculated by dividing the total number of mailed ballots rejected (item C4a) by the total number of mailed ballots returned by voters (item C1b). A total of 0.4% of the mailed ballots returned by voters (C1b) were not classified as having been either counted (C3a) or rejected (C4a). Alabama did not provide sufficient data to calculate the mailed ballot count and rejection rates. Casewise deletion at the state level was used in these calculations. The EAVS data also show that nationwide, 1.4% of the transmitted mailed ballots were returned as undeliverable (C1c/C1a); 3.6% were surrendered, spoiled, or replaced (C1d/C1a); 0.5% were surrendered at the polls, so the voter could cast a provisional ballot (C1e/C1a); 16.8% had an unknown status, which included voters who were transmitted a mailed ballot but chose not to vote (C1f/C1a); and 1% of mailed ballots reached some other status ([C1g+C1h+C1i]/C1a). Casewise deletion at the state level was used in these calculations.

¹⁹ The comparisons were statistically insignificant at p > 0.05.

²⁰ In the 2020 EAVS, states reported other reasons for rejecting mailed ballots in items C4p_Other, C4q_Other, and C4t_Other.



Table 2. The Most Common Reason for Rejecting Mailed Ballots Was for a Non-Matching Signature

| Reason | Percentage of Rejected Ballots | | |
|--|--------------------------------|--|--|
| Non-matching signature | 32.8% | | |
| Other reason given | 22.5% | | |
| Voter already voted in person | 13.5% | | |
| Ballot not received on time/missed deadline | 12.1% | | |
| No voter signature | 12.1% | | |
| No witness signature | 5.6% | | |
| Ballot returned in an unofficial envelope | 4.2% | | |
| Multiple ballots returned in one envelope | 2.1% | | |
| First-time voter without proper identification | 2.0% | | |
| Voter deceased | 1.6% | | |
| Ballot missing from envelope | 1.5% | | |
| Envelope not sealed | 0.9% | | |
| No resident address on envelope | 0.8% | | |
| No ballot application on record | 0.6% | | |
| No election official's signature on ballot | 0.1% | | |

Source: Rejections for non-matching signature was calculated as C4e/C4a x 100. Rejections for other reasons was calculated as (C4p+C4q+C4r)/C4a x 100. Rejections because the voter already voted in person was calculated as C4m/C4a x 100. Rejections because the ballot was not received on time was calculated as C4b/C4a x 100. Rejections because the ballot lacked a voter signature was calculated as C4c/C4a x 100. Rejections because the ballot lacked a witness signature was calculated as C4d/C4a x 100. Rejections because the ballot was in an unofficial envelope was calculated as C4g/C4a x 100. Rejections because multiple ballots were returned in a single envelope was calculated as C4k/C4a x 100. Rejections because the first-time voter did not provide proper identification was calculated as C4n/C4a x 100. Rejections because the ballot was from a deceased voter was calculated as C4l/C4a x 100. Rejections because the ballot was missing from the envelope was calculated as C4h/C4a x 100. Rejections because the envelope was not sealed was calculated as C4i/C4a x 100. Rejections because there was no resident address on the envelope was calculated as C4j/C4a x 100. Rejections because there was no ballot application on record was calculated as C4o/C4a x 100. Rejections because there was no election official's signature on the ballot was calculated as C4f/C4a x 100. Casewise deletion was used at the state level (percentages for each rejection reason were calculated independently and only states that reported data for a given reason were included in the analysis), and because of this, percentages do not sum to 100%.

In-Person Voting Before Election Day

Most states allow some kind of in-person voting before Election Day. This type of voting generally falls into two categories:

• A voter may go to a polling place before Election Day, receive a ballot, vote their ballot while at the polling place, and place their completed ballot into a ballot box or tabulator.

A voter may go to an election office to pick up a ballot over the counter. In some states, the
voter may be able to take their ballot home with them, whereas in other states, the ballot must
be completed in the office. The ballot is then sealed in an envelope and tabulated along with
ballots that are returned to the office by mail according to local procedures.

The type of in-person voting that takes place before Election Day and the populations that may use this method of voting are determined by state law. Different states use the terms "in-person early voting" and "in-person absentee voting" to describe both of the voting methods described above, although other terms exist as well (see Chapter 2 of this report).²¹ Some states offer both types of voting activities. For example, voters in Ohio may go to their county's designated early voting site, vote in person, and cast their ballot on a direct-recording electronic device or scan their ballot in a precinct scanner. Voters also have the option of completing a ballot request form, picking up a ballot from their county's election office, and returning their ballot in person, by drop box, or by mail at a later date.

Fifty-five of the states and territories (all but New Jersey) reported offering some form of in-person voting before Election Day to their population for the 2020 general election. Of these states, 12 required voters to provide an approved excuse to cast an early ballot, and 43 states allowed for no-excuse early voting. ²² Overall, three more states offered no-excuse early voting for the 2020 general election compared to the 2018 general election. Further details about state policies on early voting can be found in Chapter 2 of this report.

For the 2020 general election, states reported that 41,266,229 ballots were cast through in-person early voting and were counted, a 71.1% increase compared to the number cast by this method for the 2016 general election (24,124,466). Although the rate of early voting increased from 2016 to 2020, from 25.3% to 30.6%, the rate of increase was not as large as it was for mail voting.²³

It should be noted that some states may have reported mailed ballots returned via drop box with other early ballots. Currently, the EAVS does not collect data on the number of ballots returned via drop box, and some states' data collection practices do not distinguish between early ballots and ballots returned via a drop box.

²¹ The EAVS questions use the term "in-person early voting" to refer to all types of in-person voting that take place before Election Day. The question instructions specify that in-person absentee voting should be reported as in-person early voting in EAVS data. However, some states' data management systems do not distinguish in-person absentee voters from mail voters, so not all states with in-person absentee voting were able to report data on how many of their voters voted in this way.

²² The terminology a state used to refer to the process of allowing individuals to cast their ballots in person before Election Day was collected in item Q24 of the 2020 Policy Survey. Data on whether a state required a voter to provide an excuse to cast a ballot in person before Election Day was collected in item Q24a.

²³ The total number of in-person early ballots cast and counted was collected in item F1f of the EAVS. The early voting turnout rate was calculated by dividing this figure by the total number of ballots that were cast and counted (item F1a of the EAVS). Alabama, Connecticut, Iowa, Missouri, Mississippi, Montana, New Hampshire, New Jersey, Oregon, Pennsylvania, and Rhode Island did not report data in F1f, either because they did not offer in-person early voting (in the case of New Jersey) or because the number of in-person early voters could not be tracked separately from other modes of participation. Casewise deletion at the state level was used in this calculation.



Provisional Voting

HAVA introduced provisional voting as a way for a voter to cast a ballot when the voter's registration status cannot be verified at the time of voting, when there is some indication the voter may have already cast another ballot (for instance, by mail), or when the voter's eligibility to vote is challenged. Provisional ballots are kept separate from other election ballots and are later fully counted, partially counted, or rejected depending on whether the provisional voter's eligibility can be verified in the days following the election according to the state's rules for this process. The provisional ballot process helps ensure each qualified voter casts only one ballot that is counted and allows the voter additional time to prove their eligibility to vote if necessary. Certain states are exempt from HAVA's provisional ballot requirements because they allowed SDR at the time the law was enacted. In addition, North Dakota is exempt from this provision of HAVA because it does not require citizens to register to vote.

In the 2020 Policy Survey, 49 states and territories and the District of Columbia reported offering provisional ballots to voters. Five states and one territory—Idaho, Minnesota, North Dakota, New Hampshire, Vermont, and Puerto Rico—did not.²⁴ States reported that the most common reasons for offering a voter a provisional ballot included that an election official challenged a voter's eligibility to vote (46 states), the voter was not on the list of eligible voters (43 states), the voter lacked proper identification (40 states), the voter did not reside in the precinct in which they were attempting to vote (40 states), and another person (not an election officer) challenged a voter's eligibility to vote (28 states).²⁵ If a voter cast a provisional ballot in the wrong precinct, four states reported that they would fully count the entire ballot, 20 states would partially count the ballot (e.g., only count the items on the ballot for which the voter would have been eligible had they voted in the correct precinct), and 26 states would reject the entire ballot.²⁶ For more information on provisional voting policies, including the deadlines by which provisional ballots needed to be adjudicated, please see Chapter 2 of this report.

States reported 1,316,945 provisional ballots were cast and counted for the 2020 general election. This represents a slight decline from previous years: 1,483,708 provisional ballots had been cast in 2018 and 1,897,631 in 2016. Provisional voting as a percentage of turnout has continued its rate of decline in presidential elections, from 1.7% in 2012 to 1.4% in 2016 to 0.8% in 2020.²⁷ The rate of provisional voting declined twice as fast between the 2016 and the 2020 general elections as it did between the 2012 and the 2016 general elections.

²⁴ Information on states' use of provisional voting was collected in O32 of the 2020 Policy Survey.

 $^{^{25}}$ Information on the circumstances under which a state uses provisional ballots was collected in Q32a of the 2020 Policy Survey.

²⁶ Information on how a state would treat a provisional ballot cast in the wrong precinct was collected in Q32c. Percentages were calculated using the number of states who reported using provisional voting in Q32.

²⁷ The total number of provisional ballots cast and counted was collected in item F1e of the EAVS. The provisional voting turnout rate was calculated by dividing this figure by the total number of ballots that were cast and counted (item F1a of the EAVS). Idaho, Minnesota, North Dakota, New Hampshire, and Vermont did not report data on provisional ballots in the 2020 EAVS because, as confirmed in the Policy Survey, these states do not offer provisional ballots to voters. Puerto Rico reported in the Policy Survey that it does not offer provisional ballots but reported data on provisional ballots in the EAVS. Casewise deletion at the state level was used in this calculation.

Nationally, 78.3% of provisional ballots were counted,²⁸ either in full or in part, with 21.3% being rejected.²⁹ The most common reasons that states reported for rejecting provisional ballots included that the voter was not registered in the state (accounting for 54.8% of rejections), "other reasons" (21.2%), the voter attempted to vote in the wrong jurisdiction (12.4%), the voter had already cast a ballot through another mode of voting (5%), the voter attempted to vote in the wrong precinct (4.8%), the voter failed to provide sufficient identification (3.4%), the envelope or ballot was incomplete or illegible (3.3%), and the voter's signature did not match the signature on record (2.2%).³⁰ Furthermore, 0.9% of the provisional ballots reached another adjudication aside from being either counted or rejected: the largest numbers of these ballots came from Ohio, Texas, Missouri, and Illinois.³¹

UOCAVA and Other Modes of Voting

Absentee and mail voting have long been used to provide individuals in the military or U.S. citizens who live overseas or who are absent from their residence with a way to participate in federal elections. The distinct needs of members of the uniformed services and overseas citizens remain an area of critical concern in election administration, and these individuals are given special voting protections under UOCAVA and its amendments.³² UOCAVA voters are provided certain rights to fully

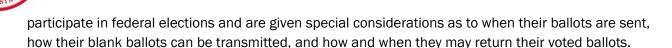
²⁸ The total number of counted provisional ballots was calculated by summing the number of provisional ballots fully counted (item E1b of the EAVS) and the number of provisional ballots partially counted (item E1c). The percentage of counted provisional ballots was calculated by dividing the sum of E1b and E1c by the sum of all provisional ballot adjudications (items E1b, E1c, E1d, and E1e). Maine reported in its EAVS survey comments that all provisional ballots are counted. The data that New Jersey reported in E1e (provisional ballots that reached another adjudication) were included in this calculation, because the state explained in its survey comments that this item included provisional ballots that were accepted in part or in full. The data that El Dorado, San Bernardino, and Stanislaus counties in California reported in E1e were included in this calculation for the same reason. Casewise deletion at the state level was used in these calculations.

²⁹ The total number of rejected provisional ballots was collected in item E1d of the EAVS. The percentage of rejected provisional ballots was calculated by dividing this figure by the sum of all provisional ballot adjudications (items E1b, E1c, E1d, and E1e). Casewise deletion at the state level was used in this calculation.

³⁰ The number of provisional ballots rejected because the voter was not registered in the state was collected in item E2b of the EAVS. The number of provisional ballots rejected because the voter attempted to vote in the wrong jurisdiction was collected in item E2c. The number of provisional ballots rejected because the voter attempted to vote in the wrong precinct was collected in item E2d. The number of provisional ballots rejected because the voter did not provide sufficient identification was collected in item E2e. The number of provisional ballots rejected because the envelope and/or ballot were incomplete or illegible was collected in item E2f. The number of provisional ballots rejected because the voter's signature did not match the signature on record was collected in item E2i. The percentage of provisional ballots rejected for each of these reasons was calculated by dividing the figure by the total number of provisional ballots rejected (item E2a). Casewise deletion at the state level was used in these calculations.

³¹ The total number of provisional ballots that reached an adjudication aside from being counted or rejected was collected in item E1e of the EAVS. The percentage of other provisional ballots was calculated by dividing this figure by the sum of all provisional ballot adjudications (items E1b, E1c, E1d, and E1e). As explained in footnote 28, the E1e data for the state of New Jersey and the counties of El Dorado, San Bernardino, and Stanislaus in California were included in the calculation for counted provisional ballots. Ohio explained in its survey comments that this data included provisional ballots cast under an APRI exception but did not provide a definition for this term. Missouri explained in its survey comments that this data included provisional ballots supplied to voters who were registered but did not have a form of identification. Casewise deletion at the state level was used in this calculation.

³² The uniformed services are the armed forces—the Army, Navy, Marine Corps, Air Force, and Coast Guard—as well as the U.S. Public Health Service Commissioned Corps, the National Oceanic and Atmospheric Administration (NOAA) Commissioned Officer Corps, and the U.S. Merchant Marine. Uniformed services members, their spouses, and their eligible dependents are, together, referred to as uniformed services voters. Overseas citizens are U.S. citizens living outside of the United States who are not uniformed services voters and are also protected by UOCAVA.



For the 2020 general election, states reported 938,297 UOCAVA ballots that were cast and counted. This total represents a sizeable increase from 2016 and 2018, when 649,427 and 358,137 UOCAVA ballots were cast, respectively. However, despite the increase in the number of voters who participated in the 2020 general election, UOCAVA voting as a percentage of the overall electorate stayed relatively the same in 2020. In 2016, 0.5% of voters were UOCAVA voters, and in 2020, UOCAVA voters comprised 0.6% of the electorate. ³³ Nationwide, 97.6% of the UOCAVA absentee ballots that were returned by voters were counted, and 2.1% of the returned ballots were rejected. ³⁴

Chapter 4 of this report contains a complete discussion of the EAC's history of collecting data on voters covered by UOCAVA; a full analysis of the data collected about these voters and their ballots in 2020, including ballots transmitted, returned, counted, and rejected; and the use of the Federal Write-In Absentee Ballot (FWAB). Chapter 2 of this report contains a complete discussion of state policies regarding UOCAVA voting.

In addition to ballots that were cast at a physical polling place on Election Day, by mail, by in-person early voting, and by provisional voting, states had the opportunity to report data on any other modes of voting that were offered in the state in 2020.35 A total of 1,290,577 ballots were reported as cast and counted that could not be categorized according to one of the modes listed in the EAVS question. The highest numbers of these votes were reported in California (923,698 ballots), Florida (184,533 ballots), North Carolina (168,900 ballots), and Wisconsin (7,387 ballots). The most common reasons for reporting data in this item included mailed ballots that could not be distinguished as being from UOCAVA or non-UOCAVA voters, conditional voter registration (CVR) voters in California, curbside absentee voters in North Carolina, and "other," "unknown," or "not categorized" ballots.

Polling Places and Poll Workers

For an election, each voter is assigned to a precinct according to their residential address as listed in their voter registration record. A precinct is a contiguous, bounded geographic area that is the basis for determining the contests and issues on which the voters legally residing in that area are eligible to vote.³⁶ Precincts are then assigned to a polling place, which is a physical location where in-person voting takes place. As previously discussed, some states use an early voting or vote center model

³³ The total number of UOCAVA ballots that were cast and counted was collected in item F1c of the EAVS. The UOCAVA turnout rate was calculated by dividing this figure by the total number of ballots that were cast and counted (item F1a of the EAVS). Rhode Island did not report data in F1c. Their survey comment stated, "According to RI general law, all UOCAVA mail ballots are consolidated into one mail ballot category." Casewise deletion at the state level was used in this calculation.

³⁴ The total number of UOCAVA absentee ballots that were returned by voters was collected in item B9a of the EAVS. The number of UOCAVA ballots counted was collected in item B14a, and the number of UOCAVA ballots rejected was collected in item B18a. The UOCAVA ballot count rate was calculated by dividing B14a by B9a, and the rejection rate was calculated by dividing B18a by B9a. Casewise deletion at the state level was used in this calculation; this calculation also did not include returned UOCAVA ballots that were not categorized as either counted or rejected.

³⁵ Ballots cast by another mode that were counted were recorded in item F1h of the EAVS.

³⁶ Some states use the terms "ward" or "voting district" to describe their voting precincts.

that allows voters to vote at any polling location within their jurisdiction rather than at a specifically assigned polling place.

States reported 176,933 precincts that were used for the 2020 general election. States reported that 107,457 polling places were used on Election Day and that 25,099 polling places were used during the early voting period, for a total of 132,556 polling places for the 2020 general election.³⁷ States also provided information on whether their polling places were located at election offices or at other sites, such as libraries, schools, or mobile voting locations. There continues to be differences in where states locate their early voting polling locations, as opposed to their Election Day polling locations. States reported that nationwide, 42.8% of early voting sites were located at election offices, and 57.3% were located at other sites.³⁸ However, for Election Day polling places, only 9.6% of polling places were located at election offices, and 93.8% were reported as being located at other sites.³⁹

Many of the laws, rules, policies, and procedures governing elections are enforced, in practice, by the poll workers who assist with elections. 40 These poll workers are typically not full-time election workers or employees of election offices; rather, they are recruited and trained to assist in the voting process during an election. Typical activities that poll workers assist in include verifying the identities

³⁷ The total number of precincts was collected in item D2a of the EAVS. The total number of Election Day polling places was collected in item D3a. The total number of early voting polling places was collected in item D4a. Kansas and Washington did not provide data on the number of Election Day polling places. Connecticut, Iowa, Kansas, Missouri, Mississippi, New Hampshire, New Jersey, and Oregon did not provide data on the number of early voting polling places; several of these states noted that early voting opportunities are limited to special circumstances, so the number of early voting sites was not tracked. Before this report's finalization, Virginia notified the EAC that the statewide number of early voting polling places in D4a was 208, not 133. Data users should note that the question numbering in this section changed in 2020; these questions were numbered differently in the 2016 and 2018 EAVS. However, a year-over-year analysis of polling places as reported in the EAVS is cautioned against, as these items have been underreported in previous years. 38 The number of early voting polling places located at election offices was collected in item D4c of the EAVS. The number of early voting polling places located at other sites was collected in item D4b of the EAVS. The percentage of early voting polling locations located at each type of site was calculated by dividing the EAVS item by the sum of D4b and D4c. This denominator was used instead of the reported total number of early voting polling locations (item D4a), because some states provided a total in D4a but not a breakdown in D4b and D4c. Of the states that reported offering in-person early voting, Connecticut, Iowa, Kansas, Missouri, Mississippi, New Hampshire, Oregon, and Wisconsin did not provide any data on early voting polling places in D4a, D4b, or D4c. Several of these states noted in their survey comments that early voting was offered only in very limited circumstances. Georgia and Rhode Island provided data on the total number of early voting polling places in D4a but did not provide a data breakdown in D4b and D4c. New Jersey did not provide data because it did not offer in-person early voting. Casewise deletion at the state level was used in these calculations, and because each category was calculated independently, the percentages do not sum to 100%.

³⁹ The number of Election Day polling places located at election offices was collected in item D3c of the EAVS. The number of Election Day polling places located at other sites was collected in item D3b of the EAVS. The percentage of Election Day polling locations located at each type of site was calculated by dividing the EAVS item by the sum of D3b and D3c. This denominator was used instead of the reported total number of Election Day polling locations (item D3a), because some states provided a total in D3a but not a breakdown in D3b and D3c. Casewise deletion at the state level was used in these calculations, and because each category was calculated independently, the percentages do not sum to 100%. Of the states that reported offering in-person early voting, Kansas and Washington did not provide any data on Election Day polling places in D3a, D3b, or D3c: Washington noted that data were not provided because the state votes almost entirely by mail. The District of Columbia, Georgia, Idaho, Massachusetts, Maine, Minnesota, Missouri, the Northern Mariana Islands, Ohio, Puerto Rico, Tennessee, and the U.S. Virgin Islands provided data on the total number of Election Day polling places in D3a but did not provide a data breakdown in D3b and D3c.

⁴⁰ Some states and jurisdictions use other titles for poll workers, such as election judges, booth workers, wardens, or commissioners. The EAVS instructions stated that observers stationed at polling places, regular office staff who did not fulfill poll worker functions during the election, or temporary election staff who were not hired specifically to serve voters in either early or Election Day voting should not be counted as poll workers for purposes of the EAVS.

of those who come to vote, assisting voters with signing documents required to cast a ballot, providing ballots and setting up voting equipment, and performing other functions as dictated by the state or local election authority.

States reported the number of early voting and Election Day poll workers separately, and they also reported the total number of poll workers who assisted with the 2020 general election. States reported that a total of 775,101 poll workers assisted with the 2020 general election. This included 690,346 poll workers who assisted with Election Day voting and 135,105 poll workers who assisted with early voting. Among states that reported data on poll workers for both the 2016 and the 2020 EAVS, there was no statistically significant change in the number of poll workers reported.

Thirty-six states also reported information on the ages of their poll workers.⁴³ Among these states, the majority of poll workers were over the age of 40 in the 2020 general election, with nearly half of them over 60 years old. However, Figure 4, which compares the age distribution of poll workers in the 2016 general election to those in the 2020 general election, shows slight but statistically significant shifts in the age categories over time. In 2020, the percentage of poll workers who were ages 18 to 25 and 26 to 40 increased, and the percentage of poll workers who were ages 61 to 70 and 71 or older decreased compared to 2016.⁴⁴ Notably, the percentage of poll workers who were ages 26 to 40 nearly doubled, from 8% in 2016 to 15% in 2020.

⁴¹ The total number of poll workers who assisted with the 2020 general election was collected in item D7a of the EAVS. The total number of poll workers who assisted with Election Day voting was collected in item D5. The total number of poll workers who assisted with early voting was collected in item D6. D7a does not match the sum of D5 and D6, because in D7a, each poll worker was to only be counted once even if they assisted with both early voting and Election Day voting. Oregon, Pennsylvania, Puerto Rico, Vermont, Washington, and Wisconsin were unable to provide poll worker data. Alabama, Connecticut, Louisiana, Maine, Massachusetts, Missouri, Mississippi, New Jersey, and North Dakota did not provide data on the number of early voting poll workers. North Dakota did not provide data on the number of Election Day poll workers. New Hampshire provided data on the minimum number of poll workers required at each polling location by law but noted that it may not reflect the number of poll workers who actually assisted.

 $^{^{42}}$ T tests conducted on the national number of poll workers in 2016 and 2020 were statistically insignificant at p < 0.05. 43 Poll worker age data were reported in item D7 of the EAVS for 2020, with D7a corresponding to the total number of poll workers who assisted with the 2020 general election and items D7b–D7g corresponding to age categories. The denominator used in this calculation was the sum of the age categories in D7b–D7g. Poll worker age data were reported in items D3 and D4 for 2016, with D3a corresponding to the total number of poll workers and items D4a–D4f corresponding to age categories. The denominator used in this calculation was the sum of the age categories in D4a–D4f. In 2020, South Carolina only reported poll workers who were under the age of 18 and did not provide data for any other age categories. South Carolina was excluded from the calculations of the percentage of poll workers by age. Connecticut, Georgia, Hawaii, Illinois, Louisiana, Massachusetts, Minnesota, New Hampshire, New Jersey, North Dakota, the Northern Mariana Islands, Oregon, Pennsylvania, Puerto Rico, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Wisconsin were unable to provide data on the ages of their poll workers. Casewise deletion at the state level was used in these calculations.

 $^{^{44}}$ *T* tests conducted that compared the percentage of poll workers in the 18 to 25, 26 to 40, 61 to 70, and 71 or older age categories between 2016 and 2020 were statistically significant at p < 0.05, with most being p < 0.01. Other age groups did not have a statistically significant change.

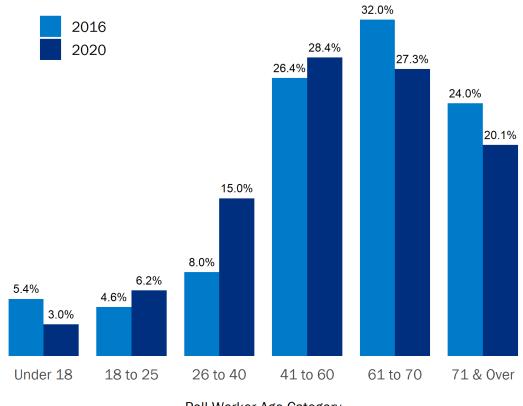


Figure 4. Poll Worker Age Distribution Was Slightly Younger in 2020 Than in 2016

Poll Worker Age Category

Source: The percentage of poll workers under age 18 was calculated as D7b/(D7b+D7c+D7d+D7e+D7f+D7g) \times 100 for 2020 and D4a/(D4a+D4b+D4c+D4d+D4e+D4f) \times 100 for 2016. The percentage of poll workers ages 18–25 was calculated as D7c/(D7b+D7c+D7d+D7e+D7f+D7g) \times 100 for 2020 and D4b/(D4a+D4b+D4c+D4d+D4e+D4f) \times 100 for 2016. The percentage of poll workers ages 26–40 was calculated as D7d/(D7b+D7c+D7d+D7e+D7f+D7g) \times 100 for 2020 and D4c/(D4a+D4b+D4c+D4d+D4e+D4f) \times 100 for 2016. The percentage of poll workers ages 41–60 was calculated as D7d/(D7b+D7c+D7d+D7e+D7f+D7g) \times 100 for 2020 and D4d/(D4a+D4b+D4c+D4d+D4e+D4f) \times 100 for 2016. The percentage of poll workers ages 61–70 was calculated as D7e/(D7b+D7c+D7d+D7e+D7f+D7g) \times 100 for 2020 and D4e/(D4a+D4b+D4c+D4d+D4e+D4f) \times 100 for 2016. The percentage of poll workers ages 71 or older was calculated as D7g/(D7b+D7c+D7d+D7e+D7f+D7g) \times 100 for 2020 and D4f/(D4a+D4b+D4c+D4d+D4e+D4f) \times 100 for 2016. Casewise deletion was used at the state level (percentages for each age category were calculated independently and only states that reported data for a given age category were included in the analysis), and because of this, percentages do not sum to 100%.

The survey comments many jurisdictions provided indicated that this age shift was partially attributable to the COVID-19 pandemic. The U.S. Centers for Disease Control and Prevention (CDC) stated that older adults are at greater risk of severe illness from COVID-19, with adults 65 years or older in the highest risk category. This risk category overlaps with the group of adults who typically make up the majority of poll workers in federal general elections. The 2020 EAVS data confirm that a number of older poll workers did not assist with the 2020 general election and that many younger adults took their places.

SISTANCE COMMISSION AND THE STATES

The COVID-19 pandemic also affected state and local efforts to obtain a sufficient number of poll workers to assist with the 2020 general election. Although poll worker recruitment remains a challenge, with 52% of jurisdictions reporting that it was either very difficult or somewhat difficult to obtain a sufficient number of poll workers, Figure 5 shows that poll worker recruitment has gotten less difficult since the 2016 general election. 45 In their survey comments, many jurisdictions cited cross-cutting effects on their recruitment efforts. Some long-time poll workers who had served in previous elections were unable to do so for the 2020 general election; some were unable to work because of age-related COVID-19 risks, and in many cases, jurisdictions needed to replace workers who called out sick close to the election to quarantine after COVID-19 exposure. On the other hand, many jurisdiction officials praised the efforts of the EAC and state election offices that encouraged

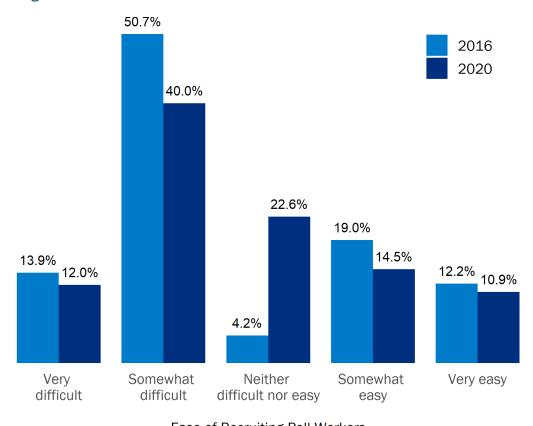


Figure 5. Poll Worker Recruitment Was Less Difficult in 2020 Than in 2016

Ease of Recruiting Poll Workers

Source: Ease of recruiting poll workers was collected in item D8 in the 2020 EAVS and D5 in the 2016 EAVS. For both years, jurisdictions that responded, "not enough information to answer," "data not available," "does not apply," or left this item blank were excluded from this analysis.

 $^{^{45}}$ Data on the ease of recruiting poll workers were collected in item D8 of the 2020 EAVS and item D5 of the 2016 EAVS. In 2020, 3,436 of 6,460 jurisdictions (53.2%) responded "not enough information to answer," "data not available," "does not apply," or left this item blank. The comparison between 2016 and 2020 data was statistically significant at p < 0.01.

qualified individuals to sign up as poll workers. Some jurisdictions noted that they had overwhelming interest from those who view assisting with elections as a way to help their community and recruited more poll workers than they had available slots to fill.

Notably, ease of poll worker recruiting appears to be highly correlated with the size of the jurisdiction. Jurisdictions that had 10,000 or fewer registered voters reported having an easier time recruiting poll workers than did jurisdictions with more than 10,000 registered voters.⁴⁶

Election Technology

The use of technology in polling places and vote tally locations varies widely across and within the states. The EAVS collects data on the type of voting equipment that is used and the type of voting that the equipment is used for, the specific makes and models of the equipment and how many are deployed, and whether electronic poll books (or e-poll books) are used to assist at polling places. The voting equipment landscape continues to evolve with each election.

Voting Equipment

The EAVS collects data on the use of six types of voting equipment that voters can use to cast their ballots:47

- Direct-recording electronic (DRE) voting equipment, not equipped with a voter-verified paper audit trail (VVPAT)48
- DRE voting equipment, equipped with a VVPAT⁴⁹
- Electronic system that produces a paper record but does not tabulate votes. These are often referred to as ballot marking devices (BMD)50
- Scanner (optical/digital) that tabulates paper records that voters mark by hand or via a ballot marking device51

⁴⁶ For this comparison, jurisdictions were classified according to the total number of registered voters as reported in item A1a of the EAVS. This comparison was statistically significant at p < 0.001.

⁴⁷ Two jurisdictions in Arkansas and 21 jurisdictions in Kansas did not provide any information about their voting equipment in the EAVS. Two jurisdictions in Missouri did not provide responses on the use of DREs with VVPAT (F6 in the EAVS), and an additional jurisdiction in Missouri did not provide responses on the use of ballot marking devices (BMD; F7 in the EAVS) or scanners (F8 in the EAVS). Five jurisdictions in Texas did not provide responses on the use of DREs without VVPAT (F5 in the EAVS), DREs with VVPAT, BMDs, or scanners. Twenty-six jurisdictions in Utah responded "data not available" to questions about BMDs, and one responded "data not available" to questions about scanners (F8 in the EAVS). In Vermont, 101 jurisdictions responded "does not apply" to questions about scanners, and 145 jurisdictions did not provide responses to questions about hand counting ballots (F11 in the EAVS). No jurisdictions in Kansas provided responses to questions about the use of BMDs or hand counting ballots. Two jurisdictions—Maine - UOCAVA and Kalawao County, Hawaii-responded "does not apply" to all of these questions; however, that is because these jurisdictions report EAVS data with other jurisdictions in their state (see Chapter 5 for more details).

⁴⁸ Data on DREs without VVPAT were collected in items F5a, F5b, F5c, and F5d of the EAVS.

⁴⁹ Data on DREs with VVPAT were collected in items F6a, F6b, F6c, and F6d of the EAVS.

⁵⁰ Data on BMDs were collected in items F7a, F7b, F7c, and F7d of the EAVS.

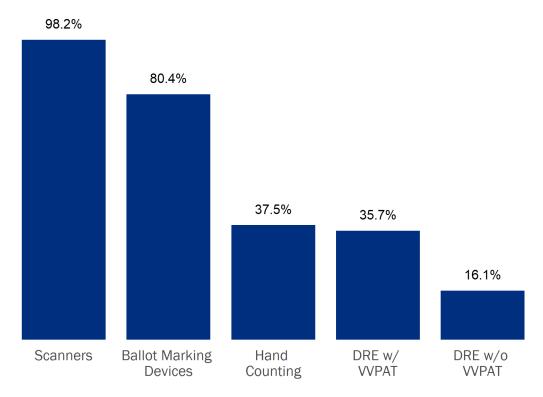
⁵¹ Data on scanners were collected in items F8a, F8b, F8c, and F8d of the EAVS.



- Punch card machines⁵²
- Lever machines⁵³

The EAVS also collects information on whether jurisdictions hand count paper ballots without the use of an optical or digital scanning system.⁵⁴

Figure 6. Scanners and BMDs Were the Most Commonly Used Voting Methods in 2020



Percentage of States with At Least One Jurisdiction Using the Voting Method in the 2020 General Election

Source: The use of scanners was collected in item F8a of the 2020 EAVS. Use of BMDs was collected in item F7a. Use of hand counting was collected in item F11a. Use of DRE with VVPAT was collected in item F6a. Use of DRE without VVPAT was collected in item F5a. States in which at least one EAVS jurisdiction reported using the voting equipment are included in this graph. Kansas did not respond to F7a or F11a.

⁵² Data on punch card machines were collected in items F9a, F9b, F9c, and F9d of the EAVS. No jurisdictions have reported using this equipment since before the 2016 EAVS.

⁵³ Data on lever machines were collected in items F10a, F10b, F10c, and F10d of the EAVS. No jurisdictions have reported using this equipment since before the 2016 EAVS.

⁵⁴ Data on hand counting paper ballots were collected in items F11a and F11d of the EAVS.

Nationally, states reported deploying 369,366 pieces of voting equipment to cast and tabulate votes for the 2020 general election.⁵⁵ Figure 6 shows the number of states that reported using voting equipment in at least one jurisdiction. Most jurisdictions and states used more than one type of equipment. The most commonly used types of equipment were scanners (used in 55 states) and BMDs (used in 45 states). Twenty-one states reported hand counting ballots without using any equipment to assist, and 20 states used DREs equipped with a VVPAT.

The use of DREs without VVPAT has been a particular concern to some experts, because these machines do not include a paper record of the votes that are cast, which raises security issues and can make it difficult to conduct certain types of post-election audits. In the 2018 EAVS, 14 states reported using DREs without VVPAT in at least one of their jurisdictions. The 2020 EAVS data show that only nine states now use this equipment in at least one of their jurisdictions: Arkansas, Indiana, Kansas, Kentucky, Louisiana, Mississippi, New Jersey, Tennessee, and Texas. Of these states, Louisiana reported using DREs without VVPAT in each of its jurisdictions. Five states that reported using DREs without VVPAT in 2018 discontinued using those machines by the 2020 general election (Delaware, Florida, Georgia, Pennsylvania, and South Carolina).

Table 3. DRE Without VVPAT-Only Jurisdictions Declined Between 2018 and 2020

| | 20 | 18 | 2020 | | |
|--------------|----------------------------|--------------------------------|----------------------------|--------------------------------|--|
| State | Number of
Jurisdictions | Percentage of
Jurisdictions | Number of
Jurisdictions | Percentage of
Jurisdictions | |
| Arkansas | 1 | 1.3% | 0 | - | |
| Indiana | 16 | 17.4% | 12 | 13.0% | |
| Kansas | 7 | 6.7% | 0 | | |
| Kentucky | 5 | 4.2% | 0 | - | |
| Pennsylvania | 50 | 74.6% | 0 | | |
| Tennessee | 6 | 6.3% | 1 | 1.1% | |
| Texas | 32 | 12.6% | 19 | 7.5% | |

Source: The number of jurisdictions that reported using only DRE without VVPAT voting machines was based on responses to items F5a, F6a, F7a, and F8a of the 2018 and 2020 EAVS. The percentage of jurisdictions using only DRE without VVPAT was calculated by dividing by the total number of jurisdictions in the state. One county in Florida that reported using a DRE without VVPAT in 2018 was not included in this table, because the county had listed a make and model of a scanner in item F5b_1 in its 2018 data, which indicates a possible data entry error. None of the counties in Kansas that did not provide voting equipment information for the 2020 EAVS reported using DREs without VVPAT in the 2018 EAVS.

⁵⁵ The number of voting machines deployed was reported in items F5c_1, F5c_2, F5c_3, F6c_1, F6c_2, F6c_3, F7c_1, F7c_2, F7c_3, F8c_1, F8c_2, F8c_3, F9c_1, F9c_2, F9c_3, F10c_1, F10c_2, and F10c_3 of the EAVS. These items were summed for each jurisdiction to arrive at this total. American Samoa did not report the number of voting machines deployed, because this territory only uses hand-marked paper ballots that are manually counted. Oregon and Wisconsin reported that they do not track the number of voting machines deployed. Before this report's finalization, Virginia notified the EAC that the statewide number of BMDs in F7c_1, F7c_2, and F7c_3 was 2,533, not "data not available."

The number of jurisdictions that reported using only DREs without VVPAT and not using any other type of voting equipment also declined between 2018 and 2020. Table 3 shows that for the 2020 general election, only three states reported having jurisdictions that used only DREs without VVPAT as their voting equipment, and in each of those states, the percentage of their jurisdictions that used only DRE without VVPAT has also decreased since 2018.

Electronic Poll Books

When voters go into polling places, their identity is checked against voter registration information that is contained in poll books to ensure they are registered to vote and did not already cast a ballot during in-person early voting or with a mailed ballot. These poll books can be paper based and printed before the election, or they can be electronic. The use of e-poll books has steadily increased in recent elections. For the 2016 general election, 1,146 jurisdictions (17.7%) reported using e-poll books; this number rose to 1,684 (26.1%) in 2018 and to 1,991 (30.8%) in 2020. The number of jurisdictions that used e-poll books in 2020 represents an 18.2% increase from 2018.

As of the 2020 general election, 38 states reported using e-poll books in at least one of their jurisdictions, and 16 states and territories (Arizona, Delaware, Georgia, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York, North Carolina, North Dakota, Puerto Rico, Rhode Island, South Carolina, and the U.S. Virgin Islands) and the District of Columbia reported using e-poll books in all of their jurisdictions. Of the jurisdictions that reported using e-poll books, the most common usages were to sign voters in at polling places (98.9%), update voter history (87.8%), and look up polling places (79.5%), and 20.7% of jurisdictions reported using e-poll books for other uses as well.⁵⁶

The 2020 Policy Survey also collected information on whether states have a testing or certification process in place for e-poll books.⁵⁷ Of the 39 states that provided a response to this question, 12 states (30.8%) indicated that the testing and certification process is required by statute, 10 states (25.6%) indicated that the testing and certification process is required by a formal administrative rule or as guidance, and 17 states (43.6%) indicated that testing and certification of e-poll books is not required.⁵⁸ The EAC does not currently provide testing or certification of e-poll books; any testing that states perform on their equipment is performed to the state's specifications.

⁵⁶ Use of e-poll books to sign voters in was reported in item F3a of the EAVS. Use of e-poll books to update voter history was reported in item F3b. Use of e-poll books to look up polling places was reported in item F3c. Use of e-poll books for other purposes was reported in item F3d. A jurisdiction was considered to have used e-poll books in 2020 if it responded "yes" to at least one of these items.

⁵⁷ Q16 of the 2020 Policy Survey collected information on whether the state, or any jurisdiction in the state, used e-poll books. Colorado, Hawaii, and Massachusetts reported in the Policy Survey that they used e-poll books but did not report data on the usage of e-poll books in item F3 of the EAVS; Colorado noted in a comment in the Policy Survey that "CO's statewide voter registration system has an application that allows judges at vote centers to look up in-person voters and see whether they've returned a ballot. There is no testing and certification because the application is developed and maintained by our VR development team in our IT department." Puerto Rico reported data on the usage of e-poll books in the EAVS but reported not using e-poll books in the Policy Survey.

⁵⁸ Q16a of the 2020 Policy Survey collected information on what kind of testing or certification is required for e-poll books. Illinois did not provide a response to this question.

Appendix A: Descriptive Tables

Overview Table 1: 2020 EAVS at a Glance

| State | Total
Jurisdictions | Total Active
Registered
Voters | Total CVAP | Total Voter
Turnout | Turnout as %
of Active
Registration | Turnout
as % of
CVAP |
|------------------------|------------------------|--------------------------------------|------------|------------------------|---|----------------------------|
| Alabama [1] | 67 | 3,438,213 | 3,731,336 | 2,329,047 | 67.7 | 62.4 |
| Alaska | 1 | 595,647 | 533,151 | 361,400 | 60.7 | 67.8 |
| American Samoa [2] | 1 | 16,341 | | 11,944 | 73.1 | |
| Arizona | 15 | 4,275,729 | 5,137,474 | 3,420,481 | 80.0 | 66.6 |
| Arkansas | 75 | 1,408,061 | 2,235,415 | 1,209,997 | 85.9 | 54.1 |
| California | 58 | 21,795,538 | 26,032,160 | 17,720,746 | 81.3 | 68.1 |
| Colorado | 64 | 3,803,762 | 4,244,210 | 3,320,607 | 87.3 | 78.2 |
| Connecticut [1] | 169 | 2,335,860 | 2,619,474 | 1,863,479 | 79.8 | 71.1 |
| Delaware | 3 | 711,287 | 725,178 | 514,656 | 72.4 | 71.0 |
| District of Columbia | 1 | 517,890 | 536,768 | 346,491 | 66.9 | 64.6 |
| Florida | 67 | 14,517,002 | 15,507,315 | 11,137,676 | 76.7 | 71.8 |
| Georgia | 159 | 7,194,889 | 7,581,837 | 5,023,812 | 69.8 | 66.3 |
| Guam [2] | 1 | 55,896 | | 29,377 | 52.6 | |
| Hawaii [3] | 5 | 759,971 | 1,014,035 | 580,098 | 76.3 | 57.2 |
| Idaho | 44 | 1,029,763 | 1,282,630 | 878,527 | 85.3 | 68.5 |
| Illinois | 108 | 9,103,542 | 9,088,036 | 6,140,545 | 67.5 | 67.6 |
| Indiana | 92 | 4,170,353 | 4,978,356 | 3,103,284 | 74.4 | 62.3 |
| lowa [1] | 99 | 2,094,770 | 2,348,787 | 1,700,130 | 81.2 | 72.4 |
| Kansas [4] | 105 | 1,764,949 | 2,103,748 | 1,379,623 | 78.2 | 65.6 |
| Kentucky | 120 | 3,319,307 | 3,367,502 | 2,149,444 | 64.8 | 63.8 |
| Louisiana | 64 | 2,963,901 | 3,463,372 | 2,169,354 | 73.2 | 62.6 |
| Maine | 497 | 1,135,008 | 1,078,770 | 822,534 | 72.5 | 76.2 |
| Maryland | 24 | 4,142,347 | 4,316,921 | 3,059,603 | 73.9 | 70.9 |
| Massachusetts | 351 | 4,400,254 | 5,057,192 | 3,658,005 | 83.1 | 72.3 |
| Michigan [5] | 83 | 7,209,300 | 7,562,464 | 5,579,317 | 77.4 | 73.8 |
| Minnesota | 87 | 3,731,016 | 4,157,556 | 3,290,013 | 88.2 | 79.1 |
| Mississippi [1] | 82 | 1,982,632 | 2,246,323 | 1,334,155 | 67.3 | 59.4 |
| Missouri [1] | 116 | 3,963,980 | 4,650,318 | 3,201,458 | 80.8 | 68.8 |
| Montana [1] | 56 | 675,971 | 831,760 | 612,141 | 90.6 | 73.6 |
| Nebraska | 93 | 1,168,708 | 1,388,950 | 966,786 | 82.7 | 69.6 |
| Nevada | 17 | 1,835,401 | 2,111,932 | 1,407,761 | 76.7 | 66.7 |
| New Hampshire [1], [6] | 320 | 1,087,145 | 1,070,215 | 814,499 | 74.9 | 76.1 |
| New Jersey [7] | 21 | 5,896,836 | 6,170,130 | 4,494,659 | 76.2 | 72.8 |
| New Mexico | 33 | 1,255,669 | 1,522,171 | 928,230 | 73.9 | 61.0 |
| New York | 62 | 12,362,997 | 13,810,830 | 8,701,749 | 70.4 | 63.0 |



| State | Total
Jurisdictions | Total Active
Registered
Voters | Total CVAP | Total Voter
Turnout | Turnout as %
of Active
Registration | Turnout
as % of
CVAP |
|---------------------------------|------------------------|--------------------------------------|-------------|------------------------|---|----------------------------|
| North Carolina | 100 | 6,607,121 | 7,729,644 | 5,543,405 | 83.9 | 71.7 |
| North Dakota [8] | 53 | | 567,545 | 364,499 | | 64.2 |
| Northern Mariana
Islands [2] | 1 | 18,526 | | 13,355 | 72.1 | |
| Ohio | 88 | 8,073,829 | 8,879,469 | 5,974,121 | 74.0 | 67.3 |
| Oklahoma | 77 | 2,021,846 | 2,875,059 | 1,564,886 | 77.4 | 54.4 |
| Oregon [9] | 36 | 2,944,588 | 3,162,204 | 2,396,123 | 81.4 | 75.8 |
| Pennsylvania [10] | 67 | 8,280,348 | 9,810,201 | 6,973,951 | 84.2 | 71.1 |
| Puerto Rico [11] | 1 | 2,355,894 | 2,579,596 | 1,296,169 | 55.0 | 50.2 |
| Rhode Island [1] | 39 | 735,195 | 800,798 | 519,412 | 70.6 | 64.9 |
| South Carolina | 46 | 3,535,061 | 3,892,341 | 2,523,856 | 71.4 | 64.8 |
| South Dakota | 66 | 578,683 | 653,394 | 427,406 | 73.9 | 65.4 |
| Tennessee | 95 | 4,226,928 | 5,129,580 | 3,074,692 | 72.7 | 59.9 |
| Texas | 254 | 15,279,870 | 18,875,542 | 11,449,044 | 74.9 | 60.7 |
| U.S. Virgin Islands [2] | 1 | 53,341 | | 18,064 | 33.9 | |
| Utah | 29 | 1,713,297 | 2,134,249 | 1,542,529 | 90.0 | 72.3 |
| Vermont [12] | 246 | 440,920 | 498,705 | 368,075 | 83.5 | 73.8 |
| Virginia [13] | 133 | 5,763,187 | 6,226,623 | 4,487,338 | 77.9 | 72.1 |
| Washington [14] | 39 | 4,892,871 | 5,409,035 | 4,116,055 | 84.1 | 76.1 |
| West Virginia | 55 | 1,062,685 | 1,420,289 | 801,667 | 75.4 | 56.4 |
| Wisconsin [15] | 1,851 | 3,834,164 | 4,412,888 | 3,308,331 | 86.3 | 75.0 |
| Wyoming | 23 | 303,049 | 434,852 | 278,503 | 91.9 | 64.0 |
| U.S. Total | 6,460 | 209,441,338 | 237,998,330 | 161,303,109 | 76.8 | 67.7 |

| State | Total In-Person
Election Day
Ballots Cast
and Counted | Total Mailed
Ballots Cast
and Counted | Total In-Person
Early Ballots
Cast and
Counted | Total Polling
Places | Total Poll
Workers |
|---------------------------------|--|---|---|-------------------------|-----------------------|
| Alabama [1] | 2,014,242 | 300,684 | - | 2,045 | 16,128 |
| Alaska | 157,220 | 92,471 | 82,451 | 584 | 3,077 |
| American Samoa [2] | 10,310 | 905 | 455 | 42 | 256 |
| Arizona | 371,565 | 2,931,175 | 69,063 | 928 | 7,482 |
| Arkansas | 258,836 | 84,910 | 830,561 | 20,889 | 6,549 |
| California | 1,124,389 | 14,515,783 | 966,201 | 5,655 | 48,221 |
| Colorado | 89,789 | 3,092,904 | 108,856 | 642 | 7,185 |
| Connecticut [1] | 1,188,283 | 667,403 | - | 718 | 3,590 |
| Delaware | 345,809 | 161,135 | 5,236 | 267 | 3,157 |
| District of Columbia | 29,036 | 229,459 | 80,959 | 127 | 4,467 |
| Florida | 1,942,102 | 4,546,896 | 4,332,912 | 4,858 | 44,857 |
| Georgia | 980,627 | 1,311,361 | 2,704,002 | 2,755 | 27,474 |
| Guam [2] | 16,167 | 108 | 12,966 | 27 | 465 |
| Hawaii [3] | 4,522 | 548,636 | 24,214 | 16 | 64 |
| ldaho | 384,319 | 345,636 | 145,388 | 754 | 5,815 |
| Illinois | 2,049,927 | 2,037,583 | 2,005,711 | 19,684 | 46,711 |
| Indiana | 1,201,154 | 535,942 | 1,354,897 | 2,137 | 17,557 |
| lowa [1] | 698,557 | 994,300 | | 1,329 | 8,685 |
| Kansas [4] | 505,132 | 463,909 | 375,196 | | 8,412 |
| Kentucky | 477,612 | 631,497 | 1,024,965 | 879 | 8,528 |
| Louisiana | 1,182,672 | 162,692 | 817,951 | 2,096 | 16,980 |
| Maine | 311,560 | 359,331 | 151,535 | 1,040 | 6,054 |
| Maryland | 439,094 | 1,502,852 | 987,373 | 401 | 14,033 |
| Massachusetts | 1,256,443 | 1,521,052 | 852,926 | 1,611 | 13,044 |
| Michigan [5] | 2,286,764 | 2,741,668 | 529,015 | 4,950 | 35,825 |
| Minnesota | 1,380,309 | 1,286,660 | 607,304 | 2,581 | 29,785 |
| Mississippi [1] | 1,085,337 | 234,500 | _ | 1,776 | 11,358 |
| Missouri [1] | 2,288,607 | 899,695 | _ | 2,326 | 19,075 |
| Montana [1] | 9,497 | 597,912 | | 43 | 1,592 |
| Nebraska | 417,349 | 485,195 | 51,537 | 1,015 | 7,810 |
| Nevada | 128,729 | 664,461 | 540,767 | 307 | 4,653 |
| New Hampshire [1], [6] | 554,315 | 253,932 | - | 308 | |
| New Jersey [7] | 987 | 4,178,875 | - | 1,549 | 7,603 |
| New Mexico | 142,470 | 323,661 | 456,280 | 883 | 4,165 |
| New York | 4,284,263 | 1,763,448 | 2,502,161 | 5,124 | 118,378 |
| North Carolina | 896,818 | 974,351 | 3,460,562 | 3,203 | 26,608 |
| North Dakota [8] | 91,803 | 183,161 | 87,882 | 128 | 1,607 |
| Northern Mariana
Islands [2] | 3,970 | 12,321 | 8,130 | 11 | 189 |



| State | Total In-Person
Election Day
Ballots Cast
and Counted | Total Mailed
Ballots Cast
and Counted | Total In-Person
Early Ballots
Cast and
Counted | Total Polling
Places | Total Poll
Workers |
|-------------------------|--|---|---|-------------------------|-----------------------|
| Ohio | 2,344,886 | 2,135,600 | 1,345,715 | 3,651 | 47,761 |
| Oklahoma | 1,114,001 | 275,017 | 167,516 | 2,032 | 6,552 |
| Oregon [9] | | 2,379,544 | | 36 | |
| Pennsylvania [10] | 4,214,277 | 2,623,867 | | 9,246 | |
| Puerto Rico [11] | 1,092,637 | 145,244 | 48,724 | 1,612 | |
| Rhode Island [1] | 198,611 | 318,313 | | 500 | 3,594 |
| South Carolina | 1,182,726 | 428,704 | 894,078 | 2,091 | 17,135 |
| South Dakota | 208,396 | 122,525 | 93,469 | 573 | 2,675 |
| Tennessee | 766,552 | 216,074 | 2,071,168 | 2,066 | 17,831 |
| Texas | 1,707,821 | 982,362 | 8,660,809 | 9,604 | 49,441 |
| U.S. Virgin Islands [2] | 8,119 | 1,670 | 8,173 | 12 | 190 |
| Utah | 81,970 | 1,386,385 | 35,048 | 196 | 1,619 |
| Vermont [12] | 90,959 | 272,318 | 2,033 | 521 | |
| Virginia [13] | 1,657,228 | 983,907 | 1,798,050 | 2,587 | 30,403 |
| Washington [14] | | 4,050,981 | 183 | 66 | |
| West Virginia | 396,926 | 142,191 | 256,113 | 1,421 | 8,324 |
| Wisconsin [15] | 1,337,269 | 1,298,346 | 651,791 | 2,467 | |
| Wyoming | 135,426 | 85,454 | 55,903 | 187 | 2,137 |
| U.S. Total | 47,148,389 | 69,486,966 | 41,266,229 | 132,556 | 775,101 |

Overview Table 1 Calculation Notes:

Total Jurisdictions uses a count of Federal Information Processing Standards (FIPS) code by state.

Total Active Registered Voters uses question A1b.

Total CVAP uses the 2019 1-year estimate of the CVAP from the U.S. Census Bureau.

Total Voter Turnout uses question F1a.

Turnout as % of Active Registration uses question F1a divided by A1b.

Turnout as % of CVAP uses question F1a divided by the CVAP estimate.

Total In-Person Election Day Ballots Cast and Counted uses question F1b.

Total Mailed Ballots Cast and Counted uses the sum of questions F1d and F1g.

Total In-Person Early Ballots Cast and Counted uses question F1f.

Total Polling Places uses the sum of questions D3a and D4a.

Total Poll Workers uses question D7a.

Overview Table 1 Data Notes:

General Notes:

Casewise deletion at the state level was used in calculating national percentages. The percentage
calculations at the national level (U.S. Total) only used data from those states that provided data
for the numerator and denominator of the calculation. For example, since there was no CVAP
estimate for most U.S. territories, their turnout data (F1a) were not used for the calculation of
"Turnout as % of CVAP" at the national level.

- The CVAP is an estimate of the number of U.S. citizens 18 years of age or older in the state. This report used the 1-year American Community Survey (ACS) state estimate for 2019 instead of the 5-year estimate to ensure that the CVAP was as current as possible. The estimate for the year 2020 was not available by the time this report was finalized. The 2019 1-year CVAP does not include data that were collected as part of the decennial Census conducted in 2020. Some states may have reported more active registered voters than CVAP because the 2019 CVAP is being compared to 2020 data.
- The Total Voter Turnout column includes voters who cast a ballot that was counted. The Total Mailed Ballots Cast and Counted column does not include UOCAVA voters.
- [1] Alabama, Connecticut, Iowa, Missouri, Mississippi, Montana, New Hampshire, and Rhode Island did not report data in F1f, because the number of in-person early voters could not be tracked separately from other modes of participation.
- [2] American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands did not have a CVAP available to use for the turnout as a percentage of CVAP calculation.
- [3] For Hawaii, the numbers reported for the City and County of Honolulu include all mailed ballot envelopes received and validated by the county. Certified turnout results were determined through subsequent ballot envelope processing and counting by the State of Hawaii, pursuant to Hawaii State Law. [4] Kansas did not provide data on polling places.
- [5] Michigan noted in its survey comments that "walk-in absentee voting prior to Election Day is considered early voting in [Michigan]. These absentee ballots are not tabulated until Election Day." Data on these walk-in absentee voters was reported in F1f.
- [6] New Hampshire provided information on the minimum number of early voting and Election Day poll workers required by law but noted that it may not reflect the number of poll workers actually deployed.
- [7] New Jersey did not report data in F1f, because the state did not offer in-person early voting.
- [8] North Dakota does not have voter registration.
- [9] Oregon is a vote-by-mail state and does not have traditional early voting or traditional polling places.
- [10] Pennsylvania reported that the state cannot systematically track data on poll workers.
- [11] Puerto Rico reported that data on poll workers are not available and that poll workers were volunteers, not PR-SEC employees (the abbreviation was not defined by the state).
- [12] Vermont did not provide data on the number of poll workers. Prior to this report being finalized, Vermont provided updated statewide totals for most items in F1 but was unable to provide jurisdiction-level data that could be incorporated into the EAVS. The statewide vote totals are:
 - Total number of voters who cast a ballot that was counted (F1a): 371,452
 - Voters who cast a ballot at a physical polling place on Election Day and whose ballots were counted (F1b): 91,079
 - UOCAVA voters who cast a ballot via an absentee ballot or FWAB and whose ballots were counted (F1c): 2,719
 - Voters who cast a mailed ballot and whose ballots were counted (F1d): 225,621
 - Voters who cast a ballot at an in-person early voting location and whose ballots were counted (F1f): 2,033
- [13] Before this report's finalization, Virginia notified the EAC that the statewide number of early voting polling places in D4a was 208, not 133.
- [14] Washington is a vote-by-mail state. Voters can register and vote on or before Election Day. The total in F1g (voters who cast a mailed ballot in a jurisdiction that conducts elections entirely by mail and whose ballots were counted) includes in-person voters that were issued a mailed ballot packet at a voting center



that they could deposit into a ballot drop box or mail. Totals in F1f (voters who cast a ballot at an in-person early voting location and whose ballots were counted) include voters who used a disability access unit. [15] The number of jurisdictions in Wisconsin changed several times over the two-year period covered by the 2020 EAVS due to incorporations, mergers, and similar mechanisms. Wisconsin canvass data tracks individual contests, and therefore, the total ballots cast in any election is highly unlikely to match the total votes cast in any one contest. Wisconsin voters are not required to vote in each contest on the ballot and undervotes are the likely cause of total ballots cast data being higher than the number of votes in a contest.

Overview Table 2: Voter Turnout by Mail

| State | Total Mail
Voters | % Turnout by
Mail | Total Mailed
Ballots
Transmitted | Total Mailed
Ballots
Returned | % Mailed
Ballots
Returned |
|----------------------|----------------------|----------------------|--|-------------------------------------|---------------------------------|
| Alabama [1] | 300,684 | 12.9 | 170,616 | 158,321 | 92.8 |
| Alaska | 92,471 | 25.6 | 121,223 | 97,344 | 80.3 |
| American Samoa | 905 | 7.6 | 911 | 911 | 100.0 |
| Arizona | 2,931,175 | 85.7 | 3,529,586 | 2,938,896 | 83.3 |
| Arkansas | 84,910 | 7.0 | 120,369 | 117,555 | 97.7 |
| California | 14,515,783 | 81.9 | 23,228,899 | 15,398,923 | 66.3 |
| Colorado | 3,092,904 | 93.1 | 3,904,381 | 3,122,440 | 80.0 |
| Connecticut | 667,403 | 35.8 | 832,542 | 673,899 | 80.9 |
| Delaware | 161,135 | 31.3 | 187,360 | 163,234 | 87.1 |
| District of Columbia | 229,459 | 66.2 | 416,660 | 235,486 | 56.5 |
| Florida | 4,546,896 | 40.8 | 6,065,500 | 4,750,645 | 78.3 |
| Georgia [2] | 1,311,361 | 26.1 | 1,759,036 | 1,316,165 | 74.8 |
| Guam | 108 | 0.4 | 193 | 129 | 66.8 |
| Hawaii | 548,636 | 94.6 | 748,944 | 551,383 | 73.6 |
| Idaho [3] | 345,636 | 39.3 | 407,323 | 344,893 | 84.7 |
| Illinois | 2,037,583 | 33.2 | 2,233,578 | 2,013,990 | 90.2 |
| Indiana | 535,942 | 17.3 | 547,602 | 538,860 | 98.4 |
| lowa | 994,300 | 58.5 | 1,050,593 | 997,652 | 95.0 |
| Kansas [4] | 463,909 | 33.6 | 362,948 | 295,021 | 81.3 |
| Kentucky | 631,497 | 29.4 | 666,472 | 634,595 | 95.2 |
| Louisiana | 162,692 | 7.5 | 218,057 | 163,656 | 75.1 |
| Maine | 359,331 | 43.7 | 373,478 | 362,594 | 97.1 |
| Maryland | 1,502,852 | 49.1 | 1,699,070 | 1,505,791 | 88.6 |
| Massachusetts | 1,521,052 | 41.6 | 1,679,267 | 1,531,001 | 91.2 |
| Michigan | 2,741,668 | 49.1 | 3,009,891 | 2,762,148 | 91.8 |
| Minnesota | 1,286,660 | 39.1 | 1,545,345 | 1,295,908 | 83.9 |
| Mississippi | 234,500 | 17.6 | 247,855 | 239,488 | 96.6 |
| Missouri | 899,695 | 28.1 | 935,659 | 905,132 | 96.7 |
| Montana | 597,912 | 97.7 | 704,040 | 599,505 | 85.2 |
| Nebraska | 485,195 | 50.2 | 508,049 | 486,844 | 95.8 |
| Nevada | 664,461 | 47.2 | 1,833,795 | 670,091 | 36.5 |
| New Hampshire | 253,932 | 31.2 | 263,447 | 255,935 | 97.1 |
| New Jersey | 4,178,875 | 93.0 | 6,053,283 | 4,228,687 | 69.9 |
| New Mexico | 323,661 | 34.9 | 373,548 | 339,906 | 91.0 |
| New York | 1,763,448 | 20.3 | 2,366,172 | 1,832,724 | 77.5 |
| North Carolina | 974,351 | 17.6 | 1,350,883 | 981,816 | 72.7 |
| North Dakota | 183,161 | 50.3 | 214,506 | 183,544 | 85.6 |



| State | Total Mail
Voters | % Turnout by
Mail | Total Mailed
Ballots
Transmitted | Total Mailed
Ballots
Returned | % Mailed
Ballots
Returned |
|---------------------------------|----------------------|----------------------|--|-------------------------------------|---------------------------------|
| Northern Mariana
Islands [5] | 12,321 | 92.3 | 1,670 | 1,670 | 100.0 |
| Ohio | 2,135,600 | 35.7 | 2,314,198 | 2,144,504 | 92.7 |
| Oklahoma | 275,017 | 17.6 | 344,600 | 280,106 | 81.3 |
| Oregon | 2,379,544 | 99.3 | 2,924,063 | 2,397,091 | 82.0 |
| Pennsylvania | 2,623,867 | 37.6 | 3,120,999 | 2,653,688 | 85.0 |
| Puerto Rico [6] | 145,244 | 11.2 | 22,403 | 22,402 | 100.0 |
| Rhode Island | 318,313 | 61.3 | 318,313 | 318,426 | 100.0 |
| South Carolina | 428,704 | 17.0 | 447,697 | 430,229 | 96.1 |
| South Dakota | 122,525 | 28.7 | 132,529 | 123,406 | 93.1 |
| Tennessee | 216,074 | 7.0 | 229,768 | 218,149 | 94.9 |
| Texas | 982,362 | 8.6 | 1,208,665 | 988,364 | 81.8 |
| U.S. Virgin Islands | 1,670 | 9.2 | 1,846 | 1,682 | 91.1 |
| Utah | 1,386,385 | 89.9 | 1,752,928 | 1,396,681 | 79.7 |
| Vermont | 272,318 | 74.0 | 313,193 | 273,784 | 87.4 |
| Virginia | 983,907 | 21.9 | 1,099,502 | 990,198 | 90.1 |
| Washington | 4,050,981 | 98.4 | 5,042,956 | 4,082,581 | 81.0 |
| West Virginia | 142,191 | 17.7 | 150,202 | 142,445 | 94.8 |
| Wisconsin [7] | 1,298,346 | 39.2 | 1,441,825 | 1,305,082 | 90.5 |
| Wyoming | 85,454 | 30.7 | 89,540 | 85,627 | 95.6 |
| U.S. Total | 69,486,966 | 43.1 | 90,687,978 | 70,551,227 | 77.8 |

| | Mailed Ball | lots Counted | Mailed Ball | Mailed Ballots Rejected | | |
|---------------------------------|-------------|---------------|-------------|-------------------------|--|--|
| State | Total | % of Returned | Total | % of Returned | | |
| Alabama [1] | | | | | | |
| Alaska | 96,701 | 99.3 | 643 | 0.7 | | |
| American Samoa | 905 | 99.3 | 6 | 0.7 | | |
| Arizona | 2,931,164 | 99.7 | 7,732 | 0.3 | | |
| Arkansas | 84,232 | 71.7 | 7,561 | 6.4 | | |
| California | 15,305,243 | 99.4 | 92,924 | 0.6 | | |
| Colorado | 3,092,904 | 99.1 | 29,536 | 0.9 | | |
| Connecticut | 667,403 | 99.0 | 6,496 | 1.0 | | |
| Delaware | 161,135 | 98.7 | 2,099 | 1.3 | | |
| District of Columbia | 234,758 | 99.7 | 728 | 0.3 | | |
| Florida | 4,740,149 | 99.8 | 13,919 | 0.3 | | |
| Georgia [2] | 1,311,361 | 99.6 | 4,804 | 0.4 | | |
| Guam | 108 | 83.7 | 21 | 16.3 | | |
| Hawaii | 548,636 | 99.5 | 2,747 | 0.5 | | |
| Idaho [3] | 352,641 | 102.2 | 3,613 | 1.0 | | |
| Illinois | 1,986,445 | 98.6 | 33,853 | 1.7 | | |
| Indiana | 535,942 | 99.5 | 2,918 | 0.5 | | |
| Iowa | 994,300 | 99.7 | 2,592 | 0.3 | | |
| Kansas [4] | 24,924 | 8.4 | 1,361 | 0.5 | | |
| Kentucky | 631,497 | 99.5 | 3,101 | 0.5 | | |
| Louisiana | 161,292 | 98.6 | 2,364 | 1.4 | | |
| Maine | 359,331 | 99.1 | 1,326 | 0.4 | | |
| Maryland | 1,502,852 | 99.8 | 2,939 | 0.2 | | |
| Massachusetts | 1,521,052 | 99.4 | 9,949 | 0.6 | | |
| Michigan | 2,741,668 | 99.3 | 20,480 | 0.7 | | |
| Minnesota | 1,286,660 | 99.3 | 9,248 | 0.7 | | |
| Mississippi | 233,925 | 97.7 | 5,563 | 2.3 | | |
| Missouri | 899,695 | 99.4 | 5,437 | 0.6 | | |
| Montana | 597,912 | 99.7 | 1,593 | 0.3 | | |
| Nebraska | 485,195 | 99.7 | 1,649 | 0.3 | | |
| Nevada | 664,461 | 99.2 | 5,630 | 0.8 | | |
| New Hampshire | 253,932 | 99.2 | 2,003 | 0.8 | | |
| New Jersey | 4,178,875 | 98.8 | 49,812 | 1.2 | | |
| New Mexico | 328,631 | 96.7 | 17,008 | 5.0 | | |
| New York | 1,763,448 | 96.2 | 66,746 | 3.6 | | |
| North Carolina | 974,351 | 99.2 | 7,465 | 0.8 | | |
| North Dakota | 183,152 | 99.8 | 392 | 0.2 | | |
| Northern Mariana
Islands [5] | 1,193 | 71.4 | 144 | 8.6 | | |



| | Mailed Ball | ots Counted | Mailed Ballots Rejected | | |
|---------------------|-------------|---------------|-------------------------|---------------|--|
| State | Total | % of Returned | Total | % of Returned | |
| Ohio | 2,135,600 | 99.6 | 8,904 | 0.4 | |
| Oklahoma | 275,017 | 98.2 | 5,089 | 1.8 | |
| Oregon | 2,379,544 | 99.3 | 17,547 | 0.7 | |
| Pennsylvania | 2,619,517 | 98.7 | 34,171 | 1.3 | |
| Puerto Rico [6] | 22,402 | 100.0 | | | |
| Rhode Island | 318,313 | 100.0 | 113 | 0.0 | |
| South Carolina | 425,701 | 98.9 | 4,528 | 1.1 | |
| South Dakota | 122,525 | 99.3 | 789 | 0.6 | |
| Tennessee | 216,074 | 99.0 | 2,090 | 1.0 | |
| Texas | 982,362 | 99.4 | 8,304 | 0.8 | |
| U.S. Virgin Islands | 1,670 | 99.3 | 12 | 0.7 | |
| Utah | 1,386,385 | 99.3 | 10,296 | 0.7 | |
| Vermont | 272,318 | 99.5 | 1,465 | 0.5 | |
| Virginia | 983,907 | 99.4 | 6,291 | 0.6 | |
| Washington | 4,051,164 | 99.2 | 31,417 | 0.8 | |
| West Virginia | 142,191 | 99.8 | 254 | 0.2 | |
| Wisconsin [7] | 1,302,101 | 99.8 | 2,981 | 0.2 | |
| Wyoming | 85,454 | 99.8 | 173 | 0.2 | |
| U.S. Total | 69,560,318 | 98.8 | 560,826 | 0.8 | |

Overview Table 2 Calculation Notes:

Total Mail Voters uses the sum of questions F1d and F1g.

% Turnout by Mail uses the sum of questions F1d and F1g divided by question F1a.

Total Mailed Ballots Transmitted uses question C1a.

Total Mailed Ballots Returned uses question C1b.

% Mailed Ballots Returned uses question C1b divided by question C1a.

Mailed Ballots Counted, Total uses question C3a.

Mailed Ballots Counted, % of Returned uses question C3a divided by question C1b.

Mailed Ballots Rejected, Total uses question C4a.

Mailed Ballots Rejected, % of Returned uses question C4a divided by question C1b.

Overview Table 2 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- Because each percentage was calculated independently, the percentages of mailed ballots counted and rejected may not sum to 100% for some states or at the national level.
- The Total Mail Voters column reflects the number of voters who cast a ballot by mail that was counted. It does not include voters who cast a UOCAVA ballot or FWAB.

- The Total Mailed Ballots Transmitted column captures the total number of mailed ballots that states reported transmitting, regardless of whether the ballot was returned or not. The number of ballots transmitted typically exceeds the number of ballots returned because some voters who transmitted a mailed ballot choose to vote by another mode or to not vote at all. Total Mailed Ballots Returned typically exceeds Total Mail Voters because some returned mailed ballots are rejected for not meeting state requirements. Mailed Ballots Counted may not match Total Mail Voters because states may have different methodologies for calculating these numbers.
- The Total Mailed Ballots Returned column includes both counted and rejected ballots that were returned to election offices.
- [1] Alabama reported mail and early in-person voting data together as the Total Mail Voters (300,684). Both are considered absentee voting; thus, the data for transmission method are commingled and cannot be reported separately.
- [2] Data on rejected mailed ballots for Georgia include rejected ballots entered by counties into the state voter registration system as of February 2021, which does not necessarily include all ballots rejected by counties.
- [3] Butte County and Valley County in Idaho responded "Data not available" to the number of mailed ballots received (C1b) but reported data for the number of mailed ballots counted (C3a). Madison County and Valley County in Idaho reported more mailed ballots counted than mailed ballots received. Because of these responses, the total number of mailed ballots counted exceeds the number of mailed ballots received at the state level for Idaho, and the percentage of returned ballots that were counted exceeds 100%.
- [4] Kansas did not provide any survey comments to explain why the data reported in the Total Mail Voters column exceeds that of the Total Mailed Ballots Transmitted column, nor why the percentage of mailed ballots counted and rejected does not sum to 100%. Some jurisdictions that reported data on Total Mail Voters did not provide data for Total Mailed Ballots Transmitted.
- [5] The Northern Mariana Islands did not provide any survey comments to explain why the data reported in the Total Mail Voters column exceeds that of the Total Mailed Ballots Transmitted column, nor why the percentages of mailed ballots counted and rejected does not sum to 100%.
- [6] Puerto Rico reported "data not available" in question C4. In addition, this territory noted in a survey comment that the Total Mail Voters column may include ballots for non-federal elections and that its response in the Total Mail Voters and % Turnout by Mail columns includes "voters who [cast] their vote early but in their home, not in a polling location."
- [7] Local election officials in Wisconsin were still recording voter participation method at the time data was provided for this report; therefore, the Total Mail Voters data were incomplete. These data are currently available from the state.



Overview Table 3: In-Person Voting and Other Modes of Voting

| State | In-Person Elec
Voters | | In-Person Ea | rly Voters | Provisional | Voters |
|------------------------|--------------------------|------|--------------|------------|-------------|--------|
| | Total | % | Total | % | Total | % |
| Alabama [1] | 2,014,242 | 86.5 | | | 8,840 | 0.4 |
| Alaska [2] | 157,220 | 43.5 | 82,451 | 22.8 | 11,509 | 3.2 |
| American Samoa | 10,310 | 86.3 | 455 | 3.8 | 12 | 0.1 |
| Arizona | 371,565 | 10.9 | 69,063 | 2.0 | 30,151 | 0.9 |
| Arkansas [3] | 258,836 | 21.4 | 830,561 | 68.6 | 5,082 | 0.4 |
| California [4] | 1,124,389 | 6.3 | 966,201 | 5.5 | 216,781 | 1.2 |
| Colorado | 89,789 | 2.7 | 108,856 | 3.3 | 150 | 0.0 |
| Connecticut [1] | 1,188,283 | 63.8 | | - | 104 | 0.0 |
| Delaware | 345,809 | 67.2 | 5,236 | 1.0 | 107 | 0.0 |
| District of Columbia | 29,036 | 8.4 | 80,959 | 23.4 | 1,738 | 0.5 |
| Florida [5] | 1,942,102 | 17.4 | 4,332,912 | 38.9 | 7,169 | 0.1 |
| Georgia | 980,627 | 19.5 | 2,704,002 | 53.8 | 9,347 | 0.2 |
| Guam | 16,167 | 55.0 | 12,966 | 44.1 | 71 | 0.2 |
| Hawaii | 4,522 | 0.8 | 24,214 | 4.2 | 6 | 0.0 |
| Idaho [6] | 384,319 | 43.7 | 145,388 | 16.5 | 0 | 0.0 |
| Illinois | 2,049,927 | 33.4 | 2,005,711 | 32.7 | 42,003 | 0.7 |
| Indiana | 1,201,154 | 38.7 | 1,354,897 | 43.7 | 1,348 | 0.0 |
| lowa [1] | 698,557 | 41.1 | | | 1,293 | 0.1 |
| Kansas | 505,132 | 36.6 | 375,196 | 27.2 | 36,107 | 2.6 |
| Kentucky | 477,612 | 22.2 | 1,024,965 | 47.7 | 77 | 0.0 |
| Louisiana | 1,182,672 | 54.5 | 817,951 | 37.7 | 658 | 0.0 |
| Maine | 311,560 | 37.9 | 151,535 | 18.4 | 108 | 0.0 |
| Maryland | 439,094 | 14.4 | 987,373 | 32.3 | 108,478 | 3.5 |
| Massachusetts [7] | 1,256,443 | 34.3 | 852,926 | 23.3 | 1,724 | 0.0 |
| Michigan [8] | 2,286,764 | 41.0 | 529,015 | 9.5 | 77 | 0.0 |
| Minnesota [6] | 1,380,309 | 42.0 | 607,304 | 18.5 | - | |
| Mississippi [1] | 1,085,337 | 81.4 | | | 11,358 | 0.9 |
| Missouri [1] | 2,288,607 | 71.5 | | - | 2,139 | 0.1 |
| Montana [1] | 9,497 | 1.6 | | | 364 | 0.1 |
| Nebraska | 417,349 | 43.2 | 51,537 | 5.3 | 9,998 | 1.0 |
| Nevada | 128,729 | 9.1 | 540,767 | 38.4 | 66,359 | 4.7 |
| New Hampshire [1], [6] | 554,315 | 68.1 | | | - | |
| New Jersey [9] | 987 | 0.0 | | | 293,894 | 6.5 |
| New Mexico [10] | 142,470 | 15.3 | 456,280 | 49.2 | 687 | 0.1 |
| New York | 4,284,263 | 49.2 | 2,502,161 | 28.8 | 84,884 | 1.0 |
| North Carolina [11] | 896,818 | 16.2 | 3,460,562 | 62.4 | 16,388 | 0.3 |
| North Dakota [6] | 91,803 | 25.2 | 87,882 | 24.1 | | |

| State | In-Person Elec
Voters | _ | In-Person Early Voters | | orly Voters Provisional Voters | |
|-----------------------------|--------------------------|------|------------------------|------|--------------------------------|-----|
| | Total | % | Total | % | Total | % |
| Northern Mariana
Islands | 3,970 | 29.7 | 8,130 | 60.9 | 24 | 0.2 |
| Ohio | 2,344,886 | 39.3 | 1,345,715 | 22.5 | 126,066 | 2.1 |
| Oklahoma | 1,114,001 | 71.2 | 167,516 | 10.7 | 1,986 | 0.1 |
| Oregon [12] | | | | | 45 | 0.0 |
| Pennsylvania [13] | 4,214,277 | 60.4 | | | 106,951 | 1.5 |
| Puerto Rico | 1,092,637 | 84.3 | 48,724 | 3.8 | 8,977 | 0.7 |
| Rhode Island [1], [14] | 198,611 | 38.2 | | | 2,488 | 0.5 |
| South Carolina | 1,182,726 | 46.9 | 894,078 | 35.4 | 5,442 | 0.2 |
| South Dakota | 208,396 | 48.8 | 93,469 | 21.9 | 65 | 0.0 |
| Tennessee | 766,552 | 24.9 | 2,071,168 | 67.4 | 6,222 | 0.2 |
| Texas | 1,707,821 | 14.9 | 8,660,809 | 75.6 | 37,760 | 0.3 |
| U.S. Virgin Islands | 8,119 | 44.9 | 8,173 | 45.2 | 94 | 0.5 |
| Utah | 81,970 | 5.3 | 35,048 | 2.3 | 31,652 | 2.1 |
| Vermont [6] | 90,959 | 24.7 | 2,033 | 0.6 | | |
| Virginia | 1,657,228 | 36.9 | 1,798,050 | 40.1 | 15,825 | 0.4 |
| Washington [15] | - | | 183 | 0.0 | 43 | 0.0 |
| West Virginia | 396,926 | 49.5 | 256,113 | 31.9 | 4,222 | 0.5 |
| Wisconsin [16] | 1,337,269 | 40.4 | 651,791 | 19.7 | 57 | 0.0 |
| Wyoming | 135,426 | 48.6 | 55,903 | 20.1 | 15 | 0.0 |
| U.S. Total | 47,148,389 | 30.5 | 41,266,229 | 30.6 | 1,316,945 | 0.8 |



| State | UOCAV | A Voters | Other Voters | | |
|-----------------------------|---------|----------|--------------|-----|--|
| | Total | % | Total | % | |
| Alabama [1] | 5,281 | 0.2 | | | |
| Alaska [2] | 13,519 | 3.7 | 4,230 | 1.2 | |
| American Samoa | 214 | 1.8 | | | |
| Arizona | 18,527 | 0.5 | | | |
| Arkansas [3] | 30,512 | 2.5 | 174 | 0.0 | |
| California [4] | 93,452 | 0.5 | 923,698 | 5.2 | |
| Colorado | 28,908 | 0.9 | | - | |
| Connecticut [1] | 7,689 | 0.4 | - | - | |
| Delaware | 2,369 | 0.5 | - | - | |
| District of Columbia | 5,299 | 1.5 | - | - | |
| Florida [5] | 116,364 | 1.0 | 184,533 | 1.7 | |
| Georgia | 18,475 | 0.4 | - | - | |
| Guam | 65 | 0.2 | | | |
| Hawaii | 2,720 | 0.5 | - | - | |
| Idaho [6] | 3,184 | 0.4 | | _ | |
| Illinois | 24,297 | 0.4 | - | - | |
| Indiana | 9,943 | 0.3 | - | - | |
| lowa [1] | 5,980 | 0.4 | | - | |
| Kansas | 5,434 | 0.4 | | _ | |
| Kentucky | 4,664 | 0.2 | | - | |
| Louisiana | 5,919 | 0.3 | | | |
| Maine | 5,771 | 0.7 | | | |
| Maryland | 21,806 | 0.7 | | | |
| Massachusetts [7] | 25,331 | 0.7 | 529 | 0.0 | |
| Michigan [8] | 21,793 | 0.4 | | | |
| Minnesota [6] | 15,740 | 0.5 | | | |
| Mississippi [1] | 2,960 | 0.2 | | | |
| Missouri [1] | 11,017 | 0.3 | | | |
| Montana [1] | 4,368 | 0.7 | | | |
| Nebraska | 2,707 | 0.3 | | | |
| Nevada | 7,445 | 0.5 | | | |
| New Hampshire [1], [6] | 6,252 | 0.8 | | - | |
| New Jersey [9] | 20,903 | 0.5 | | | |
| New Mexico [10] | 5,132 | 0.6 | 284 | 0.0 | |
| New York | 66,993 | 0.8 | | | |
| North Carolina [11] | 26,386 | 0.5 | 168,900 | 3.0 | |
| North Dakota [6] | 1,653 | 0.5 | | | |
| Northern Mariana
Islands | 0 | 0.0 | | - | |

| State | UOCAVA Voters | | Other | Voters |
|------------------------|---------------|-----|-----------|--------|
| | Total | % | Total | % |
| Ohio | 21,854 | 0.4 | | |
| Oklahoma | 6,366 | 0.4 | | |
| Oregon [12] | 16,534 | 0.7 | | |
| Pennsylvania [13] | 28,014 | 0.4 | 842 | 0.0 |
| Puerto Rico | 587 | 0.0 | | |
| Rhode Island [1], [14] | | | | - |
| South Carolina | 12,906 | 0.5 | | |
| South Dakota | 2,951 | 0.7 | | |
| Tennessee | 14,676 | 0.5 | | |
| Texas | 60,292 | 0.5 | | |
| U.S. Virgin Islands | 8 | 0.0 | | - |
| Utah | 7,474 | 0.5 | | - |
| Vermont [6] | 2,986 | 0.8 | | |
| Virginia | 32,328 | 0.7 | | - |
| Washington [15] | 64,848 | 1.6 | | |
| West Virginia | 2,215 | 0.3 | | - |
| Wisconsin [16] | 13,481 | 0.4 | 7,387 | 0.2 |
| Wyoming | 1,705 | 0.6 | | - |
| U.S. Total | 938,297 | 0.6 | 1,290,577 | 2.5 |

Overview Table 3 Calculation Notes:

In-Person Election Day Voters, Total uses question F1b.

In-Person Election Day Voters, % uses question F1b divided by question F1a.

In-Person Early Voters, Total uses question F1f.

In-Person Early Voters, % uses question F1f divided by question F1a.

Provisional Voters, Total uses question F1e.

Provisional Voters, % uses question F1e divided by question F1a.

UOCAVA Voters, Total uses question F1c.

UOCAVA Voters, % uses question F1c divided by question F1a.

Other Voters, Total uses question F1h.

Other Voters, % uses question F1h divided by question F1a.

Overview Table 3 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage calculations at the national level (U.S. Total) only used data from those states that provided data for the numerator and denominator of the calculation.
- Question F1f includes all voters who participated in the election in person prior to Election Day. This includes in-person early voting, in-person absentee voting, and any other terminology the state used to refer to in-person early voting (as reported in question Q24 of the 2020 Policy Survey).



- Question F1h was not mandatory. States only reported data in this item if they offered another mode of voting aside from those listed in questions F1b-F1g or if there were counted ballots that could not be categorized in questions F1b-F1g.
- Because each percentage was calculated independently, the percentages of turnout by mode in this table and the previous table may not sum to 100% for some states or at the national level.
- [1] Alabama, Connecticut, Iowa, Mississippi, Missouri, Montana, New Hampshire, and Rhode Island did not report data in F1f, because the number of in-person early voters could not be tracked separately from other modes of participation.
- [2] Alaska's F1h data included ballots transmitted by electronic transmission (online or fax) delivery.
- [3] Arkansas's F1h data included nursing home patients who refused their ballots and votes by bearer, "admin," or delivered by another person.
- [4] California's F1h data included conditional voter registration (CVR) voters, SDR voters, manual voter history updates, "confidentials," mailed ballots from domestic and UOCAVA voters that could not be separated by mode, and other counted ballots not reported in other F1 items.
- [5] Two counties in Florida—Duval and Indian River counties—combined their reported number of UOCAVA and domestic mailed ballots in F1h in lieu of reporting them separately within F1c and F1d, respectively.
- [6] Idaho, Minnesota, New Hampshire, and Vermont are exempt from the NVRA requirement to offer provisional ballots. North Dakota is exempt from offering provisional ballots because it does not require voter registration.
- [7] Massachusetts's F1h data included "non-UOCAVA AV [absentee voting] ballots not returned by mail."
- [8] Michigan's data in the In-Person Early Voters columns reflect those who voted absentee at the local clerk's office prior to Election Day.
- [9] New Jersey did not report data in F1f because the state did not offer in-person early voting.
- [10] New Mexico's F1h data included ballots cast because of "emergency (medical reasons)."
- [11] North Carolina's F1h data included curbside absentee voters.
- [12] Oregon is a vote-by-mail state and traditional early voting does not exist.
- [13] Pennsylvania reported that the state cannot systematically track data on poll workers. Pennsylvania's F1h data included ballots for which "vote method not identified in the system."
- [14] Rhode Island reported that data for question F1c is unavailable.
- [15] Washington is a vote-by-mail state. Voters can register and vote on or before Election Day. Totals in F1f (voters who cast a ballot at an in-person early voting location and whose ballots were counted) include voters who used a disability access unit.
- [16] Wisconsin reported that state statute does not require the state to track data on poll workers. Wisconsin's F1h data included ballots for which voter method data was not yet available.

Overview Table 4: Polling Places and Poll Workers

| | Total | Total Poli | ing Places | Total Pol | l Workers |
|-------------------------|-----------|--------------|--------------|--------------|--------------|
| State | Precincts | Election Day | Early Voting | Election Day | Early Voting |
| Alabama [1] | 2,111 | 1,976 | 69 | 16,028 | |
| Alaska [2] | 441 | 420 | 164 | 2,817 | 260 |
| American Samoa | 41 | 41 | 1 | 0 | 256 |
| Arizona | 1,494 | 767 | 161 | 7,409 | 1,091 |
| Arkansas | 2,519 | 11,055 | 9,834 | 6,440 | 2,379 |
| California | 20,497 | 3,704 | 1,951 | 46,762 | 25,680 |
| Colorado [3] | 3,215 | 341 | 301 | 7,185 | 7,185 |
| Connecticut [1], [4] | 718 | 718 | | 3,590 | |
| Delaware | 439 | 264 | 3 | 3,157 | 3 |
| District of Columbia | 144 | 95 | 32 | 2,407 | 2,549 |
| Florida | 6,128 | 4,433 | 425 | 42,247 | 11,173 |
| Georgia [2] | 2,648 | 2,419 | 336 | 22,401 | 5,073 |
| Guam | 67 | 22 | 5 | 485 | 48 |
| Hawaii [2], [5] | 250 | 8 | 8 | 64 | 64 |
| Idaho | 948 | 722 | 32 | 5,532 | 303 |
| Illinois [2] | 10,075 | 17,169 | 2,515 | 43,299 | 3,412 |
| Indiana | 5,169 | 1,835 | 302 | 15,313 | 2,211 |
| lowa [1] | 1,681 | 1,329 | - | 8,632 | 1,003 |
| Kansas [6] | 2,601 | | | 5,789 | 1,120 |
| Kentucky | 3,692 | 682 | 197 | 7,947 | 4,658 |
| Louisiana [2], [7] | 3,934 | 1,991 | 105 | 16,980 | |
| Maine [8] | 551 | 520 | 520 | 6,054 | |
| Maryland [9] | 1,991 | 320 | 81 | 12,469 | 8,210 |
| Massachusetts [2], [10] | 2,173 | 1,220 | 391 | 13,044 | |
| Michigan [11] | 4,751 | 3,367 | 1,583 | 35,825 | 0 |
| Minnesota [2] | 4,110 | 2,344 | 237 | 28,646 | 1,139 |
| Mississippi [1] | 1,776 | 1,776 | | 11,358 | |
| Missouri [1] | 4,373 | 2,326 | | 19,075 | |
| Montana | 663 | 21 | 22 | 1,592 | 1,427 |
| Nebraska | 1,379 | 922 | 93 | 7,695 | 115 |
| Nevada | 1,990 | 217 | 90 | 2,692 | 2,200 |
| New Hampshire [1], [2] | 340 | 308 | | 3,576 | |
| New Jersey [2], [12] | 6,346 | 1,549 | | 7,603 | |
| New Mexico | 1,949 | 664 | 219 | 3,631 | 953 |
| New York | 15,551 | 4,838 | 286 | 73,198 | 15,065 |
| North Carolina [13] | 2,663 | 2,752 | 451 | 24,742 | 12,310 |



| 2 | Total | Total Polli | ing Places | Total Pol | l Workers |
|---------------------------------|-----------|--------------|--------------|--------------|--------------|
| State | Precincts | Election Day | Early Voting | Election Day | Early Voting |
| North Dakota [2], [14] | 422 | 110 | 18 | | |
| Northern Mariana
Islands [2] | 7 | 7 | 4 | 135 | 54 |
| Ohio [15] | 8,933 | 3,563 | 88 | 47,761 | 0 |
| Oklahoma | 1,950 | 1,950 | 82 | 5,993 | 559 |
| Oregon [16] | 1,328 | 36 | | | |
| Pennsylvania [2], [17] | 9,158 | 9,155 | 91 | | |
| Puerto Rico [2], [18] | 1,365 | 1,259 | 353 | | |
| Rhode Island [2] | 461 | 461 | 39 | 3,516 | 78 |
| South Carolina [19] | 2,262 | 1,975 | 116 | 16,618 | 517 |
| South Dakota | 715 | 506 | 67 | 2,562 | 177 |
| Tennessee | 1,961 | 1,852 | 214 | 16,641 | 2,757 |
| Texas | 9,949 | 6,580 | 3,024 | 41,092 | 17,740 |
| U.S. Virgin Islands [2] | 12 | 9 | 3 | 150 | 40 |
| Utah | 2,943 | 123 | 73 | 2,015 | 521 |
| Vermont [2], [20] | 275 | 275 | 246 | | |
| Virginia [21] | 2,454 | 2,454 | 133 | 27,984 | 2,419 |
| Washington [22] | 7,436 | | 66 | | |
| West Virginia | 1,706 | 1,361 | 60 | 8,143 | 271 |
| Wisconsin [23] | 3,698 | 2,467 | | | |
| Wyoming | 480 | 179 | 8 | 2,052 | 85 |
| U.S. Total | 176,933 | 107,457 | 25,099 | 690,346 | 135,105 |

| | Poll Workers' Ages | | | | | | |
|----------------------------|--------------------|----------------|----------------|----------------|----------------|-----------|--|
| State | % Age <18 | % Age
18-25 | % Age
26-40 | % Age
41-60 | % Age
61-70 | % Age 71+ | |
| Alabama [1] | 2.5 | 2.9 | 7.9 | 25.7 | 31.4 | 29.6 | |
| Alaska [2] | - | | | - | | - | |
| American Samoa | 0.0 | 20.7 | 25.4 | 42.6 | 11.3 | 0.0 | |
| Arizona | 1.1 | 4.4 | 12.3 | 27.7 | 30.3 | 24.1 | |
| Arkansas | 0.7 | 4.3 | 6.8 | 21.8 | 36.3 | 30.0 | |
| California | 12.7 | 9.5 | 22.8 | 30.4 | 16.3 | 8.3 | |
| Colorado [3] | 6.8 | 3.6 | 8.9 | 24.5 | 32.7 | 23.5 | |
| Connecticut [1], [4] | | | | | | | |
| Delaware | 3.6 | 6.7 | 11.7 | 32.1 | 29.9 | 15.9 | |
| District of Columbia | 1.8 | 8.8 | 49.6 | 24.6 | 11.4 | 3.7 | |
| Florida | 0.9 | 4.3 | 10.8 | 30.5 | 29.9 | 23.6 | |
| Georgia [2] | | | | | | | |
| Guam | 0.0 | 24.5 | 25.8 | 32.3 | 9.0 | 8.4 | |
| Hawaii [2], [5] | | - | | | | | |
| Idaho | 5.3 | 4.4 | 8.6 | 21.4 | 39.3 | 21.0 | |
| Illinois [2] | | - | | | | | |
| Indiana | 4.3 | 7.0 | 17.4 | 31.7 | 24.1 | 15.4 | |
| lowa [1] | 0.3 | 3.9 | 10.9 | 25.8 | 34.1 | 24.9 | |
| Kansas [6] | 4.0 | 3.9 | 12.9 | 24.4 | 29.6 | 25.1 | |
| Kentucky | 0.2 | 6.2 | 13.2 | 37.4 | 26.5 | 16.4 | |
| Louisiana [2], [7] | | | | | | | |
| Maine [8] | 0.6 | 4.4 | 11.4 | 33.0 | 31.8 | 18.7 | |
| Maryland [9] | 2.8 | 6.6 | 13.8 | 41.3 | 25.0 | 10.5 | |
| Massachusetts [2],
[10] | - | - | | - | | | |
| Michigan [11] | 3.9 | 3.8 | 6.6 | 22.9 | 33.6 | 29.1 | |
| Minnesota [2] | - | | | - | | | |
| Mississippi [1] | 0.0 | 0.0 | 0.0 | 5.0 | 50.2 | 44.8 | |
| Missouri [1] | 5.4 | 6.1 | 10.1 | 24.2 | 30.5 | 23.8 | |
| Montana | 0.0 | 2.0 | 7.5 | 27.8 | 35.7 | 27.0 | |
| Nebraska | 1.1 | 4.1 | 17.0 | 31.1 | 26.3 | 20.4 | |
| Nevada | 4.1 | 10.0 | 14.0 | 27.5 | 25.1 | 19.3 | |
| New Hampshire [1], [2] | | | | | | - | |
| New Jersey [2], [12] | | | | | | - | |
| New Mexico | 2.8 | 6.7 | 11.6 | 27.9 | 30.1 | 20.9 | |
| New York | 0.4 | 8.5 | 22.2 | 29.7 | 22.1 | 17.1 | |
| North Carolina [13] | 2.9 | 4.6 | 11.7 | 30.3 | 31.3 | 19.2 | |
| North Dakota [2], [14] | | - | - | | | - | |



| | Poll Workers' Ages | | | | | | | |
|---------------------------------|--------------------|------------------------|----------------|----------------|----------------|-----------|--|--|
| State | % Age <18 | % Age
1 8-25 | % Age
26-40 | % Age
41-60 | % Age
61-70 | % Age 71+ | | |
| Northern Mariana
Islands [2] | | | | | | - | | |
| Ohio [15] | 2.1 | 5.4 | 14.1 | 32.1 | 28.6 | 17.8 | | |
| Oklahoma | 0.0 | 2.1 | 6.3 | 18.5 | 31.6 | 41.4 | | |
| Oregon [16] | | | | | | | | |
| Pennsylvania [2], [17] | | | | | | | | |
| Puerto Rico [2], [18] | | | | | | | | |
| Rhode Island [2] | | - | | | | | | |
| South Carolina [19] | | | | | | | | |
| South Dakota | 0.0 | 1.3 | 7.6 | 21.2 | 38.4 | 31.6 | | |
| Tennessee | 3.6 | 4.4 | 9.2 | 23.8 | 32.7 | 26.3 | | |
| Texas | 6.7 | 9.5 | 14.4 | 27.9 | 26.0 | 15.5 | | |
| U.S. Virgin Islands [2] | | | | | | | | |
| Utah | 1.2 | 11.7 | 25.3 | 40.9 | 15.8 | 5.2 | | |
| Vermont [2], [20] | | | | | | | | |
| Virginia [21] | | | | | | | | |
| Washington [22] | | | | | | | | |
| West Virginia | 0.0 | 5.3 | 13.1 | 30.1 | 28.6 | 22.8 | | |
| Wisconsin [23] | | | | | | | | |
| Wyoming | 1.3 | 3.0 | 9.7 | 24.5 | 38.2 | 23.3 | | |
| U.S. Total | 3.2 | 6.2 | 15.0 | 28.4 | 27.3 | 20.1 | | |

Overview Table 4 Calculation Notes:

Total Precincts uses question D2a.

Total Polling Places, Election Day uses question D3a.

Total Polling Places, Early Voting uses question D4a.

Total Poll Workers, Election Day uses question D5.

Total Poll Workers, Early Voting uses question D6.

Poll Workers % Age <18 uses question D7b divided by the sum of questions D7b-D7g.

Poll Workers % Age 18-25 uses question D7c divided by the sum of questions D7b-D7g.

Poll Workers % Age 26–40 uses question D7d divided by the sum of questions D7b–D7g.

Poll Workers % Age 41-60 uses question D7e divided by the sum of questions D7b-D7g.

Poll Workers % Age 61-70 uses question D7f divided by the sum of questions D7b-D7g.

Poll Workers % Age 71+ uses question D7g divided by the sum of questions D7b-D7g.

Overview Table 4 Data Notes

General Notes:

Casewise deletion at the state level was used in calculating national percentages. The percentage
calculations at the national level (U.S. Total) only used data from those states that provided data
for the numerator and denominator of the calculation.

- Because percentages for each age category were calculated independently, the percentages for each age category may not sum to 100% for some states or at the national level.
- In calculating percentages for poll worker age categories, the sum of questions D7b–D7g was used instead of D7a because some states did not report data in all age categories.
- [1] Alabama, Connecticut, Iowa, Mississippi, Missouri, and New Hampshire did not report complete data on early voting because some of this data could not be tracked separately from Election Day voting data.
- [2] Alaska, Georgia, Hawaii, Illinois, Louisiana, Massachusetts, Minnesota, New Hampshire, New Jersey, North Dakota, the Northern Mariana Islands, Pennsylvania, Puerto Rico, Rhode Island, the U.S. Virgin Islands, and Vermont do not track data on the ages of their poll workers.
- [3] Colorado did not distinguish between early voting and Election Day voting in collecting information on poll workers. Because Colorado counties automatically mail ballots to every active voter and most voters choose to vote the mail ballot, a large number of poll workers are needed to process the mail ballots. That work begins in the early voting period and continues through Election Day and the eight-day post-election period when military and overseas voters can return their ballot and voters with signature or ID issues can cure their ballots.
- [4] Connecticut provided data on the total number of poll workers in question D7a but was unable to provide the age breakdown in questions D7b-D7g.
- [5] In Hawaii, in-person voting locations are called Voter Service Centers and provide accessible in-person voting, SDR, and collection of voted ballots.
- [6] Kansas did not report data on the number of polling places in questions D3 and D4.
- [7] Louisiana reported both its early voting and Election Day poll workers in question D5.
- [8] Maine reported that data on the number of early voting poll workers in question D6 was not available.
- [9] The number of Election Day voting locations in Maryland for the 2020 general election was greatly reduced due to the COVID-19 pandemic and the lack of poll workers. The 320 Election Day voting locations reported in D3a all served as county-wide vote centers. In a typical election, the number of Election Day polling places generally corresponds to the numbers of precincts, and each polling place only serves the precinct(s) assigned to it.
- [10] Massachusetts reported that "Those who worked early voting were not called 'poll workers' and varied each day of early voting."
- [11] Michigan reported data in D4 and noted that "early voting takes place at a clerk's office or their satellite offices for in-person absentee voting only." All Michigan jurisdictions reported zero for the number of early voting poll workers in D6; regular office staff operated clerk's offices and satellite locations.
- [12] New Jersey did not report data in questions D4a nor D6 because the state did not offer in-person early voting.
- [13] Precinct, polling place, and early voting site counts are based on data that election officials entered into North Carolina's Statewide Election Information Management System (SEIMS) and may be marginally different than the number of sites that were actually open during early voting and Election Day voting.
- [14] North Dakota provided data on the total number of poll workers in question D7a but was unable to provide the totals for Election Day and early voting poll workers in questions D5 and D6 or the age breakdown in questions D7b-D7g.
- [15] Ohio reported zero early voting poll workers with a comment that regular office staff operated the early voting sites.
- [16] Oregon is a vote-by-mail state and does not have or track traditional poll workers for in-person voting. [17] Pennsylvania provides in-person absentee and mail-in voting at county election offices and satellite county election offices. Absentee and mail-in ballots cast in person are secured until Election Day to be tabulated by the county board of elections. Pennsylvania reported that the state cannot systematically track data on poll workers.



- [18] Puerto Rico reported that data on poll workers are not available and that poll workers were volunteers, not PR-SEC employees.
- [19] South Carolina only reported poll workers who were under the age of 18 and did not provide data for any other age categories. South Carolina's data on poll worker ages has been excluded from this table.
- [20] Vermont did not provide data on the number of poll workers.
- [21] Virginia does not capture or track information on the age of poll workers. Before this report's finalization, Virginia notified the EAC that the statewide number of early voting polling places in D4a was 208, not 133.
- [22] Washington is a vote-by-mail state and does not have traditional polling places. Washington has voting centers that are open for the entire voting period, not just a single day. Each county is required to have two certified election administrators and can hire election workers to assist with processing returned ballots.
- [23] Wisconsin state statute does not require the state to track data on early voting physical polling locations and poll workers. Partial data are available through the state.

Overview Table 5: Election Technology and Voting Methods

| State | Total Number of
Voting Machines | DRE witho | out VVPAT | DRE with | ı VVPAT |
|----------------------|------------------------------------|-----------|-----------|----------|---------|
| | Deployed | Total | % | Total | % |
| Alabama | 4,864 | | | | |
| Alaska | 758 | - | | 152 | 20.1 |
| American Samoa [1] | | | | - | |
| Arizona | 1,539 | - | | 19 | 1.2 |
| Arkansas | 4,480 | 76 | 1.7 | 92 | 2.1 |
| California | 33,163 | | | 23 | 0.1 |
| Colorado | 1,851 | | | | |
| Connecticut | 2,154 | | | - | |
| Delaware | 1,057 | | | 1,050 | 99.3 |
| District of Columbia | 694 | | | | |
| Florida | 14,015 | | | 67 | 0.5 |
| Georgia | 30,824 | | | | |
| Guam | 11 | | | - | |
| Hawaii | 292 | | | 276 | 94.5 |
| Idaho | 1,506 | | | 72 | 4.8 |
| Illinois | 20,043 | | | 2,215 | 11.1 |
| Indiana | 14,868 | 5,775 | 38.8 | 956 | 6.4 |
| Iowa | 2,874 | | | | |
| Kansas [2] | 5,871 | 43 | 0.7 | 4,700 | 80.1 |
| Kentucky | 4,246 | 528 | 12.4 | 570 | 13.4 |
| Louisiana | 9,828 | 9,747 | 99.2 | | |
| Maine [3] | 1,088 | | | | |
| Maryland | 3,651 | | | | |
| Massachusetts | 4,386 | | | | |
| Michigan | 8,118 | | | | |
| Minnesota | 5,710 | | | | |
| Mississippi | 7,048 | 5,820 | 82.6 | 20 | 0.3 |
| Missouri | 5,346 | | | 330 | 6.2 |
| Montana | 248 | | - | | |
| Nebraska | 1,422 | | - | | |
| Nevada | 5,765 | | | 5,646 | 97.9 |
| New Hampshire | 652 | | | | |
| New Jersey | 2,207 | 1,495 | 67.7 | 632 | 28.6 |
| New Mexico | 1,461 | | | | |
| New York | 18,792 | | | | |
| North Carolina | 9,468 | | | | |
| North Dakota | 524 | | | | |



| State | Total Number of
Voting Machines | DRE without VVPAT | | DRE with | ı VVPAT |
|---------------------------------|------------------------------------|-------------------|------|----------|---------|
| | Deployed | Total | % | Total | % |
| Northern Mariana
Islands [4] | 4 | | | - | |
| Ohio | 25,164 | | | 7,028 | 27.9 |
| Oklahoma | 2,263 | | | | |
| Oregon [5] | | | | | |
| Pennsylvania | 24,413 | | | | |
| Puerto Rico | 6,075 | | | | |
| Rhode Island | 612 | | - | - | |
| South Carolina | 16,873 | | | | |
| South Dakota | 630 | | - | - | |
| Tennessee | 9,199 | 5,483 | 59.6 | | |
| Texas | 42,151 | 20,978 | 49.8 | 2,211 | 5.2 |
| U.S. Virgin Islands | 80 | | | | |
| Utah | 41 | | - | - | |
| Vermont [6] | 530 | | | | |
| Virginia [7] | 4,057 | - | - | - | |
| Washington | 186 | | | | |
| West Virginia | 5,401 | - | - | 1,887 | 34.9 |
| Wisconsin [8] | | | | | |
| Wyoming | 863 | - | - | - | |
| U.S. Total | 369,366 | 49,945 | 13.5 | 27,946 | 7.6 |

| State | Ballot Marking Devices | | Scanr | iers | Hand Counting
(Total | |
|---------------------------------|------------------------|------|--------|-------|-------------------------|--|
| | Total | % | Total | % | Jurisdictions) | |
| Alabama | 2,044 | 42.0 | 2,820 | 58.0 | 0 | |
| Alaska | 289 | 38.1 | 317 | 41.8 | 1 | |
| American Samoa [1] | | | | | 1 | |
| Arizona | 1,093 | 71.0 | 427 | 27.7 | 1 | |
| Arkansas | 3,373 | 75.3 | 939 | 21.0 | 5 | |
| California | 31,770 | 95.8 | 1,370 | 4.1 | 0 | |
| Colorado | 1,668 | 90.1 | 183 | 9.9 | 1 | |
| Connecticut | | | 2,154 | 100.0 | 0 | |
| Delaware | | | 7 | 0.7 | 3 | |
| District of Columbia | 562 | 81.0 | 132 | 19.0 | 0 | |
| Florida | 4,723 | 33.7 | 9,225 | 65.8 | 0 | |
| Georgia | 27,078 | 87.8 | 3,746 | 12.2 | 0 | |
| Guam | 8 | 72.7 | 3 | 27.3 | 0 | |
| Hawaii | | | 16 | 5.5 | 0 | |
| ldaho | 881 | 58.5 | 553 | 36.7 | 12 | |
| Illinois | 9,313 | 46.5 | 8,515 | 42.5 | 0 | |
| Indiana | 4,807 | 32.3 | 3,330 | 22.4 | 0 | |
| lowa | 1,402 | 48.8 | 1,472 | 51.2 | 0 | |
| Kansas [2] | | | 1,128 | 19.2 | | |
| Kentucky | 564 | 13.3 | 2,584 | 60.9 | 3 | |
| Louisiana | | | 81 | 0.8 | 0 | |
| Maine [3] | 496 | 45.6 | 592 | 54.4 | 187 | |
| Maryland | 1,729 | 47.4 | 1,922 | 52.6 | 0 | |
| Massachusetts | 2,173 | 49.5 | 2,213 | 50.5 | 58 | |
| Michigan | 3,367 | 41.5 | 4,751 | 58.5 | 0 | |
| Minnesota | 2,794 | 48.9 | 2,916 | 51.1 | 2 | |
| Mississippi | 507 | 7.2 | 701 | 9.9 | 0 | |
| Missouri | 2,402 | 44.9 | 2,614 | 48.9 | 1 | |
| Montana | 136 | 54.8 | 112 | 45.2 | 10 | |
| Nebraska | 1,265 | 89.0 | 157 | 11.0 | 0 | |
| Nevada | 80 | 1.4 | 39 | 0.7 | 0 | |
| New Hampshire | 310 | 47.5 | 342 | 52.5 | 123 | |
| New Jersey | | | 80 | 3.6 | 0 | |
| New Mexico | | | 1,461 | 100.0 | 33 | |
| New York | 7,768 | 41.3 | 11,024 | 58.7 | 62 | |
| North Carolina | 6,001 | 63.4 | 3,467 | 36.6 | 0 | |
| North Dakota | 260 | 49.6 | 264 | 50.4 | 0 | |
| Northern Mariana
Islands [4] | - | - | 4 | 100.0 | 0 | |



| State | Ballot Markir | ng Devices | Scanners | | Hand Counting
(Total | |
|---------------------|---------------|------------|----------|-------|-------------------------|--|
| | Total | % | Total | % | Jurisdictions) | |
| Ohio | 12,510 | 49.7 | 5,626 | 22.4 | 0 | |
| Oklahoma | | | 2,263 | 100.0 | 0 | |
| Oregon [5] | | | | | 0 | |
| Pennsylvania | 10,860 | 44.5 | 13,553 | 55.5 | 0 | |
| Puerto Rico | | | 6,075 | 100.0 | 1 | |
| Rhode Island | 78 | 12.7 | 534 | 87.3 | 0 | |
| South Carolina | 14,129 | 83.7 | 2,744 | 16.3 | 0 | |
| South Dakota | 533 | 84.6 | 97 | 15.4 | 0 | |
| Tennessee | 2,205 | 24.0 | 1,511 | 16.4 | 11 | |
| Texas | 15,250 | 36.2 | 3,712 | 8.8 | 15 | |
| U.S. Virgin Islands | 50 | 62.5 | 30 | 37.5 | 0 | |
| Utah | 29 | 70.7 | 12 | 29.3 | 0 | |
| Vermont [6] | 312 | 58.9 | 218 | 41.1 | 101 | |
| Virginia [7] | | | 4,057 | 100.0 | 0 | |
| Washington | 108 | 58.1 | 78 | 41.9 | 0 | |
| West Virginia | 2,743 | 50.8 | 771 | 14.3 | 0 | |
| Wisconsin [8] | | | | - | 705 | |
| Wyoming | 496 | 57.5 | 367 | 42.5 | 0 | |
| U.S. Total | 178,166 | 48.2 | 113,309 | 30.7 | 1,336 | |

Overview Table 5 Calculation Notes:

Total Number of Voting Machines Deployed uses the sum of questions F5c_1, F5c_2, F5c_3, F6c_1, F6c_2, F6c_3, F7c_1, F7c_2, F7c_3, F8c_1, F8c_2, F8c_3, F9c_1, F9c_2, F9c_3, F10c_1, F10c_2, and F10c_3.

DRE without VVPAT, Total uses the sum of questions F5c_1, F5c_2, and F5c_3.

DRE without WPAT, % uses the sum of questions F5c_1, F5c_2, and F5c_3 divided by the total number of voting machines deployed (Column 1).

DRE with VVPAT, Total uses the sum of questions F6c_1, F6c_2, and F6c_3.

DRE with VVPAT, % uses the sum of questions F6c_1, F6c_2, and F6c_3 divided by the total number of voting machines deployed (Column 1).

Ballot Marking Devices, Total uses the sum of questions F7c_1, F7c_2, and F7c_3.

Ballot Marking Devices, % uses the sum of questions F7c_1, F7c_2, and F7c_3 divided by the total number of voting machines deployed (Column 1).

Scanner, Total uses the sum of questions F8c_1, F8c_2, and F8c_3.

Scanner, % uses the sum of questions F8c_1, F8c_2, and F8c_3 divided by the total number of voting machines deployed (Column 1).

Hand Counting (Total Jurisdictions) uses a count of the number of jurisdictions in each state that responded "yes" to question F11a.

Overview Table 5 Data Notes:

General Notes:

- Although other descriptive tables in this chapter used casewise deletion at the state level in
 calculating percentages, this table did not. When a state reported not using a type of equipment,
 the number of devices of that type was filled with zero to better capture at the national level the
 quantity and percentage that each voting technology accounted for in the 2020 general election.
- [1] American Samoa reported only hand counting ballots in the 2020 general election.
- [2] Kansas did not respond to question F7a on the use of BMDs or question F11a on the use of hand counting.
- [3] The data depicted in this table for Maine underreported the number of BMDs (accessible voting solution) deployed by the state's jurisdictions. Each voting place was provided with at least one BMD, and some larger jurisdictions used multiple devices. In the data previously provided to the EAC, Maine reported that each jurisdiction used only one device. The actual number of devices deployed statewide was 527.
- [4] The Northern Mariana Islands reported using BMDs in question F7a and provided a description of "pencils."
- [5] Oregon reported in question F8a that each of its jurisdictions used scanners, but for the purposes of this report, data on the number of scanners deployed was not tracked.
- [6] Vermont provided a response of "valid skip" for all jurisdictions in question F6a and provided a response of "does not apply" for 41.1% of its jurisdictions in question F8a.
- [7] Virginia reported using BMDs in all 133 of its jurisdictions, but initially did not report jurisdiction-level data on the number of BMDs deployed. Before this report's finalization, Virginia notified the EAC that the statewide number of BMDs in F7c_1, F7c_2, and F7c_3 was 2,533.
- [8] Wisconsin does not permit the use of DREs without a VVPAT. Wisconsin also does not permit the use of punch card machines or lever machines. The state tracks the machine types employed in each jurisdiction and not the number of machines deployed in each jurisdiction.



Chapter 2. Election Law and Procedure: The Policy Survey

Key Findings

The 2020 Election Administration Policy Survey (Policy Survey) asked states to identify the election laws and procedures that govern voter registration, election technology, voter eligibility, modes of voting, and election audits in their state. Notable findings from this survey include:

- In 2020, more states reported providing Election Administration and Voting Survey (EAVS) responses at the state level for every EAVS section compared to 2018.
- Fourteen states reported conducting all-mail elections for the 2020 general election, either statewide or in certain jurisdictions. This is double the number of states from the 2018 Policy Survey, but in some cases, all-mail voting was implemented in response to the COVID-19 pandemic, and it was not a permanent change.
- More states reported having an online voter registration system in the 2020 Policy Survey (45 states) compared to in the 2018 Policy Survey (40 states). In the majority of cases, individuals can use this system to register to vote and to update their registration.
- About half of the states reported allowing non-military voters residing in the United States to receive their ballots through an electronic format, such as email, fax, through an online voter registration portal, or through a mobile phone app, under certain circumstances.
- Roughly half of the states reported allowing permanent absentee status when a Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voter registration is submitted via a Federal Post Card Application (FPCA), a decrease from 2018.
- Forty-four states reported requiring a post-election tabulation audit that verifies that voting equipment used during an election properly counts a sample of voted ballots after an election.

Introduction

Although quantitative data from state¹ and local election officials provide an important window into how the 2020 general election was run, these data must be understood in the context of state laws and policies. In 2008, the U.S. Election Assistance Commission (EAC) introduced a component of the EAVS that collects information on state election laws. Since 2018, this data has been collected through the Policy Survey, which uses closed-ended questions to capture states' broad policies. It is important to remember that state election laws are nuanced, and this report simplifies them for the purpose of providing an overview of election policies that offers important context to understanding the EAVS data. This report provides an overview and summary of the Policy Survey's findings.

¹ Throughout this report, unless otherwise specified, the term "state" can be understood to apply to the 50 U.S. states, the District of Columbia, and five U.S. territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that submit Policy Survey and EAVS data.

Additional information about state responses is available in Appendix A of this chapter. The 2020 Policy Survey included updates to some of the 2018 items to better capture state policy nuances.

The 2020 Policy Survey collected data on states' election laws, policies, and practices that would be in place for the November 2020 general election. Most states submitted this information before the election. The Policy Survey was also used to validate 2020 EAVS data prior to states certifying their data as final. The goal of the 2020 Policy Survey was to create comparisons between states across broad policy categories and to provide context in understanding the EAVS data submitted by states. Because of the nature of the closed-ended survey questions, some of the nuances in state election policies could not be accounted for. States were encouraged to forward additional information and context behind their Policy Survey responses to allow their data to be interpreted as accurately as possible.

For further information about how the Policy Survey data were collected and used to validate EAVS data, please see Chapter 5 of this report.

Responding to the 2020 EAVS

The 2020 Policy Survey asked states to describe who provides the data to respond to the questions in each section of the EAVS: the state election office, local election offices, or both the state and local offices. Some states indicated that all sections are completed by the state election office, and some gather data for all sections from their local jurisdictions.² Many states answered certain sections at the state level and other sections at the jurisdiction level.

With the exception of sections A and F of the EAVS, roughly half of the states provided responses at the state level, whereas about one-fifth of states reported that responses are provided by local officials. For sections A and F, about 60% of states reported providing responses at the state level, and slightly less than 15% of states reported providing responses at the local level.3 Roughly onequarter to one-third of the responses for each section were provided by both state and local officials. In 2020, more states reported providing EAVS responses at the state level for every EAVS section compared to in 2018 (see Table 1).

The findings from this question illustrate the complexities that state and local election officials experience when answering the EAVS. Many states with a large number of jurisdictions reported

² What constitutes a jurisdiction for EAVS reporting is defined by how each state chose to provide data. For the 2020 EAVS, most states reported data on the county level (or county equivalent, such as parishes for Louisiana). Illinois, Maryland, Missouri, and Virginia reported data for independent cities in addition to counties. The territories, the District of Columbia, and Alaska each reported as a single jurisdiction. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Wisconsin reported data on the township level. Maine also reported its UOCAVA data in Section B as a separate jurisdiction, because this information was only collected at the state level. Michigan reported data for the county level, but most election administration activities take place in the 1,520 local election jurisdictions in the state. ³ Information on how states answer Section A of the EAVS was collected in item Q3_1 of the Policy Survey. Information on how states answer Section B of the EAVS was collected in O3 2. Information on how states answer Section C of the EAVS was collected in Q3_3. Information on how states answer Section D of the EAVS was collected in Q3_4. Information on how states answer Section E of the EAVS was collected in Q3_5. Information on how states answer the Section F of EAVS was collected in Q3_6.

providing EAVS data entirely at the local level. Furthermore, some states reported providing EAVS data for some sections at the state level while relying on local officials for other sections.

Table 1. More States Are Providing EAVS Responses at the State Level

| Number of States Providing EAVS Responses at the State Level | | | | | | |
|--|--------------------------|--------------------------|--|--|--|--|
| EAVS Section | Number of States in 2018 | Number of States in 2020 | | | | |
| Section A | 31 | 34 | | | | |
| Section B | 27 | 28 | | | | |
| Section C | 27 | 29 | | | | |
| Section D | 23 | 26 | | | | |
| Section E ⁴ | 25 | 28 | | | | |
| Section F | 26 | 33 | | | | |

Source: Information on answering the EAVS was collected in Q3 of the Policy Survey.

In almost all states, the chief state election official is responsible for certifying the state's EAVS data submission and/or receiving and certifying the spending of Help America Vote Act (HAVA) funds on behalf of the state. In 2020, 75% of states reported that the chief election official selects the state representative for and supervises local election officials' selection as representatives to the EAC Standards Board. The Standards Board consists of 55 state and 55 local election officials who assist the EAC in carrying out its mandates.⁵

Policies on Voter Registration and List Maintenance

The primary federal law governing voter registration in the United States is the National Voter Registration Act (NVRA), which became effective after the 1994 general election. The NVRA expands voter registration opportunities for voters by creating more standardized registration processes and by designating more places as voter registration agencies. It also requires that states conduct a uniform and nondiscriminatory general program to remove from their lists the records of individuals who are no longer eligible to vote.

Congress also passed HAVA in 2002, requiring states to adopt a computerized statewide voter registration list. The States use these registration lists to determine who is eligible to participate in elections. States also face the challenge of keeping these lists up to date, as voters commonly move

1

⁴ Minnesota did not provide a response to Section E of this item for the 2020 Policy Survey.

⁵ Information on the EAC-related duties of chief state election officials was collected in item Q1a of the Policy Survey. Eleven states provided additional information for cases in which another official performs these functions. The District of Columbia noted that it does not have any local election officials.

⁶ Several states are not covered by the NVRA. North Dakota is exempt because it does not have voter registration. U.S. territories are also not subject to the NVRA, and the states of Idaho, Minnesota, New Hampshire, Wisconsin, and Wyoming are exempt because they had same-day registration (SDR) in 1994 and have continued to make this option available uninterrupted since that time.

⁷ 52 U.S.C. § 21083.

to different jurisdictions or states, die, or become otherwise ineligible to vote. North Dakota is the only state that does not require voter registration.

Between 2018 and 2020, some states passed laws allowing individuals to register to vote online, register in person on Election Day, or register through an automated process. In 2020, states reported receiving a record number of registration applications. Further information on state registration data is included in Chapter 3 of this report.

Database Systems

States responded to the HAVA voter registration requirements in different ways. Some states adopted a single, central platform at the state level that connects to terminals in local jurisdictions. This type of system is typically referred to as a "top-down" voter registration system. Other states implemented a state voter registration database that gathers and aggregates information from their local jurisdictions' voter registration databases. This type of system is typically referred to as a "bottom- up" system.8 If a system has a mix of top-down and bottom-up characteristics, then it is referred to as a "hybrid" system. The specific characteristics of hybrid systems vary state by state.

The Policy Survey asks states to report the type of voter registration database they have and how often information is shared between states and local jurisdictions.9 Figure 1 shows that a majority of states (67.9%) reported having voter registration databases that function in a top-down manner.

About 20% of states reported having a bottom-up registration system that uploads jurisdiction-level information at regular intervals to form the statewide voter registration list, and only 10.7% of states reported having a hybrid system that combines elements of both. 10 In practice, these state registration system categories can be fluid. Some top-down registration systems may implement processes of the bottom-up registration system and vice versa.

States that reported having either a bottom-up or hybrid system were asked to report how often their jurisdictions transmit voter registration information to the statewide database. 11 For these two systems, real-time data transmissions were most common (reported in 58.8% of the states with bottom-up or hybrid systems), whereas 23.5% of the states reported that voter registration information is transmitted daily. 12 Texas reported that information is transmitted both ways: transmissions from "online" counties happen in real time, whereas in "offline" counties, it happens

⁸ For a bottom-up voter registration system to be considered a statewide system, the state database, the data, and the data flow must be defined, maintained, and administered by the state. U.S. Election Assistance Commission. (2005, July). Voluntary Guidance on Implementation of Statewide Voter Registration Lists. https://www.eac.gov/sites/default/files/eac assets/1/1/Implementing%20Statewide%20Voter%20Registration%20Lists.pdf.

⁹ One state did not provide a response to this item.

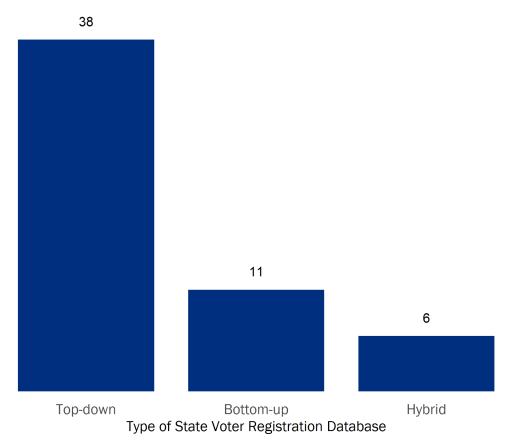
¹⁰ Information on the type of voter registration system states have was collected in item Q4 of the Policy Survey.

¹¹ Minnesota did not provide a response to this item.

¹² Information on how often local jurisdictions transmit information to the state voter registration database was collected in item Q4a of the Policy Survey.



Figure 1. Over Two-Thirds of States Have Top-Down Voter Registration Systems



Source: Information on voter registration database system type was collected in Q4 of the Policy Survey. This graph shows the number of states that reported having each type of voter registration database.

daily.¹³ Similarly, in Illinois, if the jurisdiction vendor has web services, the information is uploaded in real time, whereas a batch is sent daily from those jurisdictions without web services. The Northern Mariana Islands reported that information is retrieved upon request.

Data Linkages

Election officials must accomplish two primary activities related to voter registration: adding individuals to the database who are eligible to vote and maintaining the accuracy of the database.

A state accomplishes these goals by accessing or "linking" to other databases to verify the voter

¹³ The 2016 Statutory Overview found that several Texas jurisdictions use the Texas statewide voter registration database to directly manage registration data, and other Texas jurisdictions manage their own voter registration data using a third-party vendor. Texas refers to these as "online" and "offline" jurisdictions. Although online counties transmit information in real time through an online voter registration system, offline jurisdictions transmit information in batches through a web browser application.

¹⁴ National Research Council. 2010. *Improving State Voter Registration Databases: Final Report*. Washington, DC: The National Academies Press. https://www.eac.gov/documents/2010/5/14/improving-state-voter-registration-databases-final-report.

registration information in its database. The NVRA also outlines steps that states are required to take to keep voter registration information current and to remove ineligible voters and duplicate registrations from the voter lists. This task requires comparing voter lists to records in other databases to prevent duplicate registration records and to avoid adding individuals who are ineligible to register.¹⁵

As the National Academy of Sciences (NAS) notes, HAVA requires the chief election official in each state to attempt to verify the information for first-time voter registration applications against driver's license numbers in that state's motor vehicle licensing agency's database or against the Social Security Administration's database of social security numbers. If no match is found, election officials in most states attempt to contact the applicant for additional information, but they manage this process in various ways. HAVA requires that applicants who cannot be matched against one of these databases be allowed to vote on Election Day provided they present appropriate identification.¹⁶

The Policy Survey asks states how they share information electronically with other state and federal government entities.¹⁷ These linkages are illustrated in Figure 2. Most states reported that they link their voter registration data with the agency that handles their state's driver's licenses (85.7%) and with entities that maintain the death records (80.4%). The other most commonly reported linkages were with entities that maintain felony or prison records, such as state courts and parole agencies (62.5%). States that reported linking with the agency that handles driver's licenses most often reported transferring voter registration data daily (63.3%), followed by in real time (18.4%) and by some other measure of time that is neither weekly nor monthly (10.2%). Of the states that reported linking with entities that maintain death records, the most common type of data transfer was monthly (58.7%), followed by weekly (21.7%). States that reported linking registration data with entities that maintain felony records most often reported transferring data monthly (58.3%).¹⁸

Less commonly reported linkages included entities that maintain records of individuals who are declared mentally incompetent, state public assistance agencies, agencies for people with disabilities, other state agencies that are not required by the NVRA (e.g., public libraries or local government offices), federal agencies, and military recruiting offices.

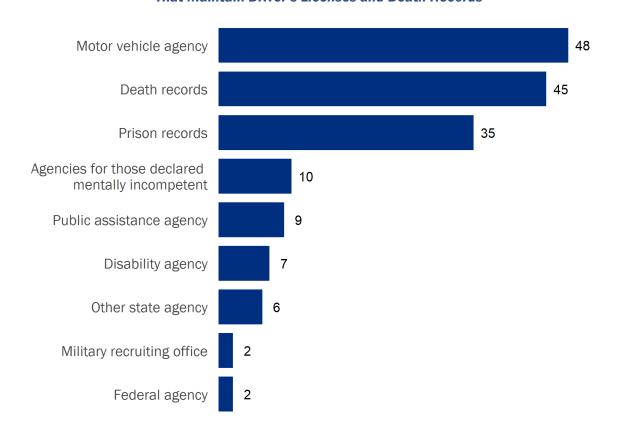
¹⁵ Ibid.

¹⁶ 52 U.S.C. § 21083.

¹⁷ Although North Dakota does not have voter registration, the state does share information electronically with other government entities and is included in these analyses.

¹⁸ Information on which entities states link their voter registration databases with and how often data transfers occur was collected in item Q5 of the Policy Survey.

Figure 2. States Most Commonly Link Voter Registration Databases With Government Agencies
That Maintain Driver's Licenses and Death Records



Source: Information on the entities that are linked to state voter registration databases was collected in Q5 of the Policy Survey. This graph shows the number of states that reported linking their voter registration databases with the specified government agency.

Automatic and Automated Voter Registration

In 2020, 42.9% of states reported that voters may be registered to vote via an automated process, whether online or in person, during a transaction with a state government agency. ¹⁹ Examples of these automated processes included those that force a choice, such as when an individual cannot proceed with a transaction without selecting whether or not they wish to be registered to vote, or processes that register a person to vote as a default, after which the individual may choose to opt out. In the event that an individual wishes to decline to register, the vast majority of states reported that they allow the declination to occur at the point of service. About one-third of states reported that they allow declinations via a mailer sent to the individual after the transaction. ²⁰

¹⁹ Information on automatic and automated voter registration was collected in item Q6 of the Policy Survey.

²⁰ Information on when an individual can decline to register to vote was collected in item Q6b of the Policy Survey.

States that have some kind of automatic or automated voter registration process linked to a state agency transaction all reported that their state motor vehicle agency participates in this program, and about one-quarter of the states indicated that public assistance agencies also participate. Less common program participants included agencies for people with disabilities and other designated state agencies. Florida also reported linking their voter registration process with tax collector offices and any office that issues state ID cards. Colorado reported linking with the state's Department of Health Care Policy and Financing, and Alaska reported linking with the state's Permanent Fund Dividend Division. Maryland noted the state agencies that participate in the automatic or automated voter registration program are designated by the Maryland General Assembly.²¹

Preregistration

In the 2020 Policy Survey, most states (87.5%) reported allowing individuals under the age of 18 to preregister to vote and become automatically registered once they turn 18 years old. Over half of states that had a preregistration program reported that they allow individuals to preregister at age 17 (51%), whereas fewer states reported allowing individuals to preregister at age 16 (38.8%). Five states (10.2%) indicated that they allow individuals to preregister at age 17 and a half.²²

Online Voter Registration

Arizona became the first state to adopt online voter registration in 2002, and by 2016, the number of states that offered online voter registration jumped to 32.23 Online voter registration generally mirrors the process of registering to vote using a paper form, but the information that is necessary to process the registration application is completed and submitted electronically, without the need of a paper form to be submitted or created.

Forty-five states (80.4%, an increase from 72.7% in 2018) reported having an online voter registration portal in which individuals can register on their own, fully online, and without having to submit a paper form. In almost all of those states, individuals can both register to vote and update their registration via the system. Two states reported that individuals can only update their registration online and cannot use the online system to submit a new registration application. A majority of states with an online voter registration system (82.2%) reported that only individuals with a valid driver's license or state-issued ID card can use it. ²⁴ Figure 3 shows the prevalence of online voter registration across states.

²¹ Information on which state agencies participate in automatic voter registration was collected in item Q6a of the Policy Survey.

²² Information on preregistration was collected in item Q10 of the Policy Survey.

²³ "EAVS Deep Dive: Registering to Vote", https://www.eac.gov/documents/2017/09/20/eavs-deep-dive-registering-to-vote/ U.S. Election Assistance Commission. (2017, September 20). *EAVS Deep Dive: Registering to Vote:* https://www.eac.gov/documents/2017/09/20/eavs-deep-dive-registering-to-vote/.

²⁴ Information on states' online voter registration policies was collected in item Q7 of the Policy Survey. Information on whether a driver's license or state-issued ID card is needed to register to vote online was collected in item Q7a of the Policy Survey.



ME NH MT ND MN WI MI NY WA MA RI OH CT ID WY SD IA IL IN PA NJ NV OR CO NE MO WV MD DE KY AR CA AZ UT KS TN VA NC NM OK LA MS AL SC TX GA GU MP AS FL PR VI Not Available State ID Required State ID Not Required

Figure 3. More Than Three-Quarters of States Offer Online Registration

Source: Information on online registration policy was collected in items Q7 and Q7a of the Policy Survey.

States were also asked to describe the technological and user experience features of their online, web-based voter registration system and how voters use it. The most common feature was the use of a motor vehicle agency signature to register to vote (84.4%), followed by mobile phone optimization (75.6%) and sending a confirmation email to each registrant (60%). Slightly less than half of all states reported having custom web page URLs to track where the voter came from to enter the online registration process (e.g., a state agency or third-party organization), providing a confirmation number to each registrant, and supporting languages other than English. About one-quarter of states also reported the use of a third-party application programming interface (API), which allows different software components to communicate with each other.²⁵

Same-Day Registration

Instead of requiring voters to register in advance of an election, some states reported allowing individuals to register to vote and to cast a ballot on the same day. Roughly half of the states reported having same-day registration (SDR) or a period of overlap between in-person early voting and the close of voter registration in which a person can register to vote and cast a ballot on the

 $^{^{25}}$ Information on the features of state online, web-based voter registration systems was collected in item Q7b of the Policy Survey.

same day (see Figure 4).26 Among states with SDR, it was most common to have SDR on Election Day (72.4%). Additionally, the majority of states indicated that they allow SDR during in-person early voting (69%).27

Twelve states reported having SDR during an overlap between the start of early voting and the close of voter registration. Some states noted that SDR only occurs in special cases, such as Alaska and Rhode Island for presidential elections. New residents who move to Nebraska after the close of voter registration can register to vote and can vote only for president in the general election; former residents who move to another state after the close of registration can also vote only for president in the general election. In North Carolina, citizens who have become eligible to vote between the "close of books" and Election Day may register on the same day as they vote.28

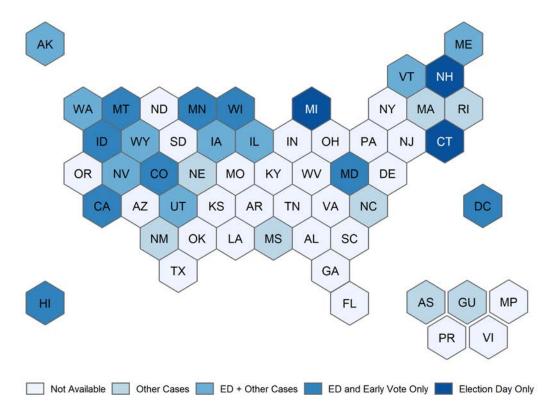


Figure 4. Half of the States Offer Some Form of Same-Day Voter Registration

Source: Information on SDR policy was collected in items Q9 and Q9a of the Policy Survey. "ED" stands for "Election Day." "Other Cases" includes instances in which states may allow for SDR during in-person early voting only, during an overlap between the start of early voting and the close of voter registration, and other specific cases.

²⁶ The timeline does not include an overlap between the mail balloting period and the close of voter registration.

²⁷ Information on state SDR policies was collected in item Q9 of the Policy Survey. Information on the circumstances of SDR was collected in item Q9a of the Policy Survey.

²⁸ North Carolina did not provide clarification on what was meant by "close of books."



State Election Office Website

The 2020 Policy Survey also asked states about which voter information search tools and other tools are available on each state's election office website. Almost all of the states indicated that voters can check their registration status and check their polling site location on the state election office website. Most states reported having tools that track ballot status, including UOCAVA ballots (87.5%), mailed ballots (82.1%), and provisional ballots (51.8%), and that check voter-specific ballot information (76.8%). Additionally, most states reported that their website allows voters to request to receive a mail or absentee ballot (67.9%).29

List Maintenance

The NVRA establishes a process for states to keep their voter registration lists accurate. Under this law, a registrant can be removed from a state's list for the following reasons:

- The registrant requests to be removed;
- The registrant dies;
- The registrant is declared mentally incapacitated, if a state law requires it;
- The registrant is convicted of a specified crime, if state law requires it; or
- The registrant changes residences outside of the jurisdiction, in which case the removal process must be conducted in accordance with procedures set forth in the NVRA.30

Under the process established by the NVRA, when a registrant appears to have moved outside of their jurisdiction due to returned or undeliverable mail, the state must follow a specific process to verify that the individual is no longer eligible to vote. An address confirmation procedure must be followed before removing the voter from the registration list.

The 2020 Policy Survey asked states whether they differentiate between active and inactive voters in their voter registration records. Active voters are individuals who require no additional processing before they can vote, whereas inactive voters will require address verification before being permitted to vote. Forty-six states, three territories, and the District of Columbia indicated that they differentiate between the two types of voters, although according to state comments, the definitions for an active and inactive voter vary widely.31 Guam, Idaho, North Dakota, New Hampshire, the U.S. Virgin Islands, and Wyoming reported not distinguishing between active and inactive voters. Some states indicated using specific terminology: Nebraska uses "in NVRA" to refer to inactive voters, Texas uses the term "suspense voters," and American Samoa uses the term "purged voter." West Virginia indicated that inactive voters are those "flagged as moving and receiv[ing] a confirmation notice." According to the

²⁹ Information on state election office website lookup tools was collected in item Q8 of the Policy Survey. ³⁰ 52 U.S.C. § 20507

³¹ Information on whether states differentiate between active and inactive voters was collected in item Q11 of the Policy Survey. Minnesota is NVRA exempt and does not define inactive voters as "voters who remain eligible to vote but require address verification under the provisions of the National Voter Registration Act," as defined in the EAVS item A1c; therefore, the EAVS item A1c does not apply to the state. Additionally, North Dakota does not have voter registration but does define inactive voters in the state voter file. Inactive voters are defined as those who have never voted before or have not voted in the last two federal elections. Although Wyoming does not keep an inactive list of eligible voters, the statewide voter registration system keeps a historical record of previously registered voters.

NVRA, voters marked as inactive are still able to vote in elections unless they have not voted for two consecutive federal elections and have not updated their information.

Almost three-quarters (70%) of states that reported differentiating between active and inactive voters also reported that they will move an active voter to the inactive voter list if mail that is sent by an election office to the voter's residence is returned as undeliverable, whereas 62% of states reported that they will move an active voter to the inactive voter list if the voter fails to return a confirmation notice. Fifteen states commented with several additional actions, including change in address, not voting in a certain number of elections, determining a person is a felon, determining a person is deceased, and the existence of duplicate voter records.32

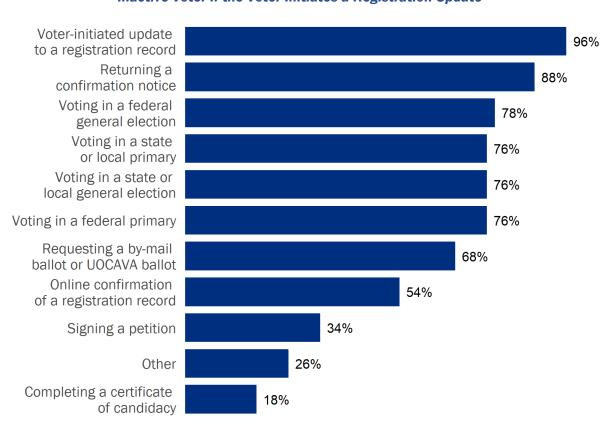


Figure 5. States That Differentiate Active and Inactive Voters Will Most Often Reactivate an Inactive Voter if the Voter Initiates a Registration Update

Source: Information on policy regarding reactivating inactive voters was collected in Q11b of the Policy Survey.

On the other hand, certain actions can result in moving an inactive voter to the active voter list. Figure 5 shows the reasons states report for reactivating inactive voters, if the state differentiates between active and inactive voters. Most states that distinguish between active and inactive voters

³² Information on moving an active voter to the inactive list was collected in item Q11a of the Policy Survey.

reported that they will move an inactive voter to the active voter list if an individual initiates an update to their registration record (96%), returns a confirmation notice (88%), votes in a federal election (78% for general and 76% for primary), votes in a state or local primary or general election (both 76% respectively), and/or requests a mail or UOCAVA ballot (68%). Furthermore, roughly half of the states reported that they will move an inactive voter to the active voter list if there is an online confirmation of the voter's registration record. Less common reasons for moving an inactive voter to the active voter list included if a voter signs a petition or completes a certificate of candidacy. Thirteen states indicated some other reason, including providing documentation (e.g., appropriate identification or a signed affidavit) at a polling place, submitting a new registration, and receiving an address change through the state motor vehicle agency.33

Thirty-five states indicated that only local officials are responsible for modifying or removing voter registration records, and 12 states reported that modifying voter registration records is done by both state and local officials.³⁴ Alaska, American Samoa, Delaware, the District of Columbia, Guam, South Carolina, and the U.S. Virgin Islands all indicated that they only modify records at the state level.35 Table 2 illustrates data sources used to identify potentially ineligible voters. Across states, the most common data sources were the state vital statistics office, reports from other states indicating a former resident registered to vote, a voter request for removal, entities that maintain prison records, and any mail (not including ballots) sent from an election office that was returned as undeliverable.36

Most states reported sending confirmation notices to voters to help identify individuals who may be ineligible to vote, but the reasons for sending confirmation notices differ by state. Of the states that send confirmation notices, 41 (85.4%) reported sending confirmation notices pursuant to Section 8 (d) (1) (B) and Section 8 (d) (2) of the NVRA, 31 states (64.6%) reported sending confirmation notices pursuant to a state statute, and seven states (14.6%) reported sending confirmation notices pursuant to a formal administrative rule or guidance. Eight states reported that they do not send confirmation notices.37

States most commonly reported sending confirmation notices to voters whose mail from an election office was returned as undeliverable (81.3%), to voters whose addresses may have changed (72.9%), to voters who have not voted in two consecutive general elections (41.7%), to voters who have been convicted of a disqualifying felony (35.4%), and to voters who requested removal from the voter registration list (29.2%). Less than one-third of states reported sending confirmation notices to voters who have been declared mentally incompetent, voters who have obtained a driver's license in a new state, and voters who have not made contact with their state for a specified length of time.

³³ Information on moving an inactive voter to the active list was collected in item Q11b of the Policy Survey.

³⁴ The District of Columbia and American Samoa noted that they do not have local election officials; Puerto Rico noted that state and local officials have the same roles and responsibilities.

³⁵ Information on who is responsible for modifying or removing voter registration records was collected in item Q12 of the Policy Survey. Nevada did not provide a response, and North Dakota indicated that this question does not apply because the state does not have voter registration.

³⁶ Information on the data sources used to identify potentially ineligible voters was collected in item Q14 of the Policy

³⁷ Information on whether and how states send confirmation notices to help identify ineligible voters was collected in item Q13 of the Policy Survey.

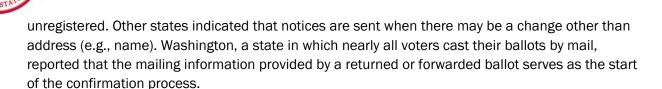
Table 2. States Most Often Use State Vital Statistics Office and Reports From Other States to Identify Ineligible Voters

| Source of Data on Potentially Ineligible Voters | Percentage of States That Report Using
Data From the Data Source |
|--|---|
| State vital statistics office death records | 92.9% |
| Reports/notices from other states that a former resident has registered to vote | 89.3% |
| Requests from voters for removal | 85.7% |
| Entities that maintain felony/prison records | 82.1% |
| Other mail from the election office (not ballots) that was returned as undeliverable | 69.6% |
| Newspaper death notices/obituaries | 66.1% |
| National Change of Address (NCOA) reports | 58.9% |
| Data from an interstate data-sharing compact | 57.1% |
| Social Security Administration death records | 57.1% |
| Mailed ballots returned as undeliverable | 55.4% |
| Motor vehicle agencies | 46.4% |
| Entities that maintain records of individuals declared mentally incompetent | 42.9% |
| Applications for mailed ballots | 26.8% |
| Jury questionnaires | 26.8% |
| Returned jury summons | 16.1% |
| State public assistance agencies | 16.1% |
| State agencies that serve persons with disabilities | 12.5% |
| Canvassing | 8.9% |
| Other | 8.9% |
| State agencies that are not specified in the NVRA | 7.1% |
| State tax filings | 1.8% |

Source: Information on the data sources used to identify ineligible voters was collected in Q14 of the Policy Survey. This question also collected information on whether states use commercial data sources, but no state selected that option.

Five states (10.4%) reported that all registered voters routinely receive a non-forwardable notice during a specified increment of time; this time frame ranges from one to four years. Just under 30% of states reported sending confirmation notices for some other reason.³⁸ For example, some states or certain jurisdictions within states indicated that they routinely send confirmation notices as part of their list maintenance procedures. States that are members of the Electronic Information Registration Center (ERIC) send confirmation notices to individuals who are eligible to vote but are

³⁸ Information on which voters states send confirmation notices to was collected in item Q13a of the Policy Survey.



Criminal Convictions and Voting

The NVRA allows states to remove voters from their registration lists if the voter receives a disqualifying criminal conviction or is incarcerated. The Policy Survey asks three questions about removing voters from registration lists due to disqualifying felony convictions and about the restoration of voting rights:

- Which populations have their voting eligibility suspended due to a criminal conviction?
- For how long does a person with a felony conviction lose their right to vote?
- How can a person with a felony conviction become an eligible voter again?

The District of Columbia, Guam, Maine, Puerto Rico, and Vermont reported that they do not limit a person's right to vote based on a criminal conviction. Conversely, 42 states reported that the conviction of any felony will limit a person's right to vote. About one-fifth of states reported that they limit the voting rights of individuals convicted only of certain felonies, and nine states reported that they limit the voting rights of individuals who are convicted of other crimes that are not felonies (e.g., election-related crimes).39

There is variation in the disqualification time periods and in the processes for restoring voting rights. Of the states that have some form of felon disenfranchisement, most reported revoking the right to vote during the period of incarceration (90.4%) and/or any period of probation and parole (61.5%). Some states also reported revoking voting rights during an additional length of time (19.2%), such as a statutorily mandated waiting period and/or until the payment of outstanding fines, restitution, or penalties (25%).40

The Policy Survey also asks states to indicate how disenfranchised individuals go about restoring their eligibility to vote.⁴¹ Minnesota, Missouri, and the U.S. Virgin Islands reported automatically restoring the previous voter registration of persons with felony convictions once the period of disenfranchisement has passed, requiring no further action by the voter.⁴² Of the 49 states that indicated requiring some type of action, 79.6% reported that a person is immediately eligible to vote and must reregister through the same process as the general public. Some states reported having other conditions, such as presenting documentation during the registration process that shows that the person has completed the voter registration requirements (12.2%) and having voting rights

³⁹ Information on state policies for suspending or revoking voting rights due to criminal convictions was collected in item Q37 of the Policy Survey. This item does not distinguish a felony conviction from the subsequent period of incarceration. ⁴⁰ Information on the length of time a disqualifying felony conviction will restrict voting rights was collected in item Q37a of the Policy Survey.

⁴¹ Due to North Dakota not having voter registration, a person who is no longer incarcerated is automatically eligible to vote without any further action needed. In Delaware, felony convictions result in permanent disqualification from voting. ⁴² Guam law prohibits incarcerated persons from voting. However, once the period of incarceration has ended, voting rights are restored. A non-incarcerated felon is able to vote, and the individual is not removed from the voter registration roll.

restored through a formal administrative process (16.3%). Thirteen states provided survey comments that further explained their policies.⁴³ In Louisiana, for example, if a person is under an order of imprisonment for a felony conviction but "has not been incarcerated pursuant to the order within the last five years," then that person is eligible to register. Florida and lowa reported that the type of felony conviction determines the restoration of voting rights. Arizona indicated that for a first felony conviction, civil rights are automatically restored upon the completion of the sentence, parole, probation period, and payment of restitution; otherwise, voting rights must be restored through a formal process.

Voting by Mail

All states and territories and the District of Columbia offer their citizens the opportunity to cast their ballots by mail in federal general elections.⁴⁴ Some states use the term "absentee voting" to refer to mail voting. The 2020 Policy Survey demonstrates that there were wide variations among the states in which voters are eligible to vote by mail, what documentation voters must provide in order to receive a mailed ballot, how mailed ballots may be returned to election officials, and the deadlines for mailed ballots to be postmarked and received by election offices for the 2020 general election. The COVID-19 restrictions pushed many states to expand their mail voting policies, and states reported more than double the number of mailed ballots cast in the 2020 general election compared to the 2016 general election. 45

In 2020, 39 states reported that they do not require voters to provide a reason for why they are requesting a mailed ballot and for why they cannot vote in person on Election Day; seven of those states reported requiring an excuse in 2018 but not in 2020. Conversely, one-third of states reported requiring voters to provide an excuse, a decrease from 40% in the 2018 Policy Survey responses.⁴⁶ Twenty-six states reported that voters can request to be on a permanent absentee list from which they will automatically receive ballots for all future elections. Either any registrant can request to be a permanent absentee voter (21.4% of states) or only individuals who meet specific criteria can request to be a permanent absentee voter (25% of states).⁴⁷

States have special criteria for individuals who make the request to be granted permanent absentee status.48 The most common requirement was that the requester must have a disability (78.6% of states that have permanent absentee voting); Delaware, 49 Massachusetts, New York, Tennessee, and Wisconsin reported that they will also grant permanent absentee status to those who are infirm,

⁴³ Information on state policies for restoring voting rights to persons with disqualifying felony convictions was collected in item Q37b of the Policy Survey.

⁴⁴ Some states use the term "in-person absentee voting" to refer to the process by which a voter visits an election office to request a mailed ballot, completes the ballot, and returns the ballot in one trip. However, EAVS considers this to be a form of in-person early voting and asks states to report their data as such.

⁴⁵ For more information, see Chapter 1 of this report.

⁴⁶ Information on whether states require an excuse for mail voting was collected in item Q17 of the Policy Survey.

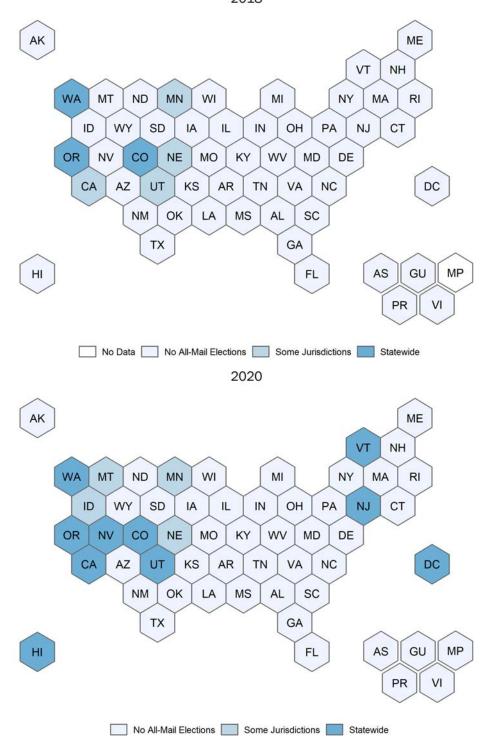
⁴⁷ Information on whether states have permanent absentee voting was collected in item Q19 of the Policy Survey.

⁴⁸ Information on who can become a permanent absentee voter was collected in item Q19a of the Policy Survey.

⁴⁹ Delaware also includes federal or state public service workers and their spouses or dependents, members of the uniformed services, and voters who are temporary residents.

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Figure 6. Number of States Offering Entirely Vote-By-Mail Elections Doubled From 2018 to 2020 2018



Source: Information on the policy of all-mail elections was collected in items Q9 and Q9a of the 2018 Policy Survey and in items Q18 and Q18a of the 2020 Policy Survey.

have a permanent illness, or can provide a note from a medical professional. West Virginia indicated allowing address confidentiality program participants to be permanent absentee voters, and Louisiana indicated requiring individuals to be over a specified age. Despite conducting all-mail elections, Oregon uses the term "absentee voter" for individuals who may be away from their residences when ballots are transmitted.

With 2020's overall shift toward mail voting, the number of states that conducted all-mail elections, in which all registered voters or all active registered voters are automatically sent a mailed ballot, doubled since the 2018 Policy Survey. Figure 6 shows the 14 states that have some type of vote-bymail system. Four states reported having some vote-by-mail jurisdictions. Ten states reported having statewide vote-by-mail systems, a significant increase from three states in 2018.50 The Policy Survey did not record whether the states that altered their all-mail voting policy between the 2018 and the 2020 general elections did so temporarily or permanently or whether the change was made in direct response to the COVID-19 pandemic. It should be noted that although these states mailed registered voters a ballot, most states also provided in-person voting options during early voting and/or on Election Day.

The Policy Survey also collected data on the circumstances under which voters could receive ballots through electronic means. This question applied specifically to non-military voters residing in the United States, as voters who are members of the uniformed services or who are overseas citizens who wish to receive ballots electronically are covered under UOCAVA. Twenty-nine states reported that they allow non-military voters residing in the United States to receive their ballots through an electronic format, such as email, fax, through an online voter registration portal, or through a mobile phone app. Alaska, Guam, Kentucky, Maryland, Oregon, and Washington reported that voters may receive a ballot electronically for any circumstance. 51 Other states reported having special circumstances.⁵² For example, 19 states indicated allowing voters with disabilities to receive ballots electronically, including seven states where voters must have specific disabilities and 12 states where voters may have any disability status. 53 Massachusetts specified that the voter must have a disability that prevents them from marking a paper ballot independently and privately, and Maine noted that the voter must self-identify as having a print disability.

Hawaii, Nevada, and the U.S. Virgin Islands reported that they allow electronic ballot transmission when a replacement ballot is need, and seven states reported that they allow electronic ballot transmission during emergency situations that hinder in-person voting, such as a natural disaster.⁵⁴

⁵⁰ Information on which states have an all-vote-by-mail system was collected in item Q18 of the Policy Survey. Information on whether the state's all-vote-by-mail system is used only in certain jurisdictions or is statewide was collected in item 018a of the Policy Survey. California and Utah reported conducting all-mail elections statewide in 2020. In 2018, both states reported that only certain jurisdictions had all-mail elections.

⁵¹ California did not report that voters may receive a ballot electronically under any circumstance but commented that any voter may cast a ballot using a certified, remote-accessible vote-by-mail system regardless of disability status or whether they are an overseas or uniformed services voter.

⁵² Information on the circumstances under which voters may receive their ballots electronically was collected in item Q23 of the Policy Survey.

⁵³ The U.S. Virgin Islands chose both of these response options. Delaware noted that disability status includes those who are ill or temporarily physically disabled. In Pennsylvania, voters may have any disability as defined by the Americans with Disabilities Act (ADA).

⁵⁴ Hawaii noted that a replacement ballot must be requested within five days of an election.

New York and Mississippi extended their requirements to emergency responders, and in Mississippi, according to the state UOCAVA statute, emergency responders qualify for an electronic ballot if they are deployed outside of their county of residence during an emergency.

Mailed Ballot Tracking and Deadlines

The 2020 Policy Survey asked states to report on their deadlines for mailed ballots from non-military voters residing in the United States. Ballot deadlines for voters covered by UOCAVA were reported in separate questions, as UOCAVA ballot deadlines are typically different from those for other mailed ballots. The postmark deadline is Election Day for just under half (46.4%) of states; however, Alabama, Iowa, North Dakota, Ohio, and Utah reported having a postmark deadline one day before Election Day. The States, mailed ballots must be received by Election Day, and in 42.9% of states, mailed ballots must be received by a specified number of days after Election Day, with responses ranging from one to 20 days after Election Day. Louisiana reported that mailed ballots must be received by one day before Election Day.

States also reported how long mailed ballots that arrive past the above deadlines are tracked for reporting in Section C of the EAVS.⁵⁸ These mailed ballots are tracked indefinitely in 42.9% of states, or until canvassing is complete in 44.6% of states. Five states have a specific length of time for mailed ballot tracking; four of these states reported a date between November 17, 2020, and February 1, 2021.⁵⁹

States vary in what satisfies postmark requirements for mailed ballots.⁶⁰ In states that require postmarks, the most commonly reported required feature was a physical postmark (76.7%),⁶¹ followed by hand cancellation or a private express delivery service date stamp (both 44.2% respectively) and postal processing markings (41.9%). Less commonly required features were intelligent barcodes (23.3%) and a date on a voter affidavit (14%).⁶² Some states specified other ways of satisfying postmark requirements.⁶³ Additionally, Ohio indicated accepting an ID tag date, and Kansas indicated accepting any other indicia from the U.S. Postal Service. In California, if the postmark is missing or damaged and no additional information is provided by the U.S. Postal Service or other mail delivery service, the ballot identification envelope will be date stamped upon receipt by an election official on or before Election Day. The District of Columbia Board of Elections reported

⁵⁵ Twenty-two states indicated that the item asking for a postmark deadline for voters does not apply to them.

⁵⁶ States that reported having a ballot receipt deadline after Election Day require ballots to be postmarked by Election Day.

⁵⁷ Information on deadlines for returning mailed ballots was collected in item Q20 of the Policy Survey.

 $^{^{\}rm 58}$ Two states did not provide a response to this item.

⁵⁹ Information on the length of time that ballots are tracked for reporting in EAVS Section C was collected in item Q21 of the Policy Survey. Maine reported tracking until November 3, 2022.

⁶⁰ Thirteen states reported not requiring a postmark for mailed ballots; six states did not provide a response to this item. South Dakota explained that they do not honor postmarks for ballots; Minnesota also commented that they do not use postmarks.

⁶¹ Florida specified that physical postmarks are only required for 10-day overseas ballots. See https://dos.myflorida.com/elections/for-voters/voting/military-and-overseas-citizens-voting/ for more detail on these ballots.

⁶² In Washington, the postmark requirement may be met by a date on a voter affidavit for UOCAVA ballots that lack a postmark.

⁶³ Information on mailed ballot postmark requirements was collected in item Q22 of the Policy Survey.

that they make ballot drop boxes available to voters through Election Day, which satisfies postmark requirements.

UOCAVA Voting

UOCAVA requires that all states offer uniformed services members, their eligible family members, and overseas citizens the ability to vote absentee in all federal elections. UOCAVA-protected citizens have the option of using the FPCA, which serves as both a registration and ballot request application and is accepted in all U.S. states and territories. All states accept FPCAs submitted by postal mail. In addition, the Military and Overseas Voter Empowerment (MOVE) Act amended UOCAVA, requiring that all states offer an electronic means for FPCA submission. UOCAVA voters may submit their FPCA by fax, online (either by email or through the state's online voter registration portal), or by other modes, as allowed by state law.

All states are required to accept FPCAs by postal mail. In 2020, the most common additional methods for accepting FPCAs were email and fax; both modes were allowed in over 90% of states. Twenty-four states (42.9%, an increase from 36.4% in 2018) reported accepting FPCAs submitted through the state's online voter registration portal.⁶⁴ Some states reported that FPCAs can be submitted by some other method; South Carolina and Colorado indicated allowing in-person returns, and Louisiana indicated allowing returns by commercial carrier. Oklahoma reported allowing UOCAVA voters to email their ballot materials to FVAP's electronic transmission service, after which the email is converted to fax and sent to the appropriate county election board. Maine specified allowing UOCAVA voters to request an absentee ballot through the state's online absentee ballot request service. A voter registration submitted via FPCA is considered permanent in 53.6% of states (a decrease from 72.7% in 2018) and temporary in 46.4% of states (an increase from 25.5% in 2018).65

States differ in the length of time an FPCA absentee ballot request remains valid; that is, the period of time or number of elections for which a voter can retain their UOCAVA status and have an absentee ballot transmitted to them. 66 Almost half (46.4%) of states reported that the length of time the FPCA will serve as a ballot request mechanism is a specified number of calendar years; in most of those states, the length of time is one year, although in North Dakota, Utah, and Virginia, it is two years. In other states, the length of time is measured by the number of general election cycles (12.5%); most of those states specified a length of one general election cycle, although Minnesota and Oklahoma specified two general election cycles. Some states (8.9%) reported that they will use the FPCA as a ballot request mechanism until the voter moves from their residence.⁶⁷

⁶⁴ Maryland reported allowing the three listed options if the voter is already registered and is using the FPCA to request an absentee ballot. If the FPCA is used to register, it must be submitted by mail or through Maryland's online voter registration portal. In Wisconsin, non-military UOCAVA voters cannot submit registrations, including the FPCA, by email or fax. 65 Information on the methods by which UOCAVA voters can submit an FPCA, other than by postal mail, was collected in item Q26 of the Policy Survey. Information on whether a voter registration submitted through an FPCA is permanent or temporary was collected in item Q27 of the Policy Survey.

⁶⁶ Information on how long UOCAVA voters remain eligible to receive absentee ballots was collected in item Q28 of the Policy Survey.

⁶⁷ This information is provided by the U.S. Postal Service or the voter.

About one-third (32.1%) of states provided a description of another length of time that was unlisted in the Policy Survey question, with some states making distinctions between general and primary elections and others reporting a time linked with either a specific election timeline or a length of time tied to the submission of the FPCA. Nevada reported that voters retain their status until the end of the following calendar year, and Maine reported that the status remains eligible for 18 months. American Samoa, Oregon, and Washington specified a timeline based on changes to a voter's registration record. California, New Jersey, and North Carolina reported that eligibility remains permanent. Voters also continue to remain eligible in Pennsylvania, as long as they are registered to vote and they reapply for an absentee ballot each election cycle. The Northern Mariana Islands also

reported that they require all registered voters to request their absentee ballots each election year.

UOCAVA Voting Deadlines

In addition to reporting deadlines for mailed ballots from non-UOCAVA voters, the 2020 Policy Survey asked states to report deadlines for ballots submitted by both uniformed services voters residing in the United States and overseas UOCAVA voters. States provided information on both postmark deadlines and ballot receipt deadlines, as applicable. In 2020, the postmark deadline was Election Day in about half of the states (48.2%) for domestic uniformed services voters; however, in Iowa, North Dakota, and Pennsylvania, the postmark deadline was one day before Election Day. ⁶⁸ Just under half of the states (41.1%) reported that ballots had to have been received by Election Day, and 58.9% of the states indicated that the ballots must have been received by a specified number of days after Election Day, with responses ranging from two to 20 days after Election Day. ⁶⁹

For overseas UOCAVA voters, Election Day was the postmark deadline in half of the states. The three states mentioned above also reported having a postmark deadline one day before Election Day for these voters. ⁷⁰ Ballots in 39.3% of the states were required to be received by Election Day; in the remaining 60.7% of states ballots could arrive after Election Day and still remain eligible to be counted, with the deadlines ranging from two to 20 days after Election Day. The majority of states (83.7%) reported that they have the same postmark requirements for UOCAVA ballots and mailed ballots from non-UOCAVA voters. ⁷¹ Eight states indicated that the requirements are different. ⁷²

For more information about how UOCAVA voters participated in the 2020 general election, including ballots transmitted, returned, counted, and rejected, and the use of the Federal Write-In Absentee Ballot (FWAB), see Chapter 4 of this report.

⁶⁸ Twenty-three states indicated that the item asking for a postmark deadline for domestic military UOCAVA voters does not apply to them.

⁶⁹ Information on deadlines for ballots submitted by uniformed services voters residing in the United States was collected in item Q29 of the Policy Survey.

 $^{^{70}}$ Twenty-two states indicated that the item asking for a postmark deadline for overseas UOCAVA voters does not apply to them.

⁷¹ Seven states did not provide a response to this item. West Virginia does not require postmarks.

⁷² Information on deadlines for ballots submitted by overseas UOCAVA voters was collected in item Q30 in the Policy Survey. Information on the differences between postmark requirements for UOCAVA and non-UOCAVA voters was collected in item Q31 in the Policy Survey.

In-Person Voting

The traditional image of voting in America involves voters physically traveling to a polling location and casting their ballots in person. In some cases, however, an individual may vote in person without having to go to a polling place on Election Day.

In-Person Voting Before Election Day

Most states reported that they allow individuals to cast their ballots in person before Election Day (not including the hand delivery of mailed ballots). 73 This type of voting generally falls into two categories:

- A voter may go to a polling place before Election Day, receive a ballot, vote their ballot while at the polling place, and place their completed ballot into a ballot box or tabulator.
- A voter may go to an election office to pick up a ballot over the counter. In some states, the voter may be able to take their ballot home with them, whereas in other states, the ballot must be completed in the office. The ballot is then sealed in an envelope and tabulated along with ballots that are returned to the office by mail according to local procedures.

Different states use the terms "in-person early voting" and "in-person absentee voting" to describe both of the voting methods above, although other terms exist as well. Some states offer both types of voting activities.

Table 3. Examples of Unique Descriptions of In-Person Early Voting

| State | Description of In-Person Early Voting |
|----------------|--|
| American Samoa | Local absentee voting |
| Connecticut | Can request an absentee ballot, vote on the spot, and not return it by mail |
| Georgia | Advance voting |
| Hawaii | In-person voting |
| Kansas | In-person advance voting |
| North Carolina | One-stop and early voting |
| Oregon | Some populations can go to county elections office and receive a ballot, which they can then use to vote |
| Pennsylvania | Mailed ballots can be completed over the counter at an election office |
| Puerto Rico | Voting in their houses via USPS mail |
| Washington | In-person voting |

Source: Information on the descriptions of in-person early voting was collected in Q24 of the Policy Survey.

⁷³ New Jersey does not have in-person voting before Election Day.

Twenty-nine states (51.8%) reported having in-person early voting, and 27 states (48.2%) reported having in-person absentee voting. ⁷⁴ Ten states specified unique descriptions for early voting, as seen in Table 3. Twelve states (21.4%) reported requiring an excuse to vote in person before Election Day, a decrease from the 15 states that reported this policy in 2018. ⁷⁵

Vote Centers

The EAC describes vote centers as centralized, consolidated polling sites that serve as alternatives to traditional polling places. The Jurisdictions that use vote centers allow voters to cast their Election Day ballots at any vote center in their jurisdiction, rather than needing to vote at a specifically assigned polling place. The 2020 Policy Survey asked whether any of the state's jurisdictions allow voters to cast ballots at any polling place or vote center in their jurisdiction and to describe how vote centers operate.

Over one-third of states (37.5%) reported having vote centers or allowing voters to cast ballots at any polling place in the voter's jurisdiction. Eight of those states (38.1%) indicated that they require the use of vote centers statewide. Another eight reported having vote centers, but jurisdictions have the option not to implement them. Alabama, Arkansas, Missouri, Tennessee, and Texas (comprising 23.8% of the states) reported having vote centers, but only in jurisdictions that meet specific requirements.⁷⁷

Voter Identification

Under HAVA, Congress established minimum identification standards that an individual must meet in order to register to vote:

- Individuals who register to vote at their state's motor vehicle agency, another government
 agency, or using an online registration portal are typically authenticated by presenting
 appropriate documentation to the government agency and by the state matching the person's
 driver's license number or last four digits of their social security number to an existing state
 record.
- Individuals who register by mail and who have not voted before for federal office in their state
 of residence are required to present, at some point before voting, either a current and valid
 photo identification or a copy of a utility bill, bank statement, government check, paycheck, or
 other government document that shows the person's name and address.

⁷⁴ Information on the terminology used to describe the process of voting in person before Election Day was collected in item Q24 of the Policy Survey. States were able to select multiple response options.

 $^{^{75}}$ Information on whether an excuse is required to vote in person before Election Day was collected in item Q24a of the Policy Survey.

⁷⁶ U.S. Election Assistance Commission. (2017, November 11). EAVS Deep Dive: Poll Workers and Polling Places: U.S. Election Assistance Commission. https://www.eac.gov/documents/2017/11/15/eavs-deep-dive-poll-workers-and-polling-places.

⁷⁷ Information on whether any jurisdictions within a state will allow voters to cast ballots at any polling location or vote center in their jurisdiction was collected in item Q25 of the Policy Survey. Information on how vote centers operate was collected in item Q25a of the Policy Survey.

• Individuals who are entitled to vote by absentee ballot under UOCAVA or entitled to vote other than in person under the Voting Accessibility for the Elderly and Handicapped Act or other federal law are exempt from HAVA's identification requirements.

The definition of voter identification varies by state. In some states it can mean a government-issued document with a photograph, whereas in other states, it can mean a voter-executed affidavit affirming identity. For in-person, non-first-time voting whether before or on Election Day, most states (53.6%) reported that they require voters to present a government-issued photo identification as proof of their identity. 78 Twenty states (35.7%) reported allowing voters to present a governmentissued, non-photo identification, and 24 states (42.9%) reported allowing non-government-issued, non-photo identification. Some states reported allowing a proof of residence (32.1%), a signed affidavit affirming identity with no further action required (37.5%) or with the requirement of presenting proper identification before a provisional ballot is counted (23.2%), or in some cases, voters may have a person registered to vote within that jurisdiction vouch for their identity (12.5%). Five states (8.9%) reported that they do not have identification requirements for in-person voting.⁷⁹

Provisional Voting

The EAC has provided best practices on the development of provisional voting procedures and notice to voters to ensure provisional voting procedures are fair, transparent, effective, and consistently applied to all voters in the state. The EAC states in its Best Practices on Provisional Voting report:

Section 302 of the Help America Vote Act (HAVA) creates the right for potential voters to cast provisional ballots in the event their names do not appear on the registration list or the voters' eligibility is challenged by an election official. The issuance of a provisional ballot is best described as a safety net or fail safe for the voter, in that:

- It maintains the person's intent to vote and selections until election officials determine that the person does or does not have the right to cast a ballot in the election.
- It allows the determination of the voter's eligibility to be made at a time when more perfect or complete information is available either from the voter or from the election jurisdiction.80

HAVA specifies minimum requirements for notice to voters and provides opportunities for voters to resolve eligibility issues. Within the federal framework, states have different methods of complying with the provisional notification to voter requirements, using different technology and different timetables. State and local election officials ultimately apply their policies, procedures, and state legal requirements when making a determination as to whether or not to count a provisional ballot. For example, a state that has a stricter standard for the identification of voters than is contained in HAVA would apply its standard to determine if a given provisional ballot meets the state's ID standard.

⁷⁸ Two states did not provide a response to the item asking about identification requirements.

⁷⁹ Information on establishing a voter's identity during in-person voting was collected in item Q36 of the Policy Survey.

⁸⁰ U.S. Election Assistance Commission. (2017, February 27). Best Practices on Provisional Voting. https://www.eac.gov/documents/2017/02/27/eac-best-practices-on-provisional-voting/.



Table 4. States That Use Provisional Ballots Most Often Do So When an Election Official Asserts
That an Individual Is Ineligible to Vote

| Reason for Offering Voters a Provisional Ballot | Percentage of States That Us <i>e</i>
Provisional Voting and Offer Provisional
Ballots for the Listed Reason |
|--|--|
| An election official asserts that an individual is not eligible to vote | 92% |
| A voter's name does not appear on the list of eligible voters | 86% |
| A voter does not have proper identification | 80% |
| A voter is not a resident of the precinct in which they are attempting to vote | 80% |
| Another person (not an election official) challenges a voter's qualifications, and the poll worker is not able to resolve the challenge | 56% |
| A voter was issued a mailed ballot, but chooses to vote in person on Election Day and does not have the mailed ballot to surrender to poll workers | 54% |
| A voter has changed their name or address but has not updated their voter registration | 52% |
| A federal or state judge extends polling place hours in a federal election | 48% |
| Other | 26% |

Source: Information on the circumstances for the use of provisional ballots was collected in Q32a of the Policy Survey.

Fifty states reported using provisional ballots for different reasons. The most common reason was an election official has asserted an individual is not eligible to vote.⁸¹ Table 4 provides a full list of reasons the states use provisional ballots.

If a voter casts a provisional ballot as a result of not having acceptable identification during voting, the deadline by which they must present appropriate identification to election officials to verify their identity and to have their provisional ballot accepted was most commonly reported as a specified number of days after Election Day. The 11 states that have this policy reported a range of one to nine days after Election Day. However, in Massachusetts and Wisconsin, the deadline for adjudicating provisional ballots for the 2020 general election was a specified date: November 6, 2020.82

 ⁸¹ Information on whether states use provisional ballots was collected in item Q32 of the Policy Survey. Information on the circumstances under which a state will use provisional ballots was collected in item Q32a of the Policy Survey.
 82 Information on deadlines for presenting appropriate identification to have a provisional ballot counted was collected in item Q36a of the Policy Survey.

After the election, many states have a limited amount of time in which to adjudicate provisional ballots and decide whether the ballots will be counted (either in full or in part) or rejected.83 Twentysix percent of the states that use provisional ballots reported that the deadline is by a specified date; for the November 3, 2020, general election, these dates ranged from November 3, 2020, to November 24, 2020. Most states (70%) indicated that this deadline is specified as a number of days after Election Day, with responses ranging between one day and 28 days.84

Eight percent of the states that use provisional ballots reported provisional ballots cast in the wrong precinct would be fully counted, and 40% of the states reported that they would be partially counted.85 Slightly more than half of the states (52%) reported that these ballots would be rejected.86

Election Technology

Voting system testing and certification are required in the majority of states (83.9%) by statute, and a few states (10.7%) indicated that they require testing and certification through a formal administrative rule or guidance. American Samoa, Mississippi, and Oklahoma reported that voting system testing and certification before the system's approval for purchase is not required. The 2020 Policy Survey then asked states to describe their policies regarding the role of the EAC and federal testing and certification. States most commonly reported requiring testing by an EAC-accredited Voting System Test Laboratory (VSTL; 45.3%), certification to the EAC-adopted Voluntary Voting System Guidelines (VVSG; 43.4%), and/or state and federal certification (41.5%; see Figure 7).87

Some states provided clarifying comments: The District of Columbia reported that it requires that voting systems must meet or exceed HAVA standards and/or be federally certified. Similarly, Oregon reported that the system must be EAC certified or examined by a federally accredited VSTL. New York indicated that a secondary source code review is performed by an independent security expert.

Alaska reported that it may approve a voting system upon consideration by an election administrator, 88 and Guam indicated having an independent entity that conducts testing to determine the integrity of voting machines as deemed appropriate by election commissioners. Wisconsin reported having the statutory authority to certify systems without federal certification, but in practice, state testing typically does not start until federal certification is acquired.

Although there is no testing or certification of electronic poll books, sometimes called e-poll books, on the federal level, many states have their own process for testing or certifying these machines

⁸³ One state did not provide a response to this item. In Maine, provisional ballots are automatically counted unless a recount results in a contested election and the number of challenged ballots can affect the outcome.

⁸⁴ Information on the deadlines for adjudicating provisional ballots is collected in Policy Survey item Q32b.

⁸⁵ For example, a state might only count items on the ballot for which the voter would have been eligible had they voted in the correct precinct.

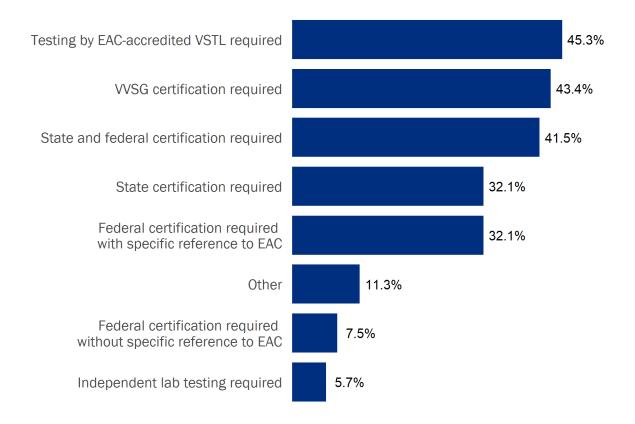
⁸⁶ Information on what happens to provisional ballots cast in the wrong precinct is collected in Policy Survey item Q32c.

⁸⁷ Information on voting system testing and certification policies was collected in items Q15 and Q15a of the Policy Survey.

⁸⁸ AK Stat § 15.20.910 (2016)

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Figure 7. States That Require Voting System Testing Most Commonly Require Testing From an EAC-Accredited VSTL



Source: Information on voting equipment testing and certification policy was collected in Q15a of the Policy Survey.

before approving them for purchase. Of the 40 states (71.4%) that reported using e-poll books either statewide or only in certain jurisdictions, 42.5% indicated that they do not require testing or certification before the e-poll books' approval for purchase.⁸⁹ In about one-third of the states that reported having e-poll book requirements, the testing and certification are required by statute, whereas in one-fourth of the states, testing and certification are required by formal administrative rule or guidance.⁹⁰

The 2020 Policy Survey asked whether any jurisdictions in the state use e-poll books and whether testing and certification are required before e-poll books' "approval for purchase." The Policy Survey and EAVS did not collect data on other procedures a jurisdiction may require before authorizing the

⁸⁹ Colorado, Hawaii, and Massachusetts reported in the Policy Survey that they use e-poll books but did not report data on the usage of e-poll books in item F3 of the EAVS. Puerto Rico reported data on the usage of e-poll books in the EAVS but reported not using e-poll books in the Policy Survey.

⁹⁰ Information on poll books was collected in items Q16 and Q16a of the Policy Survey. Illinois did not provide a response to this item.

use of e-poll books, including but not limited to pre-election testing, secure physical storage, contingency planning, chain-of-custody practices, and poll worker training.

Recounts, Audits, and Election Certification

Before local election officials certify the results of an election, they take steps to verify that all established election procedures were followed and that all voting equipment functioned properly. Many states require additional post-election verification that the counting process was accurate. These additional verifications may take the form of a partial recount (in which ballots in randomly selected precincts are counted a second time to ensure that the initial tabulation of votes was accurate) or a more detailed audit (in which the entire voting process is reviewed and key steps are verified).

Recounts

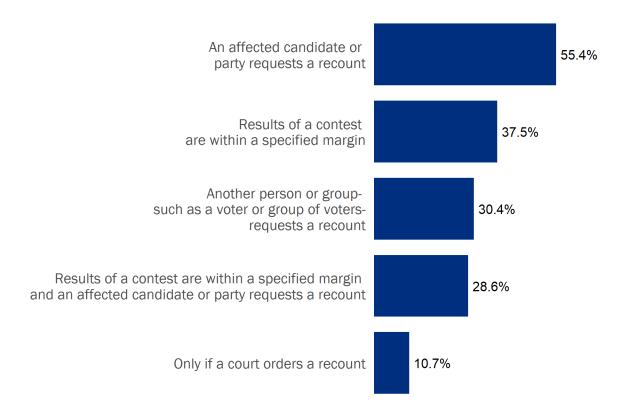
An election recount is a repeat tabulation of all votes cast in an election, and it is used to determine the accuracy of an initial count. The EAVS Policy Survey did not ask if the reasons for a recount were automatic, mandatory, or triggered. The information collected in these questions quantifies what is generally allowed by law in a specified state. Figure 8 displays the reasons why states may have conducted an election recount for the 2020 general election. States reported that the most common reason a recount may be conducted is at the request of an affected candidate or party (55.4%). Less common reasons were if the results of a contest are within a specified margin (37.5%), another person or group requests a recount (30.4%),91 or if the results of a contest are within a specified margin and it is requested by an affected candidate or party (28.6%). Arizona, Mississippi, New Jersey, New York, the Northern Mariana Islands, and Tennessee reported that recounts are only authorized if a court orders it.92

⁹¹ Based on state comments, this reason can include voters or groups of voters, a county board of canvassers, a county election commission, a political party chair, or a person opposing a state or local measure. Washington specified that a group of five or more voters may request a recount for an issue, and Nevada specified that any person or group could request a recount of a ballot measure by November 18, 2020.

⁹² Information on state policies regarding election recounts was collected in item Q34 of the Policy Survey.

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Figure 8. Post-Election Recounts Most Often May Be Conducted at the Request of an Affected Candidate or Party



Source: Information on post-election recount policy was collected in Q34 of the Policy Survey.

Post-Election Tabulation Audits

A post-election tabulation audit verifies that the voting equipment used to count ballots during an election properly counts a sample of voted ballots after an election. The majority of states (78.6%) indicated requiring some form of post-election tabulation audit, with some variation. 93 States most commonly indicated that a post-election audit is conducted as a statutory requirement, but Missouri and Nebraska stated that they conduct an audit as required by a formal administrative rule or guidance. Tennessee indicated only requiring a post-election tabulation audit for jurisdictions using optical scan voting systems. In Oklahoma, the secretary of the state election board can direct the secretary of a county election board to conduct post-election audits to ensure that voting devices and software correctly tabulated votes. Louisiana reported that it does not statutorily require tabulation audits, but audits are conducted in all parishes. The Policy Survey did not collect

⁹³ Information on whether a state requires a post-election tabulation audit was collected in item Q35 of the Policy Survey. Louisiana is not included in this calculation because it reported that "Our state does not statutorily require audits, but they are conducted in every parish."

information on whether these audits were mandatory, triggered, or conducted only in certain circumstances.

The 2020 Policy Survey asked states to report which of the following post-election tabulation audits would be required for the 2020 general election. States could select multiple options as applicable:

- A traditional tabulation audit that comes from a fixed percentage of randomly selected voting districts or voting machines and is compared to the results produced by the voting system;
- A risk-limiting tabulation audit that is a protocol designed to limit the risk of certifying an incorrect election outcome by using statistical methods to select the audit sample size; or
- Another type of audit.

Roughly three-quarters of the states reported requiring a traditional tabulation audit, and about onefifth of the states reported requiring a risk-limiting tabulation audit.94 Thirteen states (28.9%) provided comments detailing alternative procedures.95 For example, California stated that a jurisdiction may choose to conduct a risk-limiting audit instead of a traditional tabulation audit, and Nevada noted that after an initial pilot tabulation audit conducted after the 2020 general election, the state will require risk-limiting tabulation audits starting after the 2022 primary election. Pennsylvania also reported that it piloted a risk-limiting tabulation audit after the 2020 general election in addition to their statutory requirement.

Some states reported having additional steps in their tabulation audit processes. For example, Maryland stated that it conducts a traditional manual audit as well as a completely automated tabulation audit using ballot images. Louisiana noted that its tabulation audit includes a comparison between the number of times a machine was used for voting, the number of voters that signed a precinct register, the names written in the precinct poll books, and the voters who were given credit for voting in the statewide database. Washington reported that local election officials can choose among three methods to meet the state post-election tabulation audit requirement, including the option for a risk-limiting audit.

Election Certification

Although some local jurisdictions might have earlier deadlines for finalizing election results, elections are not officially certified until the state provides a final result. The 2020 Policy Survey asked states to provide their election certification deadlines for the 2020 general election.96 The range was broad,97 with 41 states reporting a date between November 10, 2020, and November 30, 2020.98

⁹⁴ Information on the type of post-election tabulation audit that states require was collected in item 035a of the Policy Survey. States were able to make multiple selections in this item's response options.

⁹⁵ In Louisiana, post-election tabulation audits were conducted by comparing all voting machine results to the number of voters that signed the precinct register, the names written in the precinct poll books, and the voters given credit for voting in the statewide database. However, Louisiana specified that post-election tabulation audits were not statutorily required for the 2020 general election.

⁹⁶ Hawaii does not have an election certification deadline; results are certified within 20 days of the election unless the Supreme Court has contested an election.

⁹⁷ The range was as early as November 4, 2020, in Puerto Rico and as late as December 11, 2020, in California.

⁹⁸ Information on deadlines for certifying the November 2020 general election results was collected in item Q33 of the Policy Survey.



States provided clarifying comments on their specific policies regarding their certification deadline. For example, Puerto Rico, Hawaii, Pennsylvania, Tennessee, and Rhode Island reported not having a specific state certification deadline, ⁹⁹ and the District of Columbia and Guam noted that their reported dates were tentative deadlines. Additionally, Alaska commented that their reported date was a target deadline, and North Carolina noted their reported deadline was barring recounts or protests in individual races.

⁹⁹ Tennessee and Pennsylvania noted that their reported deadlines apply to county officials, not state officials.

Appendix A: Descriptive Tables

Policy Survey Table 1: Voter Registration Database Type

| Alabama J — — — — — — — — — — — — — — — — — | State | Top down | Bottom up | Hybrid | If bottom up or hybrid:
How often do jurisdictions
transmit registration
information? |
|--|----------------------|----------|-----------|--------|--|
| American Samoa √ - - - - - Arkansas - √ - - Dally Caltime California - √ - - Real time - | Alabama | ✓ | | | - |
| Arizona - - V Real time Arkansas - V - Daily California - V - Real time Colorado V - - - Connecticut - - - - Delaware V - - - - District of Columbia V - | Alaska | ✓ | | | |
| Arkansas - √ - Daily California - √ - Real time Colorado √ - - - Connecticut - √ - - - Delaware √ - - - - - District of Columbia √ - | American Samoa | ✓ | | | |
| California - - Real time Colorado - <td>Arizona</td> <td>-</td> <td>-</td> <td>✓</td> <td>Real time</td> | Arizona | - | - | ✓ | Real time |
| Colorado J -< | Arkansas | | ✓ | | Daily |
| Connecticut - √ - Real time Delaware √ - - - District of Columbia √ - - - Florida √ - - - - Georgia √ - | California | - | ✓ | | Real time |
| Delaware J - - - District of Columbia J - - - Florida J - - - Georgia J - - - Guam J - - - Hawaii - - - - Idaho J - - - Illinois [1] - J - - Kentucky J - <td>Colorado</td> <td>✓</td> <td></td> <td></td> <td></td> | Colorado | ✓ | | | |
| District of Columbia √ - | Connecticut | - | ✓ | | Real time |
| Florida Georgia Goum Guam Guam | Delaware | ✓ | | | |
| Georgia √ - - - Guam √ - - - - Hawaii - - √ Real time Idaho √ - - - - Illinois [1] - √ - - Other Indiana √ - - - - Iowa √ - - - - Kansas √ - - - - Kentucky √ - - - - Louisiana √ - - - - Maine - - - - - - Maryland √ - - - - - - Massachusetts √ - - - - - - Michigan √ - - - - - - </td <td>District of Columbia</td> <td>✓</td> <td></td> <td></td> <td>-</td> | District of Columbia | ✓ | | | - |
| Guam √ - <td>Florida</td> <td>√</td> <td></td> <td></td> <td></td> | Florida | √ | | | |
| Hawaii - - √ Real time Idaho √ - - - Illinois [1] - √ - - - Indiana √ - - - - Iowa √ - - - - - Kansas √ - | Georgia | ✓ | - | | - |
| Idaho J - - - - - Illinois [1] - J - Other Indiana J - </td <td>Guam</td> <td>✓</td> <td></td> <td></td> <td></td> | Guam | ✓ | | | |
| Illinois [1] | Hawaii | | | ✓ | Real time |
| Indiana | Idaho | ✓ | | | |
| Iowa ✓ - - - Kansas ✓ - - - Kentucky ✓ - - - Louisiana ✓ - - - Maine - - ✓ Real time Maryland ✓ - - - Massachusetts ✓ - - - Michigan ✓ - - - Minnesota [2] - - - - Mississisppi - ✓ - Real time Missouri ✓ - - - Montana ✓ - - - Nebraska ✓ - - - Nevada - ✓ - - New Hampshire ✓ - - - New Jersey ✓ - - - New Mexico ✓ - - - New York - - - Real time | Illinois [1] | | ✓ | | Other |
| Kansas √ - - - Kentucky √ - - - Louisiana √ - - - Maine - - √ Real time Maryland √ - - - Maryland √ - - - Missachusetts √ - - - Michigan √ - - - Minnesota [2] - - - - Mississippi - √ - Real time Missouri √ - - - - Missouri √ - - - - Nebraska √ - - - - Nevada - √ - - - New Hampshire √ - - - - New Mexico √ - - - - New York - - - - - <td>Indiana</td> <td>✓</td> <td></td> <td></td> <td></td> | Indiana | ✓ | | | |
| Kentucky J - - - Louisiana J - - - Maine - - J Real time Maryland J - - - Maryland J - - - Missachusetts J - - - Michigan J - - - Minnesota [2] - - - - Mississippi - J - Real time Missouri J - - - - Montana J - - - - Nebraska J - - - - Nevada - J - - - New Hampshire J - - - - New Mexico J - - - - New York - - - - - | lowa | ✓ | | | - |
| Louisiana ✓ - | Kansas | ✓ | | | |
| Maine - - ✓ Real time Maryland ✓ - - - Massachusetts ✓ - - - Michigan ✓ - - - Minnesota [2] - - - - Mississippi - ✓ - Real time Missouri ✓ - - - Montana ✓ - - - Nebraska ✓ - - - Nevada - ✓ - - - New Hampshire ✓ - - - - New Jersey ✓ - - - - New Mexico ✓ - - - - New York - ✓ - - Real time | Kentucky | ✓ | | | _ |
| Maryland √ Massachusetts √ Michigan √ Minnesota [2] Mississippi √ Real time Missouri √ Montana √ Nebraska √ Nevada √ Daily New Hampshire √ New Jersey √ New York √ Real time | Louisiana | ✓ | | | |
| Massachusetts √ Michigan √ Minnesota [2] Mississippi Real time Missouri √ Montana √ Nebraska √ New Hampshire √ New Mexico √ Real time - | Maine | | | ✓ | Real time |
| Michigan ✓ Minnesota [2] Mississippi ✓ Real time Missouri ✓ Montana ✓ Nebraska ✓ Nevada ✓ Daily New Hampshire ✓ New Jersey ✓ New Mexico ✓ Real time | Maryland | ✓ | | | |
| Minnesota [2] - - - - - - Real time Missouri ✓ - | Massachusetts | ✓ | | | _ |
| Minnesota [2] - - - - - - Real time Missouri ✓ - | Michigan | ✓ | | | |
| Missouri ✓ Montana ✓ Nebraska ✓ Nevada ✓ Daily New Hampshire ✓ New Jersey ✓ New Mexico ✓ Real time | | | | | _ |
| Missouri ✓ Montana ✓ Nebraska ✓ Nevada ✓ Daily New Hampshire ✓ New Jersey ✓ New Mexico ✓ Real time | | | √ | | Real time |
| Nebraska ✓ Daily New Hampshire ✓ New Jersey ✓ New Mexico ✓ Real time | | ✓ | | | _ |
| Nebraska ✓ Daily New Hampshire ✓ New Jersey ✓ New Mexico ✓ Real time | | | | | |
| Nevada - ✓ - Daily New Hampshire ✓ - - - New Jersey ✓ - - - New Mexico ✓ - - - New York - ✓ - Real time | | | | | |
| New Hampshire ✓ New Jersey ✓ New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey New Jersey < | | | √ | | Daily |
| New Jersey ✓ New Mexico ✓ New York ✓ Real time | | ✓ | | | |
| New Mexico ✓ Real time New York - ✓ Real time | • | | | | |
| New York - ✓ Real time | - | | | | - |
| | | | √ | | Real time |
| | | ✓ | | | - |



| State | Top down | Bottom up | Hybrid | If bottom up or hybrid:
How often do jurisdictions
transmit registration
information? |
|------------------------------|--------------|-----------|--------|--|
| North Dakota | ✓ | | | |
| Northern Mariana Islands [3] | | - | ✓ | Other |
| Ohio | | ✓ | | Real time |
| Oklahoma | ✓ | - | | |
| Oregon | ✓ | | | |
| Pennsylvania | ✓ | | | |
| Puerto Rico | | ✓ | | Real time |
| Rhode Island | | | ✓ | Real time |
| South Carolina | ✓ | | | |
| South Dakota | ✓ | | | |
| Tennessee | | ✓ | | Daily |
| Texas [4] | | | ✓ | Other |
| U.S. Virgin Islands | ✓ | | | |
| Utah | | ✓ | | Daily |
| Vermont | ✓ | | | |
| Virginia | ✓ | | | |
| Washington | ✓ | | | |
| West Virginia | ✓ | - | | - |
| Wisconsin | \checkmark | - | | |
| Wyoming | ✓ | - | | - |

Policy Survey Table 1 Calculation Notes:

Top down, Bottom up, and Hybrid uses question Q4.

How often do jurisdictions transmit registration information uses question Q4a.

Policy Survey Table 1 Data Notes:

General Notes:

- States were only able to select single responses to both Q4 and Q4a.
- [1] Illinois reported that "If the jurisdiction[']s vendor has web services, the information is uploaded in real time. However, those without web [servers] send a batch every night."
- [2] Minnesota did not provide a response to these items.
- [3] In the Northern Mariana Islands, "Information [is] retrieved upon request."
- [4] Texas reported that the approximately 215 counties categorized as "online" counties transmit registration information in real time, whereas the 39 counties categorized as "offline" counties transmit registration information daily.

Policy Survey Table 2: Electronic Information Sharing With Government Entities

| State | Motor
vehicles
agencies | Agencies for
people with
disabilities | State public
assistance
agencies | Other state
agencies | Federal
agencies |
|--------------------------|-------------------------------|---|--|-------------------------|---------------------|
| Alabama | Daily | | | | |
| Alaska [1] | Daily | | | Other | |
| American Samoa | - | | | | |
| Arizona | Real time | | | | |
| Arkansas | Daily | | | | |
| California | Real time | | | | |
| Colorado | Daily | | | | |
| Connecticut [2] | Real time | | | | |
| Delaware [3] | Real time | | Other | | |
| District of Columbia [4] | Real time | - | | - | |
| Florida | Daily | | | | |
| Georgia | Daily | - | | - | |
| Guam | | | | | |
| Hawaii [5] | Other | - | | - | |
| Idaho | | | | | |
| Illinois | Daily | Daily | Daily | Real time | |
| Indiana | Daily | | | | |
| Iowa | Daily | - | | - | |
| Kansas | Daily | | | | |
| Kentucky [6] | Real time | Daily | Daily | - | - |
| Louisiana | Daily | | | | |
| Maine | - | - | | - | |
| Maryland [7] | Daily | Daily | Daily | Daily | |
| Massachusetts | Daily | | Daily | - | |
| Michigan | Daily | | | | |
| Minnesota | Daily | | | | |
| Mississippi | Daily | | | | |
| Missouri | _ | | | - | |
| Montana | Weekly | | | | |
| Nebraska [8] | Other | - | - | - | - |
| Nevada | Daily | | | | |
| New Hampshire [9] | Other | - | - | - | Other |
| New Jersey | Daily | | | - | |
| New Mexico | Daily | - | | - | - |
| New York | Daily | | | | |
| North Carolina | Daily | - | - | - | |



| State | Motor
vehicles
agencies | Agencies for
people with
disabilities | State public
assistance
agencies | Other state
agencies | Federal
agencies |
|----------------------------------|-------------------------------|---|--|-------------------------|---------------------|
| North Dakota | Daily | | | - | |
| Northern Mariana
Islands [10] | | | - | - | |
| Ohio | Daily | | | - | |
| Oklahoma [11] | Other | | | - | |
| Oregon [12] | Other | | | - | |
| Pennsylvania | Daily | Real time | Real time | - | |
| Puerto Rico | | | | | |
| Rhode Island | Real time | | | - | |
| South Carolina | Weekly | Weekly | Weekly | | |
| South Dakota | Daily | | | | |
| Tennessee | Monthly | | | - | |
| Texas | Daily | | | | |
| U.S. Virgin Islands [13] | | | | Other | |
| Utah [14] | Daily | Weekly | Weekly | Weekly | Weekly |
| Vermont | Daily | | | | |
| Virginia | Real time | | | - | |
| Washington | Real time | Real time | Real time | Real time | |
| West Virginia | Daily | | | | |
| Wisconsin [15] | Daily | | | | |
| Wyoming | Daily | | | | |

| State | Military
recruiting offices | Entities that
maintain death
records | Entities that
maintain felony
records | Entities that
maintain records
of individuals
declared
mentally
incompetent |
|--------------------------|--------------------------------|--|---|--|
| Alabama | - | Daily | Daily | |
| Alaska [1] | - | - | - | - |
| American Samoa | - | Monthly | Monthly | - |
| Arizona | - | - | - | - |
| Arkansas | - | Monthly | Monthly | - |
| California | - | Weekly | Monthly | Monthly |
| Colorado | | Monthly | Weekly | |
| Connecticut [2] | | Monthly | Monthly | Other |
| Delaware [3] | - | Monthly | | |
| District of Columbia [4] | - | Other | - | |
| Florida | - | Daily | Daily | - |
| Georgia | | Weekly | Monthly | Monthly |
| Guam | _ | | - | - |
| Hawaii [5] | | Monthly | | |
| Idaho | _ | Monthly | Monthly | - |
| Illinois | _ | Monthly | Monthly | |
| Indiana | | Monthly | Monthly | |
| Iowa | | Monthly | | |
| Kansas | | Weekly | Weekly | |
| Kentucky [6] | Other | Weekly | Weekly | Daily |
| Louisiana | | Monthly | Monthly | |
| Maine | _ | Monthly | | |
| Maryland [7] | _ | Monthly | Monthly | Other |
| Massachusetts | _ | | | |
| Michigan | _ | Weekly | Daily | |
| Minnesota | _ | Monthly | Monthly | Monthly |
| Mississippi | _ | Monthly | Daily | |
| Missouri | _ | Monthly | Monthly | _ |
| Montana | _ | Monthly | Weekly | |
| Nebraska [8] | | Weekly | Monthly | |
| Nevada | | Daily | Wioriting | |
| New Hampshire [9] | | Other | | |
| | - | | Wookh | |
| New Mexico | | Weekly | Weekly | |
| New Mexico | - | Monthly | Month! | Monthly |
| New York | - | Monthly | Monthly | Monthly |
| North Carolina | - | Monthly | Daily | - |
| North Dakota | _ | | - | _ |



| State | Military
recruiting offices | Entities that
maintain death
records | Entities that
maintain felony
records | Entities that
maintain records
of individuals
declared
mentally
incompetent |
|----------------------------------|--------------------------------|--|---|--|
| Northern Mariana
Islands [10] | | - | | - |
| Ohio | | Monthly | | |
| Oklahoma [11] | | Monthly | Monthly | - |
| Oregon [12] | - | | | - |
| Pennsylvania | - | Weekly | - | - |
| Puerto Rico | - | Real time | | - |
| Rhode Island | - | | | - |
| South Carolina | - | Monthly | Monthly | - |
| South Dakota | - | Daily | Daily | - |
| Tennessee | - | Monthly | Monthly | - |
| Texas | - | Weekly | Weekly | - |
| U.S. Virgin Islands [13] | - | | | - |
| Utah [14] | Monthly | Other | Monthly | Other |
| Vermont | - | | - | - |
| Virginia | - | Monthly | Monthly | Monthly |
| Washington | - | Monthly | Monthly | Monthly |
| West Virginia | - | Monthly | Monthly | - |
| Wisconsin [15] | - | Monthly | Daily | - |
| Wyoming | - | Weekly | Weekly | - |

Policy Survey Table 2 Calculation Notes:

Motor vehicles agency uses questions Q5a_1 and Q5a_2.

Agencies for people with disabilities uses questions Q5b_1 and Q5b_2.

State public assistance agencies uses questions Q5c_1 and Q5c_2.

Other state agencies uses questions Q5d_1 and Q5d_2.

Federal agencies uses questions Q5e_1 and Q5e_2.

Military recruiting offices uses questions Q5f_1 and Q5f_2.

Entities that maintain death records uses questions Q5g_1 and Q5g_2.

Entities that maintain felony records uses questions Q5h_1 and Q5h_2.

Entities that maintain records of individuals declared mentally incompetent uses questions Q5i_1 and Q5i_2.

Policy Survey Table 2 Data Notes:

General Notes:

States were only able to select a single response to Q5a_2-Q5i_2.

[1] Alaska reported that electronic information sharing with other, non-NVRA-required state agencies occurs after the March 31 deadline to apply for the Permanent Fund Dividend has passed. This typically involves one data file transfer.

- [2] Connecticut reported sharing electronic information with entities that maintain records of individuals declared mentally incompetent on an as-needed basis.
- [3] Delaware reported that information is transmitted to state public assistance agencies at the moment the information is submitted to the voter portal by a client.
- [4] The District of Columbia reported that information is shared with entities that maintain death records on a quarterly basis.
- [5] Hawaii reported that voter information is shared with its motor vehicle agency upon request.
- [6] Kentucky reported that it shares voter information with military recruiting offices as requests occur.
- [7] Maryland reported that it is notified as needed by the Maryland Judiciary when a person is declared mentally incompetent by order of the courts.
- [8] Nebraska conducts real-time checks of driver's license, state identifications, and SSN information on file with the motor vehicles agency. Daily transfers are conducted with the motor vehicle agency for voter registrations that occur at the agency, surrendered IDs, changed IDs, or SSNs needing verification from the Social Security Administration.
- [9] New Hampshire reported that it shares voter information with the motor vehicles agency, federal agencies, and entities that maintain felony records in a one-way exchange from the agencies to the election office.
- [10] The Northern Mariana Islands did not provide a response to these items.
- [11] Oklahoma reported that offices that have converted to the Department of Public Safety's (DPS) new system share data daily. Offices that have not yet converted to the new system can only send address change data, and that data is sent weekly. Information regarding Oklahoma driver's licenses surrendered in another state is received monthly.
- [12] Oregon reported that information is exchanged with the motor vehicles agency Monday through
- [13] The U.S. Virgin Islands reported that information is exchanged with other state agencies at the request of the court.
- [14] Utah reported that information is exchanged with entities that maintain death records on a bimonthly basis and entities that maintain records of individuals declared mentally incompetent as needed.
- [15] Wisconsin receives competency data electronically from the courts.



Policy Survey Table 3: Online Voter Registration Policies

| State | Individuals can register
to vote and update their
registration via the
system | Individuals can update
their registration via the
system | State-issued driver's
license or ID is required
to use this system |
|-----------------------------|--|--|--|
| Alabama | √ | | Yes |
| Alaska | ✓ | - | Yes |
| American Samoa | - | | |
| Arizona | √ | | Yes |
| Arkansas | - | | |
| California | √ | - | No |
| Colorado | √ | | Yes |
| Connecticut | \checkmark | | Yes |
| Delaware | √ | | Yes |
| District of Columbia | √ | | No |
| Florida | √ | | Yes |
| Georgia | √ | | Yes |
| Guam | √ | | Yes |
| Hawaii | ✓ | | Yes |
| Idaho | √ · | | Yes |
| Illinois | ✓ | | Yes |
| Indiana | √ | | Yes |
| Iowa | ✓ | | Yes |
| Kansas | √ | | Yes |
| Kentucky | √ | | No |
| Louisiana | · √ | | Yes |
| Maine | _ | | |
| Maryland | √ | | Yes |
| Massachusetts | √ | | Yes |
| Michigan | √ | | Yes |
| Minnesota | √ | | No |
| Mississippi | | √ | Yes |
| Missouri | √ | | No |
| Montana | | | |
| Nebraska | √ | | Yes |
| Nevada | √ | | Yes |
| New Hampshire | | | |
| New Jersey | √ | | Yes |
| New Mexico | √ | | Yes |
| New York | √ | | Yes |
| North Carolina | √ | | Yes |
| North Dakota [1] | | | |
| Northern Mariana
Islands | - | - | - |

| State | Individuals can register
to vote and update their
registration via the
system | Individuals can update
their registration via the
system | State-issued driver's
license or ID is required
to use this system |
|---------------------|--|--|--|
| Ohio | ✓ | | Yes |
| Oklahoma | ✓ | | No |
| Oregon | ✓ | | Yes |
| Pennsylvania | ✓ | | No |
| Puerto Rico | | | - |
| Rhode Island | ✓ | | Yes |
| South Carolina | √ | | Yes |
| South Dakota | | | - |
| Tennessee | ✓ | | Yes |
| Texas | | ✓ | Yes |
| U.S. Virgin Islands | | | |
| Utah | ✓ | | Yes |
| Vermont | ✓ | | No |
| Virginia | ✓ | | Yes |
| Washington | ✓ | | Yes |
| West Virginia | ✓ | | Yes |
| Wisconsin | √ | | Yes |
| Wyoming | | | - |

Policy Survey Table 3 Calculation Notes:

Individuals can register to vote and update their registration via the system uses question Q7. Individuals can update their registration via the system uses question Q7.

A driver's license or state-issued ID is required to use this system uses question Q7a.

Policy Survey Table 3 Data Notes:

General Notes:

• States were only able to select a single response to both Q7 and Q7a.

[1] North Dakota does not have voter registration.



Policy Survey Table 4: State Voting by Mail Election Policies

| State | Excuse
required for
mail voting | State or jurisdiction conducts all-mail election | Permanent
absentee voting
allowed | Who can be a permanent absentee voter |
|----------------------|---------------------------------------|--|---|--|
| Alabama | √ | | Yes, individuals
who meet specific
criteria | Persons with disabilities |
| Alaska | | | | |
| American Samoa | √ | | | - |
| Arizona | | | Yes, any registrant | |
| Arkansas | ✓ | | | - |
| California | | Statewide | Yes, any registrant | - |
| Colorado | | Statewide | | |
| Connecticut | √ | - | Yes, individuals
who meet specific
criteria | Persons with disabilities |
| Delaware | | | Yes, individuals
who meet specific
criteria | Federal or state workers and their spouses or dependents, members of the uniformed services, voters who are sick or disabled (temporarily or permanently), voters temporarily residing outside the United States and their spouses or dependents |
| District of Columbia | | Statewide | Yes, any registrant | |
| Florida | ✓ | | - | - |
| Georgia | | | | |
| Guam | ✓ | | | |
| Hawaii | | Statewide | | - |
| Idaho | | Only certain jurisdictions | | |
| Illinois | | | | |
| Indiana | ✓ | | | |
| Iowa | | - | - | |
| Kansas | | | Yes, individuals
who meet specific
criteria | Persons with disabilities |
| Kentucky | ✓ | | | - |
| Louisiana | √ | | Yes, individuals
who meet specific
criteria | Individuals over a specified age, persons with disabilities |
| Maine | | - | | - |
| Maryland | | | | |

| State | Excuse
required for
mail voting | State or jurisdiction conducts all-mail election | Permanent
absentee voting
allowed | Who can be a permanent absentee voter |
|-----------------------------|---------------------------------------|--|---|---|
| Massachusetts | | | Yes, individuals
who meet specific
criteria | Persons who provide a
note from a medical
professional |
| Michigan | | | Yes, any registrant | |
| Minnesota | | Only certain jurisdictions | Yes, any registrant | - |
| Mississippi | √ | | Yes, individuals
who meet specific
criteria | Persons with disabilities |
| Missouri | | - | Yes, individuals who meet specific criteria | Persons with disabilities |
| Montana | | Only certain jurisdictions | Yes, any registrant | |
| Nebraska | - | Only certain jurisdictions | - | - |
| Nevada | | Statewide | Yes, any registrant | |
| New Hampshire | ✓ | - | | - |
| New Jersey | | Statewide | Yes, any registrant | |
| New Mexico | | | | |
| New York | √ | | Yes, individuals
who meet specific
criteria | Persons with disabilities,
voters who claim
permanent illness |
| North Carolina | | | | |
| North Dakota | | | | - |
| Northern
Mariana Islands | | | | |
| Ohio | | - | | |
| Oklahoma | | - | | - |
| Oregon [1] | | Statewide | Yes, individuals
who meet specific
criteria | Persons registered as Oregon voters but who are away from their Oregon residences when ballots are available |
| Pennsylvania [2] | ✓ | | Yes, any registrant | |
| Puerto Rico | ✓ | | | |
| Rhode Island | | | Yes, individuals who meet specific criteria | Persons with disabilities |
| South Carolina | | | | |
| South Dakota | | | | |
| Tennessee | ✓ | | Yes, individuals who meet specific criteria | Persons with disabilities,
persons who have a
doctor certify that they are
unable to go to the polls |
| Texas | ✓ | - | - | - |
| U.S. Virgin
Islands | | | - | |



| State | Excuse
required for
mail voting | State or jurisdiction conducts all-mail election | Permanent
absentee voting
allowed | Who can be a permanent absentee voter |
|---------------|---------------------------------------|--|---|---|
| Utah | | Statewide | Yes, any registrant | |
| Vermont | | Statewide | | |
| Virginia | | | Yes, any registrant | - |
| Washington | | Statewide | Yes, any registrant | |
| West Virginia | ✓ | - | Yes, individuals
who meet specific
criteria | Persons with disabilities,
participants in the West
Virginia Address
Confidentiality Program |
| Wisconsin | | | Yes, individuals
who meet specific
criteria | Persons with disabilities;
persons who certify that
they are indefinitely
confined due to age,
illness, infirmity, or
disability |
| Wyoming | | | - | - |

Policy Survey Table 4 Calculation Notes:

Excuse required for mail voting uses question Q17.

State or jurisdiction conducts all-mail election uses questions Q18 and Q18a.

Permanent absentee voting allowed uses question Q19.

Who can be a permanent absentee voter uses questions Q19a_1, Q19a_2, and Q19a_3.

Policy Survey Table 4 Data Notes:

General Notes:

- States were only able to select a single response to Q17-Q19. Multiple responses were accepted for the Q19a items.
- The Policy Survey did not collect information on whether changes in states' laws regarding all-voteby-mail elections for 2020 were permanent or temporary or whether the changes were made in direct response to the COVID-19 pandemic.
- [1] Although Oregon is a vote-by-mail state, there are still individuals who are considered absentee voters. Anyone who is registered as an Oregon voter but is away from their Oregon residence when ballots are available can request to be a permanent absentee voter if Oregon remains their primary residence.
- [2] Pennsylvania provides both absentee and mail voting options. Voters who apply for an absentee ballot must give a reason for voting absentee. Voters who apply for a mailed ballot are not required to give a reason.

Policy Survey Table 5: Mail Voting Deadlines for UOCAVA and Non-UOCAVA Voters

| | Mail | oters | | c military
A voters | Overseas UO | CAVA voters |
|----------------------|------------------------------|-------------------------------|------------------------------|-------------------------------|------------------------------|-------------------------------|
| State | Postmarked
by | Received by | Postmarked
by | Received by | Postmarked
by | Received by |
| Alabama | 1 day before
Election Day | Election Day | Election Day | 7 days after
Election Day | Election Day | 7 days after
Election Day |
| Alaska | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day | Election Day | 15 days after
Election Day |
| American Samoa | Election Day | Election Day | Election Day | Election Day | Election Day | Election Day |
| Arizona | | Election Day | | Election Day | | Election Day |
| Arkansas [1] | | Election Day | | 10 days after
Election Day | | 10 days after
Election Day |
| California [2] | Election Day | 17 days after
Election Day | Election Day | 17 days after
Election Day | Election Day | 17 days after
Election Day |
| Colorado | | Election Day | | 8 days after
Election Day | | 8 days after
Election Day |
| Connecticut | Election Day | Election Day | Election Day | Election Day | Election Day | Election Day |
| Delaware | | Election Day | | Election Day | | Election Day |
| District of Columbia | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day |
| Florida [3] | | Election Day | | Election Day | - | 10 days after
Election Day |
| Georgia | | Election Day | Election Day | 3 days after
Election Day | Election Day | 3 days after
Election Day |
| Guam [4] | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day |
| Hawaii [5] | | Election Day | | Election Day | | Election Day |
| Idaho | | Election Day | | Election Day | | Election Day |
| Illinois | Election Day | 14 days after
Election Day | Election Day | 14 days after
Election Day | Election Day | 14 days after
Election Day |
| Indiana [6] | | Election Day | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day |
| lowa [7] | 1 day before
Election Day | 6 days after
Election Day | 1 day before
Election Day | 6 days after
Election Day | 1 day before
Election Day | 6 days after
Election Day |
| Kansas | Election Day | 3 days after
Election Day | Election Day | Election Day | Election Day | Election Day |
| Kentucky [8] | Election Day | Election Day | Election Day | 3 days after
Election Day | Election Day | 3 days after
Election Day |
| Louisiana | | 1 day before
Election Day | | Election Day | | Election Day |
| Maine [9] | | Election Day | | Election Day | | Election Day |
| Maryland | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day |
| Massachusetts | Election Day | 3 days after
Election Day | Election Day | 3 days after
Election Day | Election Day | 10 days after
Election Day |



| State | Mail | voters | Domestic military UOCAVA voters | | Overseas UOCAVA vo | |
|-----------------------------|------------------------------|-------------------------------|---------------------------------|-------------------------------|------------------------------|-------------------------------|
| State | Postmarked
by | Received by | Postmarked
by | Received by | Postmarked
by | Received by |
| Michigan | Election Day | Election Day | Election Day | Election Day | Election Day | Election Day |
| Minnesota [10] | - | Election Day | | Election Day | | Election Day |
| Mississippi [11] | Election Day | 5 days after
Election Day | Election Day | 5 days after
Election Day | Election Day | 5 days after
Election Day |
| Missouri | - | Election Day | Election Day | 3 days after
Election Day | Election Day | 3 days after
Election Day |
| Montana | Election Day | Election Day | Election Day | Election Day | Election Day | Election Day |
| Nebraska [12] | - | Election Day | | Election Day | | Election Day |
| Nevada | Election Day | 7 days after
Election Day | Election Day | 7 days after
Election Day | Election Day | 7 days after
Election Day |
| New Hampshire [13] | - | Election Day | | Election Day | | Election Day |
| New Jersey [14] | Election Day | 7 days after
Election Day | Election Day | 7 days after
Election Day | Election Day | 7 days after
Election Day |
| New Mexico [15] | - | Election Day | | Election Day | | Election Day |
| New York | Election Day | 7 days after
Election Day | Election Day | 13 days after
Election Day | Election Day | 13 days after
Election Day |
| North Carolina
[16] | Election Day | 9 days after
Election Day | | 9 days after
Election Day | - | 9 days after
Election Day |
| North Dakota | 1 day before
Election Day | 6 days after
Election Day | 1 day before
Election Day | 6 days after
Election Day | 1 day before
Election Day | 6 days after
Election Day |
| Northern
Mariana Islands | Election Day | 14 days after
Election Day | Election Day | 14 days after
Election Day | Election Day | 14 days after
Election Day |
| Ohio | 1 day before
Election Day | 10 days after
Election Day | | 10 days after
Election Day | - | 10 days after
Election Day |
| Oklahoma [17] | - | Election Day | - | Election Day | - | Election Day |
| Oregon [18] | | Election Day | | Election Day | | Election Day |
| Pennsylvania
[19] | | Election Day | 1 day before
Election Day | 7 days after
Election Day | 1 day before
Election Day | 7 days after
Election Day |
| Puerto Rico [20] | Election Day | 14 days after
Election Day | Election Day | 14 days after
Election Day | Election Day | 14 days after
Election Day |
| Rhode Island | - | Election Day | | 7 days after
Election Day | | 7 days after
Election Day |
| South Carolina | | Election Day | | 2 days after
Election Day | | 2 days after
Election Day |
| South Dakota
[21] | - | Election Day | | Election Day | - | Election Day |
| Tennessee [22] | | Election Day | | Election Day | | Election Day |
| Texas [23] | Election Day | 1 day after
Election Day | - | 6 days after
Election Day | Election Day | 5 days after
Election Day |
| U.S. Virgin
Islands [24] | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day | Election Day | 10 days after
Election Day |
| Utah [25] | 1 day before
Election Day | 13 days after
Election Day | Election Day | 13 days after
Election Day | Election Day | 13 days after
Election Day |

| State | Mail voters | | | c military
A voters | Overseas UOCAVA voters | | |
|-----------------------|------------------|-------------------------------|------------------|-------------------------------|------------------------|-------------------------------|--|
| State | Postmarked
by | Received by | Postmarked
by | Received by | Postmarked
by | Received by | |
| Vermont | | Election Day | | Election Day | | Election Day | |
| Virginia [26] | Election Day | 3 days after
Election Day | Election Day | 3 days after
Election Day | Election Day | 3 days after
Election Day | |
| Washington [27] | Election Day | 20 days after
Election Day | | 20 days after
Election Day | | 20 days after
Election Day | |
| West Virginia
[28] | Election Day | 5 days after
Election Day | | 5 days after
Election Day | - | 5 days after
Election Day | |
| Wisconsin [29] | Election Day | Election Day | Election Day | Election Day | Election Day | Election Day | |
| Wyoming | | Election Day | | Election Day | | Election Day | |

Policy Survey Table 5 Calculation Notes:

Mail voters, Postmarked by uses questions Q20_1_1, Q20_1_10E, Q20_1_2, and Q20_1_3.

Mail voters, Received by uses questions Q20_2_1, Q20_2_10E, Q20_2_2, Q20_2_3, Q20_2_30E, and Q20_2_4.

Domestic military UOCAVA voters, Postmarked by uses questions Q29_1_1, Q29_1_10E, Q29_1_2, and Q29_1_3.

Domestic military UOCAVA voters, Received by uses questions Q29_2_1, Q29_2_10E, Q29_2_2, Q29_2_3, Q29_2_30E, and Q29_2_4.

Overseas UOCAVA voters, Postmarked by uses questions Q30_1_1, Q30_1_10E, Q30_1_2, and Q30_1_3. Overseas UOCAVA voters, Received by uses questions Q30_2_1, Q30_2_10E, Q30_2_2, Q30_2_3, Q30_2_30E, and Q30_2_4.

Policy Survey Table 5 Data Notes:

General Notes:

- States were able to select multiple responses to each set of postmark and receipt deadline items through Q20, Q29, and Q30, although none of the states did so.
- [1] Arkansas noted in a survey comment that mailed ballots must be received by 7:30 p.m. (close of polls).
- [2] California noted in a survey comment that "For the November 3, 2020, general election, the deadline for a [mailed] ballot to be received by county elections officials is extended from 3 to 17 days after Election Day."
- [3] Florida noted in a survey comment that the deadline for mailed ballots is "7 pm local time deadline for domestic ballots 10 day extension for overseas voters."
- [4] Guam noted in a survey comment that "[B]allots must be received 10 business days after the election."
- [5] Hawaii noted in a survey comment that "Regardless of postmark date, ballots must be received by the County Elections Division by 7:00 p.m. on Election Day."
- [6] Indiana noted in a survey comment that the deadline for mailed ballots is "Noon, local prevailing time."
- [7] lowa noted in a survey comment that "[mailed] ballots must be postmarked or the ImB [Intelligent Mail barcode] tracking bar code must show that the ballot was entered into the mail stream before election day. Ballots must be received by 12:00 noon on the Monday after the election."
- [8] Kentucky noted in a survey comment that "If a [mailed] ballot is postmarked on or before 11/3 it must be received by 11/6. If a ballot is placed in a drop-box or delivered to a Clerk's office, it must be delivered by 6PM local time, 11/3."



- [9] Maine noted in a survey comment that "[Mailed] ballot[s] must be received by 8:00 pm on Election Day."
- [10] Minnesota noted in a survey comment that for mailed ballots in the 2020 general election, "consent decree changes this to postmarked on or before election day and received by 11/10."
- [11] In Mississippi, ballots returned by mail must be postmarked by Election Day and received by the end of five business days after Election Day. Mail ballots returned by email or fax must be returned by 7:00 p.m. on the date of the election.
- [12] Nebraska noted in a survey comment that "[Mailed ballots] must be received by close of polls on election day."
- [13] New Hampshire noted in a survey comment that "Absentee ballots, including all UOCAVA voters absentee ballots, must be received no later than 5 p.m. on Election Day."
- [14] New Jersey noted in a survey comment that the deadline for UOCAVA ballots is "Email and fax 8:00 pm election day."
- [15] New Mexico noted in a survey comment that "ballots must be received by 7pm on election day."
- [16] North Carolina noted in a survey comment that the "change from 3 days to 9 days approved by consent judgment in settlement between NCSBE [North Carolina State Board of Elections] and plaintiffs in the NC Alliance case which included extension of the civilian ballot mail return deadline for 2020. For remaining elections in 2020, a ballot shall be considered postmarked by Election Day if it has a postmark affixed to it or if there is information in BallotTrax, or another tracking service offered by the USPS or a commercial carrier, indicating that the ballot was in the custody of USPS or the commercial carrier on or before Election Day."
- [17] Oklahoma noted in a survey comment that "State law requires that a returned absentee ballot be received in the hands of the County Election Board Secretary by 7 p.m. (CST) on election day for it to be processed and counted."
- [18] Oregon noted that all ballots, including UOCAVA ballots, must be received by 8:00 p.m.
- [19] Pennsylvania noted that, by law, civilian ballots must be received by 8:00 p.m. on Election Day to be eligible for canvassing.
- [20] Puerto Rico noted in a survey comment that the "PR Electoral Code haven't established a certain date to finish the General Election Scrutiny (canvass). Electoral Code establish that the ballot must be receive[d] before the General [Election] Scrutiny finished. Refer to Article 10.7 of Act 58 of 2020. Generally it took around 30 days after the election date. We established 14 days because it[']s one of the options given by the system."
- [21] South Dakota noted in a survey comment that "The voted [mailed] ballot MUST be received by your County Election Official on Election Day in enough time to deliver your ballot to your voting precinct before the polls close."
- [22] Tennessee noted in a survey comment that mailed ballots must be received by "close of polls."
- [23] Texas noted in a survey comment that "For [mailed] ballots arriving by 5 p.m. the day after election day, they must be post marked no later than election day."
- [24] The U.S. Virgin Islands noted in a survey comment that "The [mailed] ballot must be placed in the mail by Election Day (postmark not required) and the ballot has ten (10) days to arrive to our office."
- [25] Utah noted in a survey comment that "20a-3a-401(5)(d)(ii) = if the election officer receives the affidavit no later than 5 p.m. the day before the canvass, count the individual's [mailed] ballot."
- [26] Virginia noted in a survey comment that "Further extensions apply if the [mailed] ballot was requested prior to the 45-day deadline and not sent by that date."
- [27] Washington noted in a survey comment that "The ballot must be received by the day before the County Canvassing Board certifies the county's election results. In November 2020, that certification date is November 24, so ballots must be received by November 23. This gives voters a 20-day window for the

November General Election." For "overseas voters and service voters," the date on the declaration to which the voter has attested determines the validity of the time of voting for that ballot.

[28] West Virginia noted that ballots must be received by the fifth day after the election that is not a Saturday, Sunday, or legal holiday.

[29] Wisconsin state statutes do not contain a postmark requirement. Absentee ballots may be delivered to the local clerk so long as they are received before polls close.



Policy Survey Table 6: Electronic Ballot Transmission for Voters

| State | Voters cannot
receive
ballots
electronically | During
emergency
situations | When a
replacement
ballot is
needed | Voters
with
specific
disability | Voters with
any
disability | Any
circumstance | Other |
|----------------------|---|-----------------------------------|--|--|----------------------------------|---------------------|--------------|
| Alabama | ✓ | - | | | | - | |
| Alaska | - | | - | | | ✓ | - |
| American Samoa | ✓ | | | | | - | |
| Arizona | ✓ | - | | | | - | |
| Arkansas | ✓ | | | | | - | - |
| California [1] | - | - | - | - | √ | - | ✓ |
| Colorado | | √ | | | √ | - | |
| Connecticut | ✓ | - | - | - | - | - | - |
| Delaware [2] | | | | | √ | - | ✓ |
| District of Columbia | - | - | - | - | ✓ | - | - |
| Florida | ✓ | | | | | | |
| Georgia | ✓ | - | | - | - | - | - |
| Guam | | - | | - | - | ✓ | - |
| Hawaii [3] | | - | | - | ✓ | - | ✓ |
| Idaho | ✓ | | | | | | |
| Illinois | ✓ | - | | - | - | - | - |
| Indiana | ✓ | | | | | | |
| Iowa | ✓ | - | | - | - | - | - |
| Kansas | ✓ | | | | | | |
| Kentucky | | - | | | | ✓ | |
| Louisiana | | | | | ✓ | | |
| Maine [4] | | ✓ | | - | - | - | ✓ |
| Maryland | | | | | | ✓ | |
| Massachusetts [5] | | - | | - | - | - | ✓ |
| Michigan | ✓ | | | | | | - |
| Minnesota | | - | | - | ✓ | - | - |
| Mississippi [6] | | | | | | | \checkmark |
| Missouri | | ✓ | | - | - | - | - |
| Montana | | | | ✓ | | - | |
| Nebraska | ✓ | - | | - | | - | - |
| Nevada | | ✓ | ✓ | | ✓ | | |
| New Hampshire | | - | - | ✓ | | - | - |
| New Jersey | ✓ | | | | | | |
| New Mexico | | - | - | ✓ | - | | - |
| New York [7] | | | | | ✓ | | ✓ |
| North Carolina | | - | - | ✓ | | - | - |
| North Dakota | √ | | | | | - | |

| State | Voters cannot
receive
ballots
electronically | During
emergency
situations | When a replacement ballot is needed | Voters
with
specific
disability | Voters with
any
disability | Any
circumstance | Other |
|-----------------------------|---|-----------------------------------|-------------------------------------|--|----------------------------------|---------------------|-------|
| Northern Mariana
Islands | ✓ | | | - | | - | - |
| Ohio | | | | | ✓ | - | |
| Oklahoma | ✓ | | | - | - | - | |
| Oregon | | - | | | | ✓ | |
| Pennsylvania [8] | | - | | - | - | - | ✓ |
| Puerto Rico | ✓ | - | | | | - | |
| Rhode Island | ✓ | - | | - | | - | |
| South Carolina | ✓ | - | | | | | |
| South Dakota | ✓ | - | | - | - | - | |
| Tennessee | ✓ | | | | | - | |
| Texas | ✓ | - | | - | - | - | |
| U.S. Virgin Islands | | √ | ✓ | ✓ | √ | | |
| Utah | | ✓ | | - | ✓ | - | |
| Vermont | ✓ | - | | | | | |
| Virginia | | ✓ | | ✓ | - | - | |
| Washington | | - | | - | | ✓ | - |
| West Virginia | | - | | ✓ | - | - | |
| Wisconsin | ✓ | | | | | | |
| Wyoming | ✓ | - | - | - | - | - | |

Policy Survey Table 6 Calculation Notes:

Voters cannot receive ballots electronically uses question Q23_1.

During emergency situations uses question Q23_2.

When a replacement ballot is needed uses question Q23_3.

Voters with specific disability uses question Q23_4.

Voters with any disability uses question Q23_5.

Voters may receive a ballot electronically for any circumstance uses question Q23_6.

Other uses question Q23_7.

Policy Survey Table 6 Data Notes:

General Notes:

- States were able to select multiple responses to Q23 items; however, selecting Q23_1 excluded all other response choices.
- Q23 collected information on electronic ballot transmission for non-UOCAVA voters only. Voters covered by UOCAVA may receive ballots electronically under the MOVE Act.

[1] In the November 3, 2020, general election, California county election officials permitted any voter to cast a ballot using a certified remote accessible vote-by-mail system.

[2] Delaware specified that voters who are sick or physically disabled, whether temporarily or permanently, can receive ballots electronically.



- [3] Hawaii reported allowing voters to receive ballots electronically when a replacement ballot is needed and is requested within five days of the election.
- [4] Maine reported allowing voters who self-identify as having a print disability to receive ballots electronically.
- [5] Massachusetts specified that voters with a disability that prevents them from privately and independently marking a paper ballot can receive ballots electronically.
- [6] Mississippi's UOCAVA state statute allows emergency responders to qualify for electronic ballots if they are deployed outside their county of residence during a state of emergency.
- [7] New York reported allowing emergency responders to receive ballots electronically.
- [8] Pennsylvania specified that voters with any disability as defined by the Americans with Disabilities Act can receive a ballot electronically.

Policy Survey Table 7: In-Person Voting Before Election Day

| State | Terminology used to describe casting a ballot in person before Election Day | Excuse required for
in-person voting
before Election Day |
|----------------------|--|--|
| Alabama | In-person absentee voting | √ |
| Alaska | In-person early voting, in-person absentee voting | - |
| American Samoa | Local absentee voting | √ |
| Arizona | In-person early voting | |
| Arkansas | In-person early voting | |
| California | In-person early voting | |
| Colorado | In-person early voting | |
| Connecticut [1] | Other | √ |
| Delaware | In-person absentee voting | ✓ |
| District of Columbia | In-person early voting | - |
| Florida | In-person early voting | |
| Georgia | Advance voting | - |
| Guam | In-person absentee voting | - |
| Hawaii | In-person voting | - |
| Idaho | In-person early voting, in-person absentee voting | |
| Illinois | In-person early voting | |
| Indiana | In-person absentee voting | |
| Iowa | In-person absentee voting | |
| Kansas | In-person advance voting | |
| Kentucky | In-person early voting | |
| Louisiana | In-person early voting | |
| Maine | In-person absentee voting | |
| Maryland | In-person early voting | |
| Massachusetts [2] | In-person early voting, in-person absentee voting | ✓ |
| Michigan | In-person absentee voting | |
| Minnesota | In-person absentee voting | |
| Mississippi | In-person absentee voting | √ |
| Missouri | In-person absentee voting | ✓ |
| Montana | In-person absentee voting | |
| Nebraska | In-person early voting | |
| Nevada | In-person early voting | |
| New Hampshire | In-person absentee voting | ✓ |
| New Jersey | - | |
| New Mexico | In-person early voting, in-person absentee voting | |
| New York | In-person early voting | |
| North Carolina | In-person early voting, in-person absentee voting, one stop voting, early voting | - |
| North Dakota | In-person early voting, in-person absentee voting | |



| State | Terminology used to describe casting a ballot in person before Election Day | Excuse required for
in-person voting
before Election Day |
|--------------------------|---|--|
| Northern Mariana Islands | In-person early voting | \checkmark |
| Ohio | In-person early voting, in-person absentee voting | |
| Oklahoma | In-person absentee voting | |
| Oregon [3] | Other | \checkmark |
| Pennsylvania [4] | Other | \checkmark |
| Puerto Rico [5] | In-person early voting, other | ✓ |
| Rhode Island | In-person absentee voting | |
| South Carolina [6] | In-person absentee voting | |
| South Dakota | In-person absentee voting | |
| Tennessee | In-person early voting | |
| Texas | In-person early voting | |
| U.S. Virgin Islands | In-person early voting, in-person absentee voting | |
| Utah | In-person early voting | |
| Vermont | In-person early voting, in-person absentee voting | |
| Virginia | In-person early voting | |
| Washington [7] | In-person voting | |
| West Virginia | In-person early voting | - |
| Wisconsin | In-person absentee voting | |
| Wyoming | In-person absentee voting | - |

Policy Survey Table 7 Calculation Notes:

Terminology used to describe casting a ballot in person before Election Day uses questions Q24_1, Q24_2, and Q24_3.

Excuse required for in-person voting before Election Day uses question Q24a.

Policy Survey Table 7 Data Notes:

General Notes:

- States were able to select multiple responses to Q24 items; however, selecting Q24_4 excluded all other response items and is not depicted in the table. States were only able to select a single response to Q24a.
- [1] Connecticut reported that a person can request an absentee ballot and cast it on the spot and not return it by mail.
- [2] In Massachusetts, in-person absentee voting before Election Day requires an excuse but early voting does not.
- [3] Oregon reported that members of specific populations (e.g., those who will not be in Oregon or have access to a regular mailing address when ballots are available) can receive and return a ballot at their county election office. They may choose to cast their vote then and there or take it with them and return via mail or drop box.
- [4] Pennsylvania's 2019 election reforms allow for absentee and mail-in ballots to be completed over the counter at an election office.

- [5] Puerto Rico reported that in addition to in-person early voting, voters may cast their ballot from their residence via mail.
- [6] South Carolina requires an excuse for in-person absentee voting; however, this requirement was temporarily suspended for elections held in 2020.
- [7] Washington is a vote-by-mail state. In-person voters were issued a vote-by-mail ballot packet at a voting center that they could deposit into a ballot drop box or mail. Alternatively, voters could use a disability access unit to vote in person before Election Day.



| | | Reasons v | vhy a jurisdic | tion in the sta
on recount of | | uct a post- | |
|--------------------------|--|--|--|--|---|------------------------|---|
| State | General
election
certification
deadline | Results
are within
a certain
margin | By
candidate
or party
request | Results are within a certain margin and a candidate or party has requested a recount | Request
by other
person or
group | By court
order only | Post-election
tabulation
audit policy |
| Alabama | 11/25/2020 | | ✓ | | | | Not required |
| Alaska [1] | 11/25/2020 | ✓ | ✓ | | ✓ | - | Required by
statute |
| American Samoa | 11/10/2020 | | ✓ | ✓ | | | Not required |
| Arizona | 11/30/2020 | | | | - | ✓ | Required by
statute |
| Arkansas [2] | 11/18/2020 | | ✓ | | ✓ | | Required by
statute |
| California [3] | 12/11/2020 | ✓ | ✓ | ✓ | ✓ | - | Required by
statute |
| Colorado | 11/25/2020 | ✓ | √ | | - | | Required by statute |
| Connecticut | 11/25/2020 | ✓ | - | - | - | - | Required by statute |
| Delaware [4] | 11/5/2020 | ✓ | - | | - | - | Required by statute |
| District of Columbia [5] | 11/24/2020 | ✓ | ✓ | - | - | - | Required by statute |
| Florida [6] | 11/17/2020 | ✓ | | | - | - | Required by
statute |
| Georgia [7] | 11/20/2020 | | | ✓ | ✓ | - | Required by
statute |
| Guam [8] | 11/19/2020 | ✓ | | | | | Not required |
| Hawaii [9] | | ✓ | - | | - | - | Required by
statute |
| Idaho [10] | 11/13/2020 | | ✓ | | ✓ | | Not required |
| Illinois | 12/4/2020 | - | | ✓ | - | - | Required by statute |
| Indiana [11] | 11/16/2020 | | ✓ | | ✓ | - | Required by
statute |
| Iowa | 11/30/2020 | - | ✓ | | - | - | Required by
statute |
| Kansas [12] | 12/1/2020 | | ✓ | | ✓ | - | Required by
statute |
| Kentucky | 11/23/2020 | | ✓ | | | | Not required |
| Louisiana [13] | 11/19/2020 | | | ✓ | ✓ | | Other |
| Maine [14] | 11/23/2020 | | ✓ | | - | | Not required |
| Maryland | 12/8/2020 | - | ✓ | | - | - | Required by
statute |
| Massachusetts
[15] | 11/18/2020 | - | ✓ | - | ✓ | - | Required by statute |
| Michigan [16] | 11/23/2020 | ✓ | √ | | ✓ | - | Required by
statute |

| | | Reasons why a jurisdiction in the state may conduct a post-
election recount of ballots | | | | | | |
|-----------------------------|--|--|--|--|---|------------------------|---|--|
| State | General
election
certification
deadline | Results
are within
a certain
margin | By
candidate
or party
request | Results are within a certain margin and a candidate or party has requested a recount | Request
by other
person or
group | By court
order only | Post-election
tabulation
audit policy | |
| Minnesota [17] | 11/24/2020 | √ | √ | | √ | | Required by statute | |
| Mississippi | 11/13/2020 | | | | | √ | Not required | |
| Missouri | 12/8/2020 | - | | √ | - | - | Required by formal rule | |
| Montana | 11/30/2020 | - | | ✓ | | | Required by statute | |
| Nebraska [18] | 11/30/2020 | ✓ | ✓ | | - | | Required by formal rule | |
| Nevada [19] | 11/16/2020 | - | ✓ | | ✓ | - | Required by statute | |
| New Hampshire [20] | 11/12/2020 | - | √ | | - | - | Not required | |
| New Jersey | 12/8/2020 | - | | | - | √ | Required by statute | |
| New Mexico | 11/24/2020 | ✓ | ✓ | | | - | Required by statute | |
| New York | 12/7/2020 | - | | | _ | √ | Required by statute | |
| North Carolina [21] | 11/24/2020 | - | - | ✓ | - | - | Required by statute | |
| North Dakota
[22] | 11/13/2020 | ✓ | ✓ | ✓ | √ | - | Required by statute | |
| Northern Mariana
Islands | 11/17/2020 | - | - | - | - | ✓ | Required by statute | |
| Ohio [23] | 11/24/2020 | ✓ | √ | | √ | - | Required by statute | |
| Oklahoma [24] | 11/10/2020 | - | ✓ | - | - | - | Other | |
| Oregon [25] | 12/3/2020 | ✓ | ✓ | | ✓ | | Required by statute | |
| Pennsylvania [26] | 11/23/2020 | ✓ | | | ✓ | - | Required by statute | |
| Puerto Rico [27] | 11/4/2020 | ✓ | | | - | - | Not required | |
| Rhode Island [28] | 11/20/2020 | - | | ✓ | | | Required by statute | |
| South Carolina
[29] | 11/13/2020 | ✓ | | | - | - | Other | |
| South Dakota | 11/10/2020 | - | - | ✓ | - | - | Not required | |
| Tennessee [30] | 11/23/2020 | | | | - | ✓ | Other | |
| Texas [31] | 12/7/2020 | - | ✓ | | | - | Required by statute | |
| U.S. Virgin Islands | 11/13/2020 | | ✓ | | - | - | Not required | |
| Utah | 11/17/2020 | - | ✓ | ✓ | - | - | Required by statute | |
| Vermont | 11/10/2020 | - | | ✓ | _ | _ | Required by
statute | |



| | | Reasons v | | tion in the sta
on recount of | and the second s | uct a post- | |
|-----------------|--|--|--|--|--|------------------------|---|
| State | General
election
certification
deadline | Results
are within
a certain
margin | By
candidate
or party
request | Results are within a certain margin and a candidate or party has requested a recount | Request
by other
person or
group | By court
order only | Post-election
tabulation
audit policy |
| Virginia [32] | 11/16/2020 | | | ✓ | - | - | Required by statute |
| Washington [33] | 12/3/2020 | ✓ | ✓ | ✓ | ✓ | - | Required by statute |
| West Virginia | 12/3/2020 | | ✓ | | - | - | Required by
statute |
| Wisconsin [34] | 12/1/2020 | | | ✓ | - | | Required by statute |
| Wyoming [35] | 11/11/2020 | ✓ | ✓ | | - | - | Other |

Policy Survey Table 8 Calculation Notes:

General election certification deadline uses question Q33.

Recount reason, Results are within a certain margin uses question Q34_1.

Recount reason, By candidate or party request uses question Q34_2.

Recount reason, Results are within a certain margin and a candidate or party has requested a recount uses question Q34_3.

Recount reason, Request by other person or group uses question Q34_4.

Recount reason, By court order only uses question Q34_5.

Post-election tabulation audit policy uses question Q35.

Policy Survey Table 8 Data Notes:

General Notes:

- States were able to specify a calendar date for item Q33, select multiple responses to item Q34, and only a single response to item Q35. Selecting Q34_5 excluded all other responses to Q34.
- [1] Alaska reported that the certification deadline is the target date for the Alaska Division of Elections to certify the election. According to Alaska statute, a defeated candidate or 10 qualified voters who believe there has been a mistake in counting votes in an election may file an application for a recount of votes for any precinct or house district and for any office, proposition, or question. This application must be filed within five days after the completion of state review. However, the application may only be filed within three days after the completion of the state review after the general election for a recount of votes cast for the offices of governor and lieutenant governor. A recount is required if a contest is tied.
- [2] Arkansas reported that the County Election Commission may also come to a decision to recount an election.
- [3] California reported that anybody who is allowed by state law can request a recount.
- [4] The Delaware Boards of Canvass convene at 10:00 a.m. on the Thursday immediately following the federal general election.
- [5] The District of Colombia included the November 24 date in a public calendar as a tentative date for certifying results rather than a set deadline.

- [6] Florida specified that the state Elections Canvassing Commission meets at 9:00 a.m. on the ninth day after a primary election and at 9:00 a.m. on the 14th day after a general election to certify the election. For the November 3, 2020, federal general election, the deadline for jurisdictions to certify their results to the state fell on November 15, 2020.
- [7] Georgia reported that "In Georgia precincts where paper or scanning ballots have been used, the superintendent may, either of their own motion or upon petition of any candidate or political party, order a recount of ballots for a particular precinct for one or more offices in which it appears an error has been made. In precincts where voting machines were used, if there appears to be a discrepancy or error in the returns recorded for any voting machine, the superintendent may, either of their own motion or upon sworn petition of three electors of any precinct, order a recanvass of the votes shown on that particular machine or machines. This recanvass may be conducted at any time prior to the certification of the consolidated returns by the superintendent."
- [8] Guam reported that the certification deadline was a tentative date. The Guam Election Commission (GEC) cannot certify a general election until all administrative complaints received within 15 days after the election have been addressed.
- [9] Hawaii explained that there is no set deadline for certifying election results. If there are no election contests filed with the Supreme Court within 20 days of the election, the results will be certified.
- [10] Idaho reported that the county board of canvassers must certify results within 10 days of the general election, prior to the state board of canvassers meeting within 15 days of the general election. Idaho reported that a person supporting or opposing a state, jurisdiction, or city measure may request an election recount.
- [11] The Indiana Election Division (IED) tabulates final results for all federal, statewide, state legislative, and judicial offices and completes that tabulation no later than the last Tuesday of November (i.e., November 24, 2020). The Secretary of State certifies results immediately after receiving IED's tabulation. For presidential electors, the Secretary of State's part of the 2020 Indiana Election Commission would be signed by that date. Since the governor is required to issue commissions to each presidential elector by noon on the first Tuesday of December (i.e., December 1, 2020), and in order to issue those commissions the governor must certify his part of the 2020 Indiana Election Commission certificate of ascertainment, the certification of the presidential election results and Indiana electors also occurs on the first Tuesday of December. Indiana reported that a candidate's political party chair (state chair for federal and statewide candidates or county chair for a state legislative candidate from any jurisdiction where the legislative district is located) may file a recount if the candidate does not file the recount by the candidate recount filing deadline.
- [12] Kansas county board of canvassers can request a recount within their jurisdictions of any race if there are manifest errors.
- [13] Louisiana reported that election results are final after compilation and promulgation by the Secretary of State. Louisiana voters that voted in the proposition election may request a recount if the number of absentee and early ballots would make a difference in the outcome of the proposition election. Louisiana does not statutorily require audits, but they are conducted in every parish.
- [14] Maine reported that the Secretary of State must submit the official tabulation to the governor by the 20th day after the election.
- [15] Massachusetts local election officials must certify their election results and transmit to the Secretary of the Commonwealth within 15 days after the election. Thereafter, the Secretary of the Commonwealth tabulates the totals and presents them to the governor and the council for certification. Any registered Massachusetts voter can petition for a recount of ballot questions.
- [16] Michigan specified that recounts are conducted automatically if the statewide vote margin is less than 2,000 votes. Candidates can request a recount regardless of the margin. Groups may request a recount of ballot proposals. The voted ballots in at least one statewide contest must be reviewed as part of an audit



- (MCL 168.31a[2]). Separate audit procedures are used to complete both a traditional tabulation audit and a risk-limiting audit. Precincts are randomly selected for audit and all ballots for one statewide race were hand counted and compared to the tabulator totals to complete a traditional tabulation audit. Additionally, ballots for a statewide race are randomly selected from ballot containers statewide using a risk-limiting audit formula, and ballots were reviewed and compared to statewide totals.
- [17] Minnesota did not specify the other person or group who may request a recount of votes.
- [18] Nebraska specified that if there is a state-level recount, it would be conducted on December 2, 2020, at 9:00 a.m.
- [19] In Nevada, any person or group was able to request a recount of a ballot question by November 18, 2020.
- [20] New Hampshire specified that its certification dates vary depending on the office. For presidential electors, United States senators, representatives in Congress, state senators, and state representatives, the deadline was December 2, 2020. For governor, executive council, and county officers, the deadline was January 6, 2021.
- [21] North Carolina specified that their reported date is barring recounts and/or protests in individual races.
- [22] North Dakota specified that a defeated candidate or 10 qualified electors may contest the nomination or election of any person or the approval or rejection of any question or proposition submitted to a vote of the electorate, pursuant to chapters 16.1-04, 16.1-05, 16.1-06, 16.1-07, 16.1-08.1, 16.1-09, 16.1-10, and 16.1-11.
- [23] Ohio specified that issue groups may request an election recount.
- [24] The Oklahoma County Election Boards certify final election results in their jurisdictions at 5:00 p.m. on the Friday following the general election. In 2020, that was 5:00 p.m. on November 6. The State Election Board certifies final statewide results at 5:00 p.m. on the Tuesday following the general election. In 2020, that was 5:00 p.m. on November 10. The secretary of the state election board shall have the authority to direct the secretary of a county election board to conduct a post-election audit of election results, for the purpose of maintaining the security of the election system by ensuring that voting devices and software used in a particular election correctly tabulated votes.
- [25] Oregon reported that any voter can request a recount on a measure. The county clerk may also request a recount of a candidate contest or measure.
- **[26]** Pennsylvania reported that the November 23, 2020, certification deadline was imposed on jurisdiction officials and not on the Secretary of the Commonwealth. Pennsylvania reported that a group of voters may request a recount of specific precincts.
- [27] The Puerto Rico Electoral Code does not establish a certain date for certification. However, it does establish partial result certification for the next day. If an election does not require a recount, the winner can be certified by the Puerto Rico State Election Commission.
- [28] Rhode Island does not have a specified certification deadline but certified all elections, with the exception of three local races that were awaiting write-in ballots to be tallied on November 20, 2020.
- [29] South Carolina reported that post-election hand count audits are required by State Election Commission mandate.
- [30] Tennessee's reported deadline applies to the certification of election results by county election commissions. There is no specified deadline for the state to certify results.
- [31] The Texas governor's canvass must be performed between 18 and 33 days after the election.
- [32] The Virginia State Board of Elections meets on the third Monday in November as required by state law.
- [33] In Washington, in addition to the mandatory recounts, if a contest is within a specified margin, a group of five or more voters may request a recount for an issue or question.

- [34] Wisconsin law permits a recount within specified margins and by a qualified party who makes a request, or when ordered by a court of law.
- [35] The Wyoming State Canvassing Board meeting was set at 10:00 a.m. on November 10, 2020. Wyoming reported that the post-election tabulation uses the same sample ballots used for the logic and accuracy testing before the election. The county clerk conducts a random audit of ballots by processing the pre-audited group of test ballots on 5% of the automated tabulating equipment for that jurisdiction, but on not less than one machine, within 30 days of any election in which the tabulating equipment was used.



Chapter 3. Voter Registration: The NVRA and Beyond

Key Findings

The Election Administration and Voting Survey (EAVS) collected data on voter registration between the 2018 and the 2020 general elections in Section A of the survey. Election officials were asked a variety of questions relating to registration and list maintenance, including the number of persons registered and eligible to vote in the 2020 general election, the number of registration forms processed, the number of confirmation notices sent pursuant to the National Voter Registration Act (NVRA) and for other purposes, and the number of records removed from the voter registration rolls. Notable findings from Section A of the 2020 EAVS include:

- The number of registrations received between the 2018 and the 2020 general elections reached 103,701,513, a 33.8% increase in registrations received compared to the period leading to the 2016 general election.
- The states' departments of motor vehicles (DMV) were once again the most commonly used registration source and accounted for 39.3% of the total registrations received between the 2018 and the 2020 general elections.
- Online registration continued to be the second-most used registration method, accounting for 28.2% of the total registrations received, and it was the registration method with the largest growth in the two-year period leading to the 2020 general election.
- The total number of reported active registrants reached 209,441,338 nationwide. The total number of active registrations for the 2020 general election increased 8.3% compared to the 2016 general election.
- States reported removing 18,781,054 voter records from voter registration rolls between the 2018 and the 2020 general elections. More than half of these removals occurred because a registrant failed to return a confirmation notice and did not vote in the following two general elections, or because the registrant moved out of the voting jurisdiction.

Introduction

Voter registration is required in 49 states, ¹ all of the U.S. territories, and the District of Columbia, making registration the first step toward election participation for most voters. ² Registration serves multiple purposes: It allows election officials to confirm if a person is eligible to vote; permits officials to efficiently allocate resources such as ballots, poll workers, and voting equipment, depending on

¹ Throughout this report, unless otherwise specified, the term "state" can be understood to apply to the 50 U.S. states, the District of Columbia, and five U.S. territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that submit Election Administration Policy Survey and EAVS data.

² North Dakota is the only state that does not require voter registration.

the number of registrants per precinct and jurisdiction;³ and allows the tracking of voter participation.

Congress passed the NVRA in 1993 to "establish procedures that will increase the number of eligible citizens who register to vote in elections for federal office." This act, commonly known as the "Motor Voter Law," requires that states offer the opportunity to register to vote at their motor vehicle licensing offices (known as the DMV in many states). The law also requires states to offer voter registration at offices that provide public assistance or state-funded programs that primarily engage in providing services to persons with disabilities, and at armed services recruitment offices. The NVRA also provides guidelines on registration list maintenance and sets limits on how voters can be removed from the rolls.

The Help America Vote Act (HAVA) of 2002 charged the U.S. Election Assistance Commission (EAC) with collecting data on voter registration and list maintenance procedures. The EAC meets its statutory requirement to report to Congress on the impact of the NVRA via Section A of the EAVS. This chapter of the EAVS report not only fulfills this requirement, but also provides insight about the changes in the registration behaviors of Americans in federal general elections and about the changes in the state policies affecting the registration process.

Federal Laws Regulating Voter Registration

The National Voter Registration Act of 1993

The NVRA is the primary federal law governing voter registration in the United States. In this law, Congress provides a clear statement regarding the importance of voter registration:

- (1) the right of citizens of the United States to vote is a fundamental right;
- (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

³ What constitutes a jurisdiction for EAVS reporting is defined by how each state chose to provide data. For the 2020 EAVS, most states reported data on the county level (or county equivalent, such as parishes for Louisiana). Illinois, Maryland, Missouri, and Virginia reported data for independent cities in addition to counties. The territories, the District of Columbia, and Alaska each reported as a single jurisdiction. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Wisconsin reported data on the township level. Maine also reported its UOCAVA data in Section B as a separate jurisdiction, because this information was only collected at the state level. Michigan reported data for the county level, but most election administration activities take place in the 1,520 local election jurisdictions in the state.

4 52 U.S.C. § 20501.

⁵ This report generally uses the term "voter registration rolls" to refer to the computerized databases of registered voters that are maintained by states and localities. Other common terms for these databases include "voter registration lists" and "voter registration records."

⁶ Before 2016, the EAC administered a separate survey called the NVRA Survey, which collected similar information. This survey was consolidated with the EAVS for the 2016 general election. Before the creation of the EAC, the NVRA Survey was administered by the Federal Election Commission.



(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.⁷

The primary purposes of the NVRA are:

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this Act [NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.8

The NVRA's first purpose is to expand opportunities for voters to register by creating more uniform processes for voter registration and designating more places and methods to register to vote. The NVRA requires that states allow multiple methods and places to register to vote, including (1) motor vehicle departments when a person obtains, renews, or updates the address on their driver's license; (2) through the mail, using a standard registration form; (3) at all state offices providing public assistance (e.g., the Supplemental Nutrition Assistance Program [SNAP]); (4) at all offices that provide state-funded programs focused on services to people with disabilities; (5) at armed forces recruitment offices; and (6) at other state designated offices such as public libraries and local government offices. All these offices are mandated under the NVRA to provide their users with information on voter registration and assistance in the registration process when required.

The NVRA was fully implemented after the 1994 general election. Several states are not covered by the NVRA. North Dakota is exempt because it does not have voter registration. The U.S. territories are also not subject to the NVRA, and the states of Idaho, Minnesota, New Hampshire, Wisconsin, and Wyoming are exempt because they had same-day registration (SDR) in 1994 and have continued to make this option available uninterrupted since that time.

The NVRA also sets some fundamental guidelines that states must follow. For example, states may set their own deadline for citizens to register to vote in a general election for federal offices, but that deadline can never be more than 30 days before the date of the election. The NVRA also sets the

⁷ 52 U.S.C. § 20501

^{8 52} U.S.C. § 20507

⁹ States can make available the standard National Mail Voter Registration Form provided by the EAC (https://www.eac.gov/voters/national-mail-voter-registration-form) or their own version of a mail registration form following the NVRA's requirements.

process that states need to follow to maintain their voter registration rolls and to conduct removal processes.

Help America Vote Act of 2002 (HAVA)

HAVA was enacted with the goal of updating the voting administration system in the United States and creating a commission to assist in the administration of federal elections. In addition to legislating the update of the administration process for federal elections in the United States, HAVA mandates that states create and maintain a "computerized statewide voter registration list" that serves as "the official voter registration list for the conduct of all elections for Federal office in the State." The computerized registration list must be centralized and "defined, maintained and administered at the State level." However, although the registration list is administered at the state level, local election officials must be able to access the registration list and are required to enter any updated voter registration information in the computerized system. HAVA also specifies that the maintenance of the implemented computerized registration list will be carried out according to the NVRA's mandates and that duplicate names or registrations will be removed from the state's registration list.

State Voter Registration Policies

States have wide latitude on how to conduct their voter registration activities, as long as the state policies do not interfere with federal laws such as the NVRA and HAVA. This flexibility allows states to adapt their laws as they see appropriate to better serve the interests of their citizens. During the period between the 2018 and the 2020 general elections, a number of states changed their laws regarding voter registration, such as implementing online voter registration, allowing voters to register at the polls on Election Day, or implementing automatic registration. 12

These types of laws usually take years between when they are first proposed and when they are fully implemented. However, states can make short-term changes to their registration policies with the aim of addressing unforeseen circumstances. For example, the state of Massachusetts changed its registration deadline to allow its citizens an additional 10 days to register given the extraordinary circumstances caused by the COVID-19 pandemic. Additionally, some states briefly extended their registration deadlines due to issues with their online registration sites that made it impossible to register to vote in the hours before the end of the registration period—these issues were in some cases caused by an unprecedented volume of attempted visits. 14

^{10 52} U.S.C. § 21083

¹¹ Ibid.

¹² These registration policies will be covered in more detail in the following section of this chapter. More information on state's voting and registration policies can be found in Chapter 2 of this report.

¹³ Elections Division of the Secretary of the Commonwealth of Massachusetts. (2020, September 23). *Important Elections Updates*. https://www.sec.state.ma.us/ele/covid-19/covid-19.htm.

¹⁴ For example, Florida extended the deadline from October 5 to October 6, 2020, for a web malfunction before the deadline (https://dos.myflorida.com/communications/press-releases/2020/public-notice-secretary-of-state-laurel-m-lee-provides-update-about-voter-registration-in-florida/), and a federal court extended Virginia's registration deadline from October 13 to October 15, 2020, because of an accidentally severed fiber optic cable that disabled the Department of Elections' website hours before the registration deadline (https://www.elections.virginia.gov/news-releases/virginia-voter-registration-deadline-extended-by-federal-court.html).



The Registration Process

The typical voter registration process is depicted in Figure 1. Citizens in the United States can register to vote using different methods, some of them mandated by federal law and others offered at the discretion of the state. Once a registration form is completed and submitted, the state or local election office must confirm the eligibility of the applicant. Eligible applicants are added to the voter registration rolls and are notified of their registration status, whereas applicants who submitted ineligible or incomplete applications are contacted for further information to complete their applications.

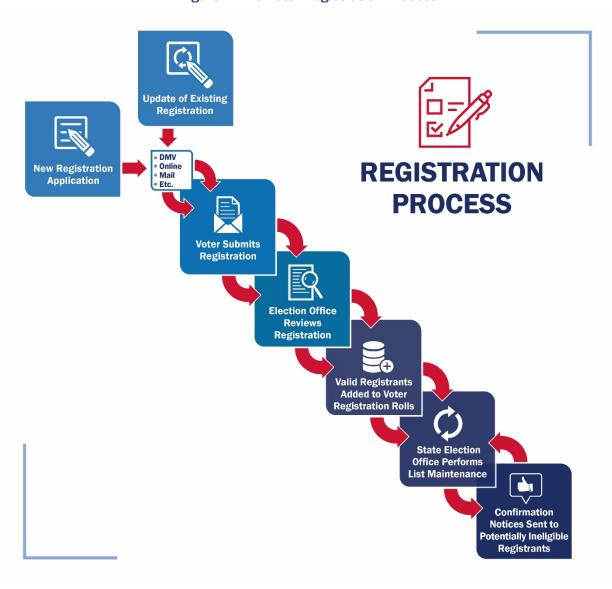


Figure 1. The Voter Registration Process

Note: Figure 1 does not represent automatic registration, in which the voter does not submit a registration application.

Voter registration also serves to assign each voter to a precinct—a bounded geographic area to which voters are assigned according to their residential address as listed in their voter registration record—so that voters receive the correct ballot. The voter registration system tracks each voter's electoral participation so that an individual can be given credit for voting in an election, which helps ensure each person casts only one ballot per election.

Every person with a valid registration is considered an active, registered voter. However, at times, a question arises as to whether a person still resides at the address at which they are registered. The election official may receive notification via the U.S. Postal Service national change of address from the voter of a new resident address. In these situations, the state or local election office may send the registrant a confirmation of address notice. In many states, if the person fails to return the form or the form is returned to the election office as undeliverable, the person is placed on a list of inactive voters. Inactive voters are still part of the voter registration rolls and are included in the registration totals in most jurisdictions. However, before they can vote, inactive voters are typically required to show approved documentation of their eligibility (most commonly, proof of living at an address within the voting jurisdiction). In some cases, inactive voters may be required to cast a provisional ballot when their eligibility cannot be established at the polls.

The NVRA also requires states to maintain their voter registration rolls by removing registrants who are no longer eligible to vote. For example, the NVRA provides that if a registrant fails to return a confirmation notice and does not vote in two subsequent federal general elections, the registrant can be removed from the voter registration roll of the jurisdiction that sent the confirmation notice. In addition, a registrant can be removed for other reasons such as death, upon the registrant's request, or due to a disqualifying criminal conviction or mental incompetence, as provided by a state's laws. This process is referred to as "list maintenance." When an individual is removed from the voter registration roll because of a change in residence of the voter under the NVRA process, this is called "address list maintenance." Election offices may share data with other state agencies or entities that maintain death records or felony and prison records for the purposes of identifying potentially ineligible voters. ¹⁶

How Americans Registered to Vote for the 2020 General Election

Between the close of registration for the 2018 general election and the close of registration for the 2020 general election, states and territories reported receiving a record 103,701,513 registration applications—26,184,917 more applications than were received in the same period leading up to the 2016 general election. The most used method of registration was the motor vehicle departments, which accounted for 39.3% of the total registrations received (39,705,812 registration

¹⁵ According to the 2020 Policy Survey, six states (Guam, Idaho, North Dakota, New Hampshire, the U.S. Virgin Islands, and Wyoming) reported that they do not distinguish between active and inactive voters in their registration records. In the survey comments in the EAVS, Oregon reported, "Do not track number of inactive voters," and Minnesota stated, "Minnesota is NVRA exempt. Minnesota does not classify voters as inactive per NVRA."

¹⁶ More information about state policies on voter registration database linkages is found in Chapter 2 of this report.

¹⁷ The total number of registration applications received during the two-year period leading to a federal general election was reported in item A3a in the 2020 EAVS and item A5a in the 2016 EAVS.

applications).¹⁸ Registration by mail accounted for 12.9%, in-person registration accounted for 8.3%, and online registration accounted for 28.2% of the total registration applications.¹⁹ The rest of the registration applications that were received during this period were from sources such as registration drives (2.2%), public assistance offices (1.6%), and armed forces recruiting offices (0.1%) among other sources.²⁰

The primary sources of registration have remained fairly consistent throughout multiple elections. For instance, motor vehicle departments have been the most common source of voter registration for over a decade, accounting for more than 30% of the received registrations since at least 2006. Figure 2 shows that other sources for filing registration applications, such as in person at election offices, by mail/fax/email, and other means (e.g., public assistance offices, registration drives), were used at very similar rates as for the 2018 general election.

Online registration has been the second-most popular registration mode since 2016 and accounted for a proportionately larger share of registration applications for the 2020 general election. In 2020, online applications increased 12.1 percentage points compared to the registration period leading to

¹⁸ The percentage of registrations received by the motor vehicle department was calculated by dividing the number of registration applications received at motor vehicle departments (item A4d of the EAVS) by the total number of registration applications received (item A3a of the EAVS). American Samoa, Idaho, New Hampshire, North Dakota, the Northern Mariana Islands, Puerto Rico, Rhode Island, the U.S. Virgin Islands, Wisconsin, and Wyoming were not included in the calculation because they did not report data on item A4d. Casewise deletion at the state level was used in this calculation. ¹⁹ The percentage of registrations received by mail, in person, and online used items A4a, A4b, and A4c of the EAVS respectively, and were divided by the total number of registration applications received (item A3a of the EAVS). Guam, North Dakota, Puerto Rico, Rhode Island, and the U.S. Virgin Islands were not included in the calculation of the percentage of registrations received by mail because they did not report data on item A4a. North Dakota and Rhode Island were not included in the calculation of the percentage of registrations received in person because they did not report data on item A4b. American Samoa, Arkansas, Maine, Mississippi, Montana, New Hampshire, New York, North Dakota, the Northern Mariana Islands, Puerto Rico, Rhode Island, South Dakota, the U.S. Virgin Islands, and Wyoming were not included in the calculation of the percentage of registrations received online because they did not report data on item A4c. Casewise deletion at the state level was used in these calculations.

²⁰ The percentage of registrations received from registration drives, public assistance offices, and armed forces recruiting offices used items A4i, A4e, and A4g of the EAVS respectively, and were divided by the total number of registration applications received (item A3a of the EAVS). American Samoa, Georgia, Guam, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, the Northern Mariana Islands, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, the U.S. Virgin Islands, West Virginia, and Wyoming were not included in the calculation of the percentage of registrations received from registration drives because they did not report data on item A4i. American Samoa, Guam, Idaho, Maine, Minnesota, New Hampshire, North Dakota, the Northern Mariana Islands, Puerto Rico, Rhode Island, the U.S. Virgin Islands, Vermont, West Virginia, Wisconsin, and Wyoming were not included in the calculation of the percentage of registrations received at public assistance offices because they did not report data on item A4e. American Samoa, Guam, Hawaii, Idaho, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, New York, North Dakota, the Northern Mariana Islands, Oregon, Puerto Rico, Rhode Island, the U.S. Virgin Islands, Vermont, West Virginia, Wisconsin, and Wyoming were not included in the calculation of the percentage of registrations received at armed forces recruiting offices because they did not report data on item A4g. Casewise deletion at the state level was used in these calculations. The instructions for this question noted that registration applications should be classified according to the mode used to submit it. For example, if the voter submits a registration form online using the state's online voter registration portal, this is considered an online voter registration. If the voter accessed the online voter registration system at a state public assistance office or at the office of an agency that primarily serves individuals with disabilities, this would also be considered an online registration.

²¹ The EAC's National Voter Registration Act Studies, which contain information on voter registration activities prior to 2016 when this information began being included in the EAVS Comprehensive Report, can be found at https://www.eac.gov/voters/national-voter-registration-act-studies.

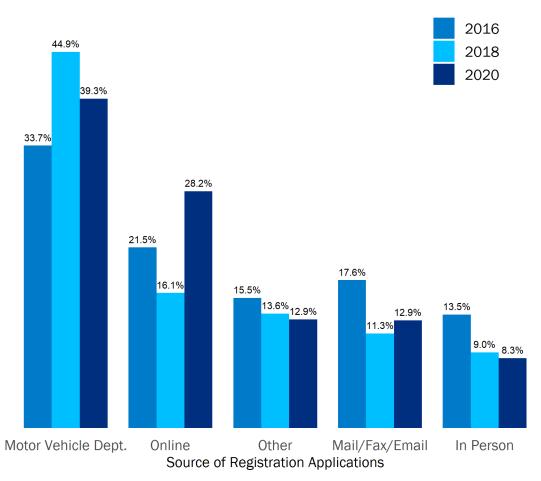


Figure 2. Motor Vehicle Departments Are the Most Common Source of Registration Applications

Source: The percentage of registrations received at motor vehicle departments was calculated as A4d/A3a \times 100 for the 2018 and the 2020 EAVS and A6d/A5a \times 100 for the 2016 EAVS. The percentage of registrations received online was calculated as A4c/A3a \times 100 for the 2018 and the 2020 EAVS and A6c/A5a \times 100 for the 2016 EAVS. The percentage of registrations received by mail/fax/email was calculated as A4a/A3a \times 100 for the 2018 and the 2020 EAVS and A6a/A5a \times 100 for the 2016 EAVS. The percentage of registrations received in person was calculated as A4b/A3a \times 100 for the 2018 and the 2020 EAVS and A6b/A5a \times 100 for the 2016 EAVS. The percentage of registrations received by other means was calculated as (A4e+A4f+A4g+A4h+A4i+A4j+A4k+A4l)/A3a \times 100 for the 2018 and the 2020 EAVS and (A6e+A6f+A6g+A6h+A6i+A6f)+A6m+A6n+A6o)/A5a \times 100 for the 2016 EAVS. Casewise deletion was used at the state level in these calculations.

the 2018 general election and was the registration source with the largest growth. Some of this growth in online registration applications could have been because of the effects of the COVID-19 pandemic, as many of the typical in-person modes of registration were restricted starting in March 2020. The percentages of registrations received at motor vehicle departments and in person at election offices saw small decreases from 2018 to 2020.

Another explanation for the growth in the use of online registration between 2018 and 2020 is that three states (Minnesota, New Jersey, and Oklahoma) began to offer online registration.²² This resulted in a total of 43 states that allowed voters to submit new registration applications online for the 2020 general election.²³ These registrations are typically reviewed electronically, and data from other state databases are used to verify a person's identity, address, and eligibility. Most of the states (81.4%) using online registration reported that applicants must have a driver's license issued by the state to register online.²⁴ Two more states (Mississippi and Texas) reported that they allow voters to update their registration records online, but voters may not submit new registration applications online.

States reported receiving 27,681,700 online registrations during the 2018–2020 registration period. Nineteen states reported receiving more than 30% of their registrations online in 2020 (see Table 2 of the Appendix). Among states that reported receiving online registrations in 2018 and 2020, only lowa and Connecticut reported a decrease in the percentage of their registrations received online (a 5.2- and 3.6-percentage-point decrease, respectively), and 26 states reported an increase of 10 percentage points or more. As in 2018, Massachusetts (67.4%) was the state with the highest percentage of online registrations. The first state to implement online registration, Arizona, also remained among the states with the highest levels of registrations received online (45.2%).

Same-Day Voter Registration

Same-day registration (SDR) allows voters to register to vote and cast their ballot on the same day. SDR can be offered on Election Day, in which case it may be referred to as Election Day registration, or it can be offered during in-person early voting.²⁸ SDR depends on local laws and, thus, is only allowed in some states and territories. Some states reported allowing SDR in narrow circumstances, such as only for particular elections (e.g., Alaska and Rhode Island reported only allowing SDR for voting for the U.S. President and Vice President) or particular cases (e.g., North Carolina reported

²² Information was collected from responses to items Q7 in the 2020 Policy Survey and Q6 in the 2018 Policy Survey. The states of Minnesota, New Jersey, and Oklahoma reported using online registration for the 2020 general election, but not in 2018. Mississippi and Texas reported offering an online option only to update registrations and did not report any online registration in item A4c of the EAVS.

²³ More information about state policies on online registration is found in Chapter 2 of this report.

 ²⁴ The percentage of states requiring a driver's license or other ID issued by the state to register to vote used item Q7a in the 2020 Policy Survey and was calculated by dividing the number of states that require a state-issued ID by the total number of states that reported allowing individuals to register to vote online in Q7 of the 2020 Policy Survey.
 25 The total number of online registration applications received during the two-year period leading to a federal general

election was reported in item A4c in the 2020 EAVS.

²⁶ The percentage of registrations received online in 2020 used item A4c of the 2020 EAVS divided by the total number of registration applications received (item A3a of the 2020 EAVS). The calculation of online registrations received in 2018 used the same item number from the 2018 EAVS data set. The comparison subtracted the percentage of registrations received online in 2020 from the percentage of registrations received online in 2018 to obtain the percentage point difference. Texas was not included among the states that received online registrations in 2018 and 2020, because they reported zero as the response for A4c in all of the counties.

²⁷ Illinois reported 96.4% of online registrations but was omitted here, because it reported more than twice as many registrations in the categories' breakdown than were reported in the item reporting total registrations received (A3a).
²⁸ Some states may have an overlap between their mail voting period and the close of their voter registration, during which it is possible for a person to register on the same day that they cast a mailed ballot; however, this is not considered SDR for purposes of the EAVS, and many states have noted in the past that it is not possible to track the number of mail voters who register to vote on the same day that they cast their mailed ballot.

allowing SDR to citizens who became eligible to vote due to naturalization or who had their voting rights restored after a conviction or felony and only if they became eligible between the close of books and Election Day).

In 2020, 29 states reported allowing some form of SDR. Twenty-one states reported allowing voters to register to vote on Election Day. Twelve states reported allowing SDR during an overlap between the start of early voting and the close of voter registration, 20 states reported allowing for SDR during in-person early voting, and four states reported allowing for SDR in very specific cases.²⁹ The states that indicated allowing SDR were mostly the same as in 2018, with the exception of South Carolina, which allowed SDR for the 2018 general election but not in 2020, and American Samoa, Massachusetts, Michigan, and Nevada, which did not allow for SDR in 2018 but did for the 2020 general election.³⁰

The total number of SDRs recorded in 2020 was 1,634,346 and accounted for 3.5% of the total registrations received among states allowing for SDR.³¹ For the first time, the 2020 EAVS asked states to break down SDRs between those that were received before and on Election Day. Election Day SDRs added up to 934,238, and early voting SDRs summed to 665,108 registrations.³² There was a wide variability in how the two types of SDRs were distributed among states that reported both, with Election Day SDRs accounting for between 5.9% and 100% of the total SDRs that states reported.³³

The use of SDR varied considerably, and similar to previous elections, the five NVRA-exempt states—which gained NVRA exemption for allowing SDR continuously since 1994³⁴—were among the states where SDR accounted for the largest percentages of registration applications. In Wyoming, 55.6% of the registration applications were SDR, followed by Idaho with 40.7% and Wisconsin with 30.4%.³⁵ The NVRA states where SDR accounted for the largest portions of their registration applications received were Vermont (24.4%) and Maine (24%). However, for most of the NVRA states, SDR accounted for less than 5% of registration applications.

 $^{^{29}}$ These results were obtained from item Q9a of the 2020 Policy Survey. More information about state policies on SDR is found in Chapter 2 of this report.

 $^{^{30}}$ These results were obtained from item Q9 of the 2020 Policy Survey and item Q7 of the 2018 Policy Survey.

³¹ The total number of SDR applications received during the two-year period leading to a federal general election was reported in item A2a in the 2020 EAVS. The percentage of registrations received that were SDRs was calculated by dividing the number of SDRs received (item A2a of the EAVS) by the total number of registration applications received (item A3a of the EAVS). The total and percentage correspond to the 26 states that reported allowing SDR and reported data for it. Guam and Massachusetts, which allow for some form of SDR, reported "Data not available" for this field. American Samoa reported zero total SDRs. Casewise deletion at the state level was used in this calculation.

³² The total number of Election Day SDRs was reported in item A2b in the 2020 EAVS, and the total number of early voting SDRs was reported in item A2c in the 2020 EAVS. The sum of Election Day SDRs and early voting SDRs does not add up to the total SDRs reported because some states either did not break down SDR by type (Alaska) or their submissions in A2b and A2c did not sum to A2a (California, Illinois, and Utah).

 ³³ The percentage of SDRs that were Election Day SDRs was calculated by dividing the number of Election Day SDR applications received (item A2b of the EAVS) by the total number of SDR applications received (item A2a of the EAVS).
 34 North Dakota is also NVRA exempt because it does not require voter registration, and the U.S. territories are also NVRA exempt.

³⁵ The percentage of registration applications that were SDRs was calculated by dividing the number of SDR applications received (item A2a of the EAVS) by the total number of registration applications received (item A3a of EAVS).



Automatic Voter Registration

Beginning in 2016, states started implementing laws allowing for automatic voter registration (AVR). These laws allow for non-registered persons to be added to the voter registration rolls during or after an interaction with a designated state agency, such as the motor vehicle department, unless the person specifically declines to be registered. The most common differences between the types of AVR policies were the point at which the individual must decline or "opt out" of being registered—either at the point of service or at a later time through a mailer sent to the individual—and which state agencies participate in the AVR program.

In 2016, Oregon was the first state to implement AVR at the state level. Since then, 23 states have also started using some form of AVR.³⁶ For the most part, states reported that individuals must opt out of AVR at the point of service. A very common example is that a person is provided the opportunity to register to vote while completing a transaction at their local motor vehicle department and is asked to provide a response of "yes" or "no" to be able to continue with the voter registration transaction. Only the states of Colorado and Oregon reported not asking individuals during their transactions and later requiring that they actively respond to a mailer if they do not want to be included in the voter registration rolls.³⁷ All states that reported allowing AVR did so at least through the state's motor vehicle department, with nine states reporting additional agencies (e.g., agencies for people with disabilities, public assistance offices) participating in the AVR program in their state.³⁸

The EAVS does not include any questions about the number of AVRs processed by states. However, the EAVS data show an increase in registrations submitted through motor vehicle departments (which data from the 2020 Policy Survey show is the most common state agency that processes AVRs) between 2016 and 2020. Although the increase of 14.3 million voter registrations processed through the motor vehicle department in this time span is likely the result of multiple factors, AVR may be one of them.³⁹ When comparing the change in motor vehicle department registrations recorded between 2016 and 2020 among states with and without AVR, states with AVR reported an increase of 80% in the number of registrations received at the motor vehicle department, whereas states without AVR reported a 10.1% increase.⁴⁰ These increases may be, in part, driven by the fact that there was a 33.8% increase in the total number of registrations received between 2016 and

³⁶ The number of states with AVR was obtained through item Q6 in the Policy Survey. More information about states with AVR is found in Chapter 2 of this report.

³⁷ Information on the point at which the individual has the opportunity to opt out of AVR was obtained through item Q6b in the Policy Survey.

 $^{^{38}}$ Information on state agencies participating in the AVR program for each state was obtained through item Q6a in the Policy Survey.

³⁹ Total registrations received at motor vehicle departments was obtained through items A4d in the 2020 EAVS and A6d in the 2016 EAVS.

⁴⁰ The percentage change in total number of registrations received at the motor vehicle department between 2016 and 2020 was calculated by dividing the number of registration applications received at the motor vehicle department in 2020 (item A4d of the 2020 EAVS) by the number of registration applications received at the motor vehicle department in 2016 (item A6d of the 2016 EAVS) for states that did and did not allow for AVR as reported in item Q6 of the Policy Survey. Classification of states as having AVR and not having AVR used item Q6 of the 2020 Policy Survey. Casewise deletion at the state level was used in this calculation.

2020.⁴¹ However, the trend of AVR states having an increase in motor vehicle department registration holds when comparing the percentage of registration applications received through motor vehicle departments in states with and without AVR for the 2016 and 2020 elections. Figure 3 shows that among states without AVR, motor vehicle department registrations accounted for a similar portion of the total registrations in 2016 and 2020. There has been a notable increase among the states that have implemented AVR in recent years.

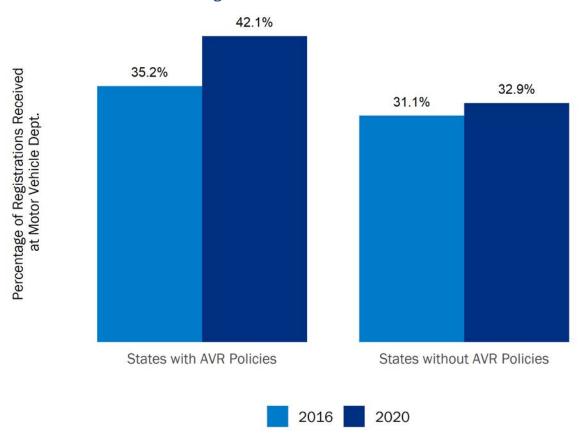


Figure 3. Motor Vehicle Department Registrations Accounted for a Larger Portion of Total Registrations Received in AVR States

Source: The percentage of registrations received at motor vehicle departments was calculated as A4d/A3a \times 100 for the 2020 EAVS and A6d/A5a \times 100 for the 2016 EAVS. Classification of states as having AVR and not having AVR used item Q6 of the 2020 Policy Survey. Casewise deletion at the state level was used in this calculation.

Alaska is the only state that reported AVRs as a separate category in its EAVS data, as this state processes most of its AVRs through the Permanent Fund Dividend program. Alaska reported in its

⁴¹ The percentage change in the total number of registrations received between 2016 and 2020 was calculated by dividing the number of registration applications received in 2020 (item A3a of the 2020 EAVS) by the number of registration applications received in 2016 (item A5a of the 2016 EAVS). North Dakota was not included in this calculation because it does not have voter registration. American Samoa and the Northern Mariana Islands were not included in this calculation because they did not complete the 2016 EAVS. Casewise deletion at the state level was used in this calculation.

survey comments that in 2016, the state approved a ballot initiative requiring AVR through the Permanent Fund Dividend. Since the implementation of the initiative, the total number of registration applications that the state reported receiving increased from 259,227 in 2016 to 1,079,008 in 2020. 42 AVRs through the Permanent Fund Dividend program accounted for 68.1% of Alaska's total registrations in 2020 and 59.8% in 2018. 43

Other Modes of Registration

In addition to in-person, online, mail/fax/email, and motor vehicle department registrations, states reported data on registration applications received from other sources, which in 2020 accounted for 12.9% of the applications received at the national level.⁴⁴ Some of these modes of registration are NVRA mandated, such as registrations through armed forces recruitment offices, public assistance offices, and state-funded agencies serving persons with disabilities. These NVRA-mandated modes of registration accounted for 1.8% of the national registrations in 2020.⁴⁵ States also reported registrations completed through other modes that are not required by the NVRA and that are authorized at the discretion of the state, such as at registration drives (2.2%) and other agencies required by the state (3%).⁴⁶

Voter Registration Rates for the 2020 General Election

The NVRA requires each state to report its total number of registered and eligible, active, and inactive registrants for each federal general election.⁴⁷ Most states reported the total "registered and eligible" voters as the sum of active and inactive registrants. However, data on registered and eligible voters as reported in the EAVS should be used with caution, as these totals can include registrants who were no longer eligible to vote in that state but who had not been removed from the voter registration rolls because the removal process from the inactive list laid out by the NVRA can take up to two election cycles to be completed. As In addition, preliminary data from the 2020 U.S.

⁴² The number of total registrations received was obtained from item A3a in the 2020 EAVS and from item A5a in the 2016 EAVS.

⁴³ Alaska reported data on the number of registrations received through the Permanent Fund Dividend program in item A4j of the 2020 and 2018 EAVS. The percentage of the total registrations that were processed through the Permanent Fund Dividend program was calculated by dividing the number of the program registration applications (item A4j for Alaska in the 2020 and the 2018 EAVS) by Alaska's total registrations received (item A3a in the 2020 and the 2018 EAVS).

⁴⁴ The percentage of registrations received by other sources different than in person, online, mail/fax/email, and the motor vehicle department was calculated as (A4e+A4f+A4g+A4h+A4i+A4j+A4k+A4l)/A3a x 100 for the 2020 EAVS. Casewise deletion was used at the state level in these calculations.

⁴⁵ The percentage of registrations received from NVRA-mandated sources different than in person, mail/fax/email, and the motor vehicle department was calculated as (A4e+A4f+A4g)/A3a x 100 for the 2020 EAVS. Casewise deletion was used at the state level in these calculations.

⁴⁶ The percentage of registrations received from registration drives and from state agencies not mandated by the NVRA used items A4i and A4h of the 2020 EAVS, respectively, and were divided by the total number of registration applications received (item A3a of the EAVS). Casewise deletion at the state level was used in these calculations.

⁴⁷ Twelve states (American Samoa, Guam, Idaho, Minnesota, New Hampshire, the Northern Mariana Islands, Ohio, Oregon, Puerto Rico, the U.S. Virgin Islands, Wisconsin, and Wyoming) reported only active registrants. North Dakota does not have voter registration and, thus, did not have any data to report.

⁴⁸ California, Florida, Kansas, and New York reported more "registered and eligible" voters in their state than the sum of the active and inactive registrants, resulting in 13,704; 13,384; 11,199; and 776 uncategorized registrants, respectively. New Hampshire reported zero registrations in 18 of its 320 jurisdictions. Two jurisdictions in Wisconsin reported zero registrations because they changed their status from town to village and/or merged with other jurisdictions where they reported the corresponding registration data. Kalawao County in Hawaii reported zero registrations because Maui County administers Kalawao County's elections.

Census show that the U.S. population increased by more than 20 million people since the 2010 Census, resulting in a change of apportionment for congressional seats in 13 states;⁴⁹ this population increase and mobility may be a contributing factor to the increase of records that states reported having on their voter registration rolls for the 2020 general election.

For the 2020 general election, states reported that 228,004,364 citizens were registered to vote, either as active or inactive voters.⁵⁰ This represents a 6.5% increase compared to the number of people who were registered to vote for the 2016 general election.⁵¹ Nationally, 91.9% of all registrants were designated as active, and 9.1% of registrants were designated as inactive.⁵² In 2020, the total number of active registrants exceeded the 200 million mark for the first time in EAVS history and accounted for 88.2% of the 2019 citizen voting age population (CVAP).⁵³ The number of active registrants in 2020 increased 8.3% compared to what states reported for the 2016 EAVS. In 2020, the majority of states reported active registration rates of 80% or more of their 2019 CVAP (see Table 1 in Appendix A of this chapter).⁵⁴ Compared to the active registration rates in 2016, 82% of the states reported a higher active registration rate in 2020.⁵⁵

⁴⁹ U.S. Census Bureau. (2021, April 26). *First 2020 Census Data Release Shows U.S. Resident Population of 331,449,281*. https://www.census.gov/library/stories/2021/04/2020-census-data-release.html.

⁵⁰ The total number of registered voters was obtained from item A1a in the 2020 EAVS.

⁵¹ The percentage change in the total number of registered voters between 2016 and 2020 was calculated by dividing the total number of registered voters in 2020 (item A1a of the 2020 EAVS) by the total number of registered voters in 2016 (item A1a of the 2016 EAVS).

⁵² The percentage of active and inactive registrants used items A1b and A1c, respectively, of the 2020 EAVS and divided these items by the total number of registered voters (item A1a of the EAVS). North Dakota was not included in these calculations because it does not have voter registration. Guam, Idaho, Minnesota, New Hampshire, the Northern Mariana Islands, Ohio, Oregon, Puerto Rico, the U.S. Virgin Islands, Wisconsin, and Wyoming were not included in the percentage of inactive voters because they did not provide data about inactive voters in item A1c of the 2020 EAVS. Casewise deletion at the state level was used in these calculations. The percentages of active and inactive registrants do not add to 100 because of the use of state casewise deletion to calculate percentages at the national level, as discussed in Chapter 5. 53 The total number of active registrants was obtained from item A1b in the 2020 EAVS. The active CVAP voter registration rate was calculated by dividing the number of active registrants (item A1b in the 2020 EAVS) by the estimated CVAP provided by the U.S. Census Bureau. North Dakota was not included in the calculation because it does not have voter registration. American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands were not included in the calculation because there is no CVAP information from the Census Bureau for these territories. Casewise deletion at the state level was used in these calculations. This report uses the 1-year American Community Survey (ACS) state CVAP estimate for 2019 instead of the 5-year estimate to ensure that the CVAP is as current as possible. The CVAP estimates for 2020 were not available by the time this report was finalized. In calculating the percentage change in the total number of active registrants from the 2016 EAVS to the 2020 EAVS, casewise deletion has been used at the state level. 54 The percentage of active CVAP voter registration was calculated by dividing the total active registrants (item A1b in the 2020 EAVS) by the total CVAP.

⁵⁵ The percentage of active CVAP voter registration change was calculated as the 2020 percentage of active CVAP voter registration ([A1b/CVAP] x 100) for the 2020 EAVS divided by the 2016 percentage of active CVAP voter registration ([A3a/CVAP] x 100) for the 2016 EAVS. One unit was subtracted from the result of the division, and the result was multiplied by 100 to obtain the percentage change. North Dakota was not included because it does not have voter registration. Pennsylvania was not included because it did not report total active registrants in 2016, as the state commented that it could not "differentiate between active and inactive from our point in time snapshot of the voter registration numbers." The U.S. territories of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands were not included because the U.S. Census Bureau does not provide an estimate for their CVAP.



Calculating Registration Rates

Estimating the percentage of the population that is registered to vote for an election can be approached in different ways using a variety of metrics. There are multiple potential numerators and denominators that can be used.

Registration Rate Numerator:

- Total Registrants. The number of people that states reported as being registered and eligible to vote (A1a in the EAVS). This total includes active and inactive registrants. This metric overrepresents of the actual number of registrants within a state, since some of the people included (particularly inactive registrants) may not be eligible to vote in that jurisdiction.
- Active Registrants. The number of people that states reported as being eligible to cast a ballot
 without the need to provide additional eligibility evidence at the polls (A1b in the EAVS). This total
 excludes inactive registrants.

Registration Rate Denominator:

- Voting Age Population (VAP). The estimate of the number of persons ages 18 or older provided by the Census Bureau.
- Citizen Voting Age Population (CVAP). The estimate of the number of American citizens ages 18 or older provided by the Census Bureau. This estimate is more accurate than the VAP in that it restricts the inclusion criteria to being a U.S. citizen, which is mandatory to vote.
- Voting Eligible Population (VEP). The estimate created by subtracting from the CVAP the citizens that are ineligible to vote (e.g., persons with disqualifying felony convictions) and persons who are in the military or citizens living overseas. This estimate is provided by the U.S. Elections Project and is available at the state level but not at the jurisdiction level like the VAP and the CVAP estimates.

The combination of active registrants and the CVAP to calculate the registration rate in the EAVS provides a higher level of accuracy than using the total registrations and/or the VAP to calculate the rate at the jurisdiction level when needed, as opposed to the use of the VEP. This calculation, however, has some limitations, such as the potential overrepresentation of total registrants in the active registrant list due to the challenges for states to keep voter registration rolls fully up to date. When analyzing EAVS data, the EAC recommends using the following method to calculate voter registration rates:

$$\frac{A1b \ of \ EAVS}{CVAP} \times 100 = Active \ CVAP \ Voter \ Registration \ Rate$$

See Chapter 2 of this report for a discussion of state policies on voter registration list maintenance.

There was a 3.6-percentage-point increase in the active registration rates at the national level (from 84.6% in 2016 to 88.2% in 2020). ⁵⁶ At the state level, Georgia and Texas reported the largest

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⁵⁶ The percentage of active CVAP voter registration for 2020 was calculated as the total active voters (A1b in the 2020 EAVS) divided by the 2019 CVAP. The percentage of active CVAP voter registration for 2016 was calculated as the total active voters (A3a in the 2016 EAVS) divided by the 2015 CVAP. The percentage point change between the 2016 and 2020 active CVAP voter registration rates was calculated by subtracting the 2015 active CVAP voter registration percentage from the 2019 active CVAP voter registration percentage.

increases in active registration rates between 2016 and 2020 (24.5% and 18.8%, respectively), and New York and Puerto Rico reported the largest drops in active registration rates (24.3% and 14.4%, respectively).⁵⁷ Figure 4 shows the change in the active CVAP voter registration rate among states from the 2016 general election to the 2020 general election.

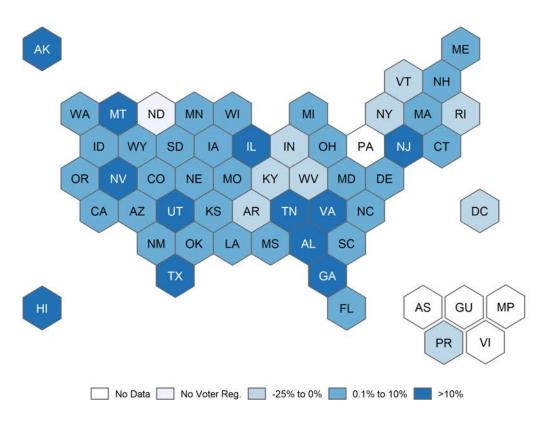


Figure 4. Most States Had an Increase in the Active CVAP Voter Registration Rate From 2016 to 2020

Source: The percentage of active CVAP voter registration change was calculated as the 2020 percentage of active CVAP voter registration ($[A1b/CVAP] \times 100$) for the 2020 EAVS divided by the 2016 percentage of active CVAP voter registration ($[A3a/CVAP] \times 100$) for the 2016 EAVS. One unit was subtracted from the result of the division, and the result was multiplied by 100 to obtain the percentage change. North Dakota does not have a change rate because it does not have voter registration. Pennsylvania does not have a change rate, because it did not report total active registrants in 2016, as the state commented that they could not "differentiate between active and inactive from our point in time snapshot of the voter registration numbers." The U.S. territories of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands do not have a change rate because the U.S. Census Bureau does not provide an estimate for their CVAP. Cutoff points in the graph were selected to reflect states that decreased, that slightly increased, and that notably increased in terms of the active CVAP registration rate from 2016 to 2020.

⁵⁷ New York reported an uncharacteristically high number of active and total registrations in the 2016 EAVS compared to the registrations reported in the general elections of 2014, 2018, and 2020, which led to the drop in active registrants noted in the 2020 EAVS. The percentage of active CVAP voter registration was calculated by dividing the total active registrants (item A1b in the 2020 EAVS) by the total CVAP.



Types of Registrations Received for the 2020 General Election

When a person submits a registration form, it is processed by the state and can reach one of several outcomes. Valid applications from persons who are eligible and not already registered are considered new applications and are added to the voter registration rolls. Applications submitted by persons already registered to vote at the same address with the same name and personal information are considered duplicates. Applications from already-registered persons wishing to change their name, party affiliation, or address are processed as updates to existing registrations. Applications that do not meet the requirements of eligibility are considered invalid or rejected. When allowed by state law, applications submitted by persons under 18 years old are processed as preregistrations so that they will be registered when they become of voting age.

All registration forms received are processed and scrutinized by election officials to ensure that the information is correct, that only eligible voters are added to the registration rolls, and that duplicate registration records are not created. After the application's review by election officials and following the NVRA's guidelines, states must notify the applicant with the result of their application. For example, a successful application may be notified in the form of a registration card mailed to the applicant or a notice of rejection may be mailed to unsuccessful applicants.

Valid Registrations

Table 1 displays information on the result of the registration applications that were received by states. Of the more than 100 million registration applications received between the 2018 and the 2020 federal general elections, the most common type of registration was an update to an existing record that did not involve a cross-jurisdiction change of address.⁵⁸ These updates usually involve a change of name (such as after a marriage or divorce), party affiliation, or within-jurisdiction change of address; these updates accounted for 49.4% of the registrations processed at the national level.⁵⁹ New valid registrations—a registration application received from an eligible person in a jurisdiction where they were not previously registered and that resulted in a new registration record being added to the voter registration roll—made up 32.2% of the registrations received.⁶⁰

Other types of valid registrations reported in the EAVS included a change of address that crossed local jurisdiction borders but was still within the state, which accounted for 9.5% of the total registration applications filed.⁶¹ Some states reported allowing for underage citizens to preregister to vote so that they are automatically added to the voter registration rolls when they turn 18 years old.

⁵⁸ The number of total registration applications was reported in item A3a of the EAVS. The number of registration applications that were a change of name, party, or within-jurisdiction change of address was reported in item A3f of the EAVS.

⁵⁹ The percentage of registration applications that were a change of name, party, or within-jurisdiction change of address received was calculated by dividing the number of such registration applications received (item A3f of the EAVS) by the total number of registration applications received (item A3a of the EAVS). Casewise deletion at the state level was used in this calculation.

⁶⁰ The percentage of registration applications that were a new registration was calculated by dividing the number of such registration applications received (item A3b of the EAVS) by the total number of registration applications received (item A3a of the EAVS). Casewise deletion at the state level was used in this calculation.

⁶¹ The percentage of registration applications that were a cross-jurisdiction change of address was calculated by dividing the number of such registration applications received (item A3g of the EAVS) by the total number of registration applications received (item A3a of the EAVS). Casewise deletion at the state level was used in this calculation.

These preregistrations accounted for 1.2% of the total registrations among states that allowed them. 62 Finally, 14.7% of the registrations were labelled as "Other." This category in the EAVS is used by states to report registrations that were not covered among the standard categories, or in most cases, to report registrations that could not be broken down into the categories provided, such as a change to existing records that some jurisdictions could not determine whether it involved a within or cross-jurisdictional change of address. 63

Table 1. Most Registration Applications Were New Applications or Within-Jurisdiction Changes

| Type of Registration Form Received | Percentage of Total
Registration Forms Received |
|---|--|
| Change of name, party, or address (within jurisdiction) | 49.4% |
| New valid registrations | 32.2% |
| Other | 14.7% |
| Duplicate registrations | 9.7% |
| Cross-jurisdiction change of address | 9.5% |
| Invalid or rejected | 2.9% |
| Preregistrations from persons under 18 years of age | 1.2% |

Source: The percentage of registrations received that were a change of name, party, or within-jurisdiction change of address received was calculated as $(A3f/A3a) \times 100$. The percentage of registrations received that were a new valid registration was calculated as $(A3b/A3a) \times 100$. The percentage of registrations received that were a duplicate registration was calculated as $(A3d/A3a) \times 100$. The percentage of registrations received that were a cross-jurisdiction change of address was calculated as $(A3g/A3a) \times 100$. The percentage of registrations received that were labelled as "Other" registrations was calculated as $((A3h+A3i+A3i)/A3a) \times 100$. The percentage of registrations received that were invalid or a rejected registration was calculated as $(A3e/A3a) \times 100$. The percentage of registrations received that were a preregistration of persons under 18 years of age was calculated as $(A3c/A3a) \times 100$. Casewise deletion was used at the state level in these calculations (percentages for each type of registration were calculated independently and only states that reported data for a given type were included in the analysis), and because of this, percentages do not sum to 100%.

Rejected and Duplicate Registrations

Some of the registration forms received by states do not result in the creation or the update of a registration record. The two types of invalid registration applications that the EAVS collects data on are rejected applications and duplicate applications. The first group includes applications that contain incorrect information, information that cannot be validated against existing state records, or applications from persons who do not meet eligibility requirements. In the period between the close

⁶² The percentage of registration applications that were a preregistration of persons under 18 years of age was calculated by dividing the number of such registration applications received (item A3c of the EAVS) by the total number of registration applications received (item A3a of the EAVS). Casewise deletion at the state level was used in this calculation.
63 The percentage of registration applications that were categorized as "other" was calculated by dividing the total number of such registration applications received (sum of items A3h, A3i, and A3j of the EAVS) by the total number of registration applications received (item A3a of the EAVS). Casewise deletion at the state level was used in this calculation. Not all the applications accounted for in the "other" category may be valid; however, they were included in this section because they cannot be fully identified as rejected or duplicate either.

of registration for the 2018 general election and the close of registration for the 2020 general election, states reported rejecting 2,840,590 applications, accounting for 2.9% of the total registration applications received. This percentage is comparable to the percentage of registrations that were rejected in 2018 (3.4%) and 2016 (3.2%).⁶⁴

Duplicate registrations include applications that are exact matches to existing registration records; these can be applications submitted by persons who did not realize they were already registered to vote or who submitted multiple applications through different modes (e.g., submitted an application with the exact same information through the mail and online). States reported receiving 8,827,089 duplicate applications between the 2018 and the 2020 federal general elections, which accounted for 9.7% of the total registrations received. As with rejected applications, the percentage of duplicate registrations registered in 2020 was comparable to those in 2018 (10.2%) and 2016 (7.9%).

A majority of states provided a breakdown of the total, rejected, and duplicate registrations they received and the source of those registrations (e.g., mail, in person).⁶⁷ As expected, most registration sources had rejection and duplicate percentages that were similar to the national averages; however, there were a few outliers. For duplicate registrations, the overall percentage at the national level was 9.7%, and most sources reported duplicate percentages similar to the national level, ranging from 5.3% to 13.3%.⁶⁸ However, there were exceptions, such as state-designated offices not mandated by the NVRA, that reported lower levels of duplicate registrations (3%). At the other side of the spectrum, registrations received by mail, fax, or email had notably higher levels of duplicate registrations received (19.1%) compared to the national average.⁶⁹ Invalid or rejected applications

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for the number of total registration application rejections was obtained from item A3e of the EAVS. The percentage of registrations received that were invalid or rejected registrations in 2020 was calculated as the total applications rejected in 2020 (item A3e in the 2020 EAVS) divided by the total registration applications received (item A3a in the 2020 EAVS). The percentage of registrations received that were invalid or rejected registrations in 2018 was calculated as the total applications rejected in 2018 (item A3e in the 2018 EAVS) divided by the total registration applications received (item A3a in the 2018 EAVS). The percentage of registrations received that were invalid or rejected registrations in 2016 was calculated as the total applications rejected in 2016 (item A5e in the 2016 EAVS) divided by the total registration applications received (item A5a in the 2016 EAVS). Casewise deletion at the state level was used in this calculation.

65 The number of total duplicate registration applications was obtained from item A3d of the EAVS. The percentage of registrations received that were duplicate registrations in 2020 was calculated as the total duplicate applications in 2020 (item A3d in the 2020 EAVS) divided by the total registration applications received (item A3a in the 2020 EAVS). Casewise deletion at the state level was used in this calculation.

⁶⁶ The percentage of registrations received that were duplicate registrations in 2020 was calculated as the total duplicate applications in 2018 (item A3d in the 2018 EAVS) divided by the total registration applications received (item A3a in the 2018 EAVS). The percentage of registrations received that were duplicate registrations in 2016 was calculated as the total duplicate applications in 2016 (item A5d in the 2016 EAVS) divided by the total registration applications received (item A5a in the 2016 EAVS). Casewise deletion at the state level was used in this calculation.

⁶⁷ Thirteen states did not provide the application source breakdown for duplicate registrations, and 14 states did not provide the application source breakdown for rejected registrations. Data from these states were not included in the ensuing calculations in the paragraph.

 $^{^{68}}$ The percentage of registration applications received from a source and categorized as duplicate was calculated as follows for each registration source included in the range: in person = $(A6b/A4b) \times 100$; online = $(A6c/A4c) \times 100$; motor vehicle department = $(A6d/A4d) \times 100$; public assistance offices = $(A6e/A4e) \times 100$; state-funded agencies serving persons with disabilities = $(A6f/A4f) \times 100$; armed forces recruitment offices = $(A6g/A4g) \times 100$; registration drives = $(A6i/A4i) \times 100$; Other = $((A6j+A6k+A6l)/(A4j+A4k+A4l)) \times 100$. Casewise deletion at the state level was used in this calculation.

 $^{^{69}}$ The percentage of registration applications that were duplicates was calculated as follows for each registration source mentioned: state-designated offices not mandated by the NVRA = (A6h/A4h) x 100; mail/fax/email = (A6a/A4a) x 100. Casewise deletion at the state level was used in this calculation.

represented 2.9% of registrations at the national level, and most sources reported a rejection percentage close to that, ranging from 1.7% to 4.2% of registrations rejected, 70 except for registration drives (10.1%), and NVRA-mandated public assistance offices (9.1%) that had notably higher levels of applications classified as rejected or invalid. 71

Registration List Maintenance

The NVRA requires states to maintain an "accurate and current voter registration roll" to "protect the integrity of the electoral process." To facilitate this maintenance, the NVRA requires that any change of address submitted to a motor vehicle department must serve as notification of a change of address for voter registration, unless the individual indicates that the change is not for voter registration purposes. The law also requires states and territories to conduct a uniform and nondiscriminatory general program to remove the records of ineligible voters. States and territories have considerable freedom to choose when, where, and how these functions are performed, but must follow the guidelines listed in the NVRA, which describe the need to use confirmation notices and to complete (with few exceptions) systematic removal programs "not later than 90 days prior to the date of a primary or general election for Federal office," 3 as well as to keep a detailed list of instances in which it is appropriate to remove a record from the voter registration rolls.

Confirmation Notices

One tool that states may use to keep their voter registration rolls up to date are confirmation notices. These are postage pre-paid and pre-addressed return cards that are sent to registrants who a state suspects are no longer eligible to vote in the jurisdiction in which they are registered. If the registrant does not return the confirmation notice, they can be added to the inactive registrant list and would be asked to provide proof of residence before voting. If the registrant fails to return the confirmation notice and does not participate in the subsequent two consecutive federal elections, then the NVRA grants the state the ability to remove the registrant from the voter registration roll. If the registrant has not moved out of the voting jurisdiction, they must complete and return the confirmation notice no later than the registration deadline of the next election to remain on the list of active registrants.

 $^{^{70}}$ The percentage of registration applications received from a source and categorized as invalid or rejected was calculated as follows for each registration source included in the range: mail/fax/email = (A7a/A4a) x 100; in person = (A7b/A4b) x 100; online = (A7c/A4c) x 100; motor vehicle department = (A7d/A4d) x 100; state-funded agencies serving persons with disabilities = (A7f/A4f) x 100; armed forces recruitment offices = (A7g/A4g) x 100; state-designated offices not mandated by the NVRA = (A7h/A4h) x 100; and Other = ((A7j+A7k+A7l)/(A4j+A4k+A4l) x 100. Casewise deletion at the state level was used in this calculation.

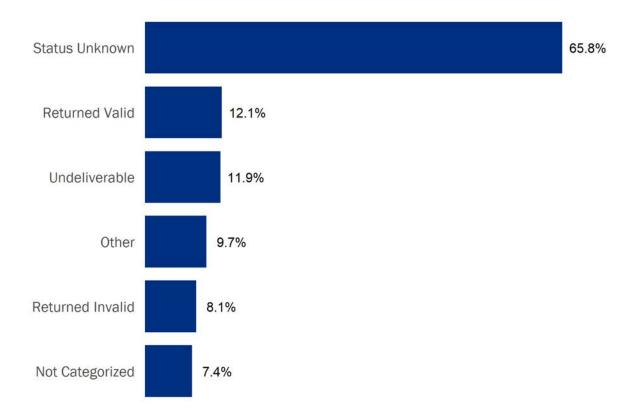
 $^{^{71}}$ The percentage of registration applications received from a source and categorized as invalid or rejected was calculated as follows for each registration source mentioned: registration drives = $(A7i/A4i) \times 100$; public assistance offices = $(A7e/A4e) \times 100$. Casewise deletion at the state level was used in this calculation.

^{72 52} U.S.C. § 20501

⁷³ 52 U.S.C. § 20507



Figure 5. Almost Two-Thirds of Confirmation Notices That Were Sent Had an Unknown Status



Source: Status unknown (A8e) refers to any notice that was sent to a voter but was not received back confirming registration, confirming invalidation, or returned as undeliverable. This percentage was calculated as $(A8e/A8a) \times 100$. The percentage of confirmation notices sent and returned confirming valid registration was calculated as $(A8b/A8a) \times 100$. The percentage of confirmation notices sent and returned undeliverable was calculated as $(A8d/A8a) \times 100$. The percentage of confirmation notices sent and returned confirming registration should be invalidated was calculated as $(A8c/A8a) \times 100$. The percentage of confirmation notices sent and not categorized was calculated as $(1 - ((A8b+A8c+A8d+A8e+A8f+A8g+A8h)/A8a)) \times 100$. The percentage of confirmation notices sent and labeled as other was calculated as $((A8f+A8g+A8h)/A8a) \times 100$. Casewise deletion was used at the state level (percentages for each category were calculated independently and only states that reported data for a given category were included in the analysis), and because of this, percentages do not sum to 100%.

Nationally, 28,010,094 confirmation notices were sent between the 2018 general election and the month before the 2020 general election, accounting for 14.3% of the active voters reported by states in 2020.⁷⁴ This percentage is slightly higher than what was reported by states in 2018

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⁷⁴ The total number of confirmation notices sent was reported in item A8a of the EAVS. The number of confirmation notices sent as a percentage of the active registrants was calculated using total confirmation notices sent (item A8a of the EAVS) divided by total active registrants (A1b of the EAVS). Casewise deletion at the state level was used in this calculation. In 2020, 49 states and territories reported the number of confirmation notices sent during the period of registration for the 2020 general election. North Dakota does not require citizens to register to vote and, thus, does not use confirmation notices. Minnesota, Puerto Rico, the U.S. Virgin Islands, and Wyoming are NVRA exempt. Alabama reported that they did "not have a report that has the total number of confirmation notices sent." Indiana did not provide this information

(11.6%) and in 2016 (10.9%).⁷⁵ Figure 5 shows that confirmation notices with an unknown status accounted for 65.8% of the total. The unknown status notices generally included confirmation notices that were sent and never returned to the jurisdiction—allowing states to move the addressees of these notices to the inactive registration list if the state uses that designation. States reported 12.1% of confirmation notices were returned confirming the voter's continued eligibility, and 8.1% were returned confirming the voter was no longer eligible to vote in the jurisdiction or no longer wanted to be registered to vote.

Removing Voters From Voter Registration Rolls

The NVRA mandates that registrants may only be removed from the voter registration rolls in these circumstances:

- Upon the death of the registrant;
- Upon the registrant's written confirmation that their address has changed to a location outside the registrar's jurisdiction;
- On the request of the registrant;
- For mental incapacity of the registrant, as provided in state law;
- On criminal conviction of the registrant, as provided in state law; or
- On the registrant's failure to respond to certain confirmation mailings <u>along with</u> failure to appear to vote in two consecutive federal general elections subsequent to the mailing.

Because some of the states' processes to remove a registrant from the voter registration rolls can take up to two federal general election cycles to complete, it is inevitable that voter registration rolls will contain some number of voter records for individuals who are no longer eligible to vote.

Between the close of registration for the 2018 general election and the close of registration for the 2020 general election, states reported removing 18,781,054 records from their voter registration rolls. ⁷⁶ This was equal to 8.2% of the total number of voters who were registered in the United States as of the close of registration for the 2020 general election. ⁷⁷ Almost two-thirds of the states and territories reported removing a number of registrants that added up to between 3% and 10% of their total registered voters. There were some exceptions to this trend: Connecticut's removals accounted

because it "does not send the removal notices referenced by the EAC survey." Forty-four states reported the status of the confirmation notices sent. In addition to the states that did not report on confirmation notices, Delaware, Kentucky, Louisiana, Massachusetts, and Rhode Island did not break down the number of confirmation notices sent by status.

The number of confirmation notices sent as a percentage of the active registrants in 2018 was calculated using total confirmation notices sent (item A8a of the 2018 EAVS) divided by total active registrants (A1b of the 2018 EAVS). The number of confirmation notices sent as a percentage of the active registrants in 2016 was calculated using total confirmation notices sent (item A10a of the 2016 EAVS) divided by total active registrants (A3a of the 2016 EAVS). Casewise deletion at the state level was used in this calculation.

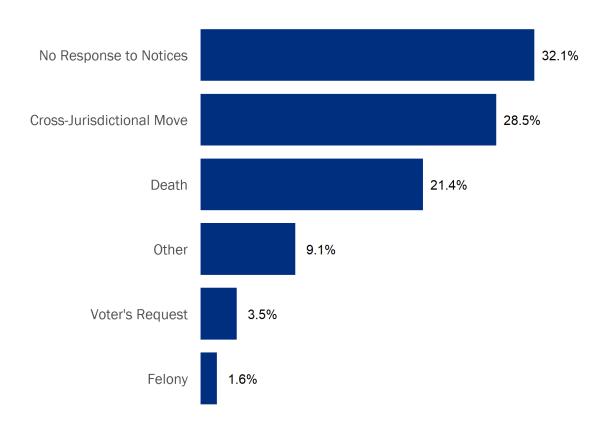
⁷⁶ The total number of registrants removed from the voter registration rolls was reported in item A9a of the EAVS. All states and territories reported data for the items related to voter removal, except for North Dakota, which does not require citizens to register to vote.

⁷⁷ The number of registrants removed as a percentage of total registrants was calculated using total registrants removed from the voter registration rolls (item A9a of the EAVS) divided by total registrants (A1a of the EAVS). Casewise deletion at the state level was used in this calculation.

for the lowest percentage of total registrants at 2.1%, and Puerto Rico reported the highest percentage of removals at 32.3% (see Table 5 of Appendix A in this chapter).

States also reported the reasons for removing records from their voter registration rolls. These reasons for removal are shown in Figure 6. The most common reason was failure to both respond to a confirmation notice and to vote in two consecutive federal general elections, which accounted for 32.1% of removals. Cross-jurisdiction change of address and death of the registrant were the other two major reasons for states' removal of registrants from their rolls (28.5% and 21.4%, respectively).

Figure 6. Almost One-Third of Removed Registration Records Were a Result of Failure to Respond to a Confirmation Notice



Source: The percentage of registrations removed because of no response to confirmation notices (and not voting in the following two general elections) was calculated as $(A9e/A9a) \times 100$. The percentage of registrations removed because of a cross-jurisdiction change of address was calculated as $(A9b/A9a) \times 100$. The percentage of registrations removed because of death was calculated as $(A9c/A9a) \times 100$. The percentage of registrations removed because the voter was declared mentally incompetent or because of other reasons was calculated as $((A9f+A9h+A9i+A9j)/A9a) \times 100$. The percentage of registrations removed because the voter requested to be removed was calculated as $(A9g/A9a) \times 100$. The percentage of registrations removed because of disqualifying felony conviction was calculated as $(A9d/A9a) \times 100$. Casewise deletion was used at the state level (percentages for each category were calculated independently and only states that reported data for a given category were included in the analysis), and because of this, percentages do not sum to 100%.

The majority of states reported that a registrant could be removed from the voter registration rolls if the registrant received a disqualifying criminal conviction and/or was incarcerated, ⁷⁸ but only 1.6% of the removals were the result of a disqualifying felony conviction. ⁷⁹ Two states, however, reported that more than 10% of their registration removals happened due to criminal convictions or incarceration. Georgia reported that 10.8% of registrants were removed for this reason, and Kentucky (13.3%) reported the largest percentage of this type of removal. Kentucky also reported criminal conviction as a common reason for registration removal in the 2018 EAVS.⁸⁰

⁷⁸ Maine, Vermont, Puerto Rico, Guam, and the District of Columbia reported criminal conviction and/or incarceration was not a reason for voter removal in item Q37 of the 2020 Policy Survey.

 $^{^{79}}$ The percentage of registrations removed because of a disqualifying felony conviction was calculated as (A9d/A9a) x 100. Casewise deletion was used at the state level.

⁸⁰ The percentage of registrations removed because of a disqualifying felony conviction in 2018 was calculated as the total registrants removed from the voter registration rolls for this reason (item A9d of the 2018 EAVS) divided by total registrants removed from the rolls (item A9a in 2018).



Appendix A: Descriptive Tables

Voter Registration Table 1: Registration History

| State | Year | CVAP Total | Reported
Registrations | Active
Registrations | Active
Regs.
(% of
CVAP) | Active
Regs.
(% of
Total) | Inactive
Registrations | Inactive
Regs.
(% of
Total) |
|---------------------------------|------|------------|---------------------------|-------------------------|-----------------------------------|------------------------------------|---------------------------|--------------------------------------|
| | 2020 | 3,731,336 | 3,717,798 | 3,438,213 | 92.1 | 92.5 | 279,585 | 7.5 |
| Alabama | 2018 | 3,688,249 | 3,465,352 | 3,164,301 | 85.8 | 91.3 | 301,051 | 8.7 |
| | 2016 | 3,653,381 | 3,333,946 | 3,049,655 | 83.5 | 91.5 | 139,638 | 4.2 |
| | 2020 | 533,151 | 646,093 | 595,647 | 111.7 | 92.2 | 50,446 | 7.8 |
| Alaska | 2018 | 531,653 | 624,467 | 571,851 | 107.6 | 91.6 | 52,616 | 8.4 |
| | 2016 | 528,248 | 587,303 | 528,671 | 100.1 | 90.0 | 58,632 | 10.0 |
| | 2020 | | 16,341 | 16,341 | | 100.0 | 0 | 0.0 |
| American Samoa
[1], [2], [3] | 2018 | - | 15,527 | 8,462 | _ | 54.5 | 7,065 | 45.5 |
| [±], [2], [0] | 2016 | - | _ | _ | _ | - | | _ |
| | 2020 | 5,137,474 | 4,728,109 | 4,275,729 | 83.2 | 90.4 | 452,380 | 9.6 |
| Arizona | 2018 | 4,895,706 | 4,276,891 | 3,715,624 | 75.9 | 86.9 | 561,267 | 13.1 |
| | 2016 | 4,710,448 | 4,080,680 | 3,589,084 | 76.2 | 88.0 | 491,596 | 12.0 |
| | 2020 | 2,235,415 | 1,831,414 | 1,408,061 | 63.0 | 76.9 | 423,353 | 23.1 |
| Arkansas | 2018 | 2,207,894 | 1,786,840 | 1,456,887 | 66.0 | 81.5 | 329,953 | 18.5 |
| | 2016 | 2,185,724 | 1,765,513 | 1,422,393 | 65.1 | 80.6 | 343,120 | 19.4 |
| | 2020 | 26,032,160 | 26,157,616 | 21,795,538 | 83.7 | 83.3 | 4,348,374 | 16.6 |
| California [4] | 2018 | 25,650,455 | 25,103,559 | 19,724,297 | 76.9 | 78.6 | 5,379,262 | 21.4 |
| | 2016 | 25,002,812 | 24,486,638 | 19,435,856 | 77.7 | 79.4 | 5,065,746 | 20.7 |
| | 2020 | 4,244,210 | 4,211,528 | 3,803,762 | 89.6 | 90.3 | 407,766 | 9.7 |
| Colorado | 2018 | 4,057,437 | 3,953,613 | 3,426,499 | 84.4 | 86.7 | 527,114 | 13.3 |
| | 2016 | 3,896,986 | 3,840,303 | 3,336,663 | 85.6 | 86.9 | 503,640 | 13.1 |
| | 2020 | 2,619,474 | 2,524,717 | 2,335,860 | 89.2 | 92.5 | 188,857 | 7.5 |
| Connecticut | 2018 | 2,611,667 | 2,369,335 | 2,193,586 | 84.0 | 92.6 | 175,749 | 7.4 |
| | 2016 | 2,584,884 | 2,331,684 | 2,162,797 | 83.7 | 92.8 | 168,887 | 7.2 |
| | 2020 | 725,178 | 739,672 | 711,287 | 98.1 | 96.2 | 28,385 | 3.8 |
| Delaware | 2018 | 709,999 | 695,014 | 672,632 | 94.7 | 96.8 | 22,382 | 3.2 |
| | 2016 | 697,148 | 675,663 | 642,334 | 92.1 | 95.1 | 33,329 | 4.9 |
| | 2020 | 536,768 | 625,683 | 517,890 | 96.5 | 82.8 | 107,793 | 17.2 |
| District of Columbia | 2018 | 510,514 | 617,046 | 511,633 | 100.2 | 82.9 | 105,413 | 17.1 |
| Columbia | 2016 | 504,242 | 493,287 | 493,287 | 97.8 | 100.0 | | - |
| | 2020 | 15,507,315 | 15,231,808 | 14,517,002 | 93.6 | 95.3 | 701,422 | 4.6 |
| Florida | 2018 | 15,014,950 | 14,126,722 | 13,278,070 | 88.4 | 94.0 | 848,652 | 6.0 |
| | 2016 | 14,441,877 | 13,505,571 | 12,853,866 | 89.0 | 95.2 | 651,705 | 4.8 |

| State | Year | CVAP Total | Reported
Registrations | Active
Registrations | Active
Regs.
(% of
CVAP) | Active
Regs.
(% of
Total) | Inactive
Registrations | Inactive
Regs.
(% of
Total) |
|---------------|------|------------|---------------------------|-------------------------|-----------------------------------|------------------------------------|---------------------------|--------------------------------------|
| | 2020 | 7,581,837 | 7,618,436 | 7,194,889 | 94.9 | 94.4 | 423,547 | 5.6 |
| Georgia | 2018 | 7,362,615 | 6,944,851 | 6,437,524 | 87.4 | 92.7 | 507,327 | 7.3 |
| | 2016 | 7,168,068 | 6,657,621 | 5,463,014 | 76.2 | 82.1 | 1,194,607 | 17.9 |
| | 2020 | | 55,896 | 55,896 | | 100.0 | - | |
| Guam [1], [2] | 2018 | | 55,941 | 55,941 | - | 100.0 | _ | |
| | 2016 | | 51,720 | 51,720 | _ | 100.0 | _ | |
| | 2020 | 1,014,035 | 832,466 | 759,971 | 74.9 | 91.3 | 72,495 | 8.7 |
| Hawaii | 2018 | 1,025,548 | 756,751 | 712,765 | 69.5 | 94.2 | 43,986 | 5.8 |
| | 2016 | 1,022,704 | 751,483 | 666,573 | 65.2 | 88.7 | 84,910 | 11.3 |
| | 2020 | 1,282,630 | 1,029,763 | 1,029,763 | 80.3 | 100.0 | | |
| Idaho [2] | 2018 | 1,219,481 | 917,609 | 917,609 | 75.2 | 100.0 | _ | |
| | 2016 | 1,168,843 | 936,529 | 936,529 | 80.1 | 100.0 | - | |
| | 2020 | 9,088,036 | 9,789,893 | 9,103,542 | 100.2 | 93.0 | 686,351 | 7.0 |
| Illinois | 2018 | 9,055,927 | 8,751,060 | 8,091,045 | 89.3 | 92.5 | 660,015 | 7.5 |
| | 2016 | 9,017,653 | 8,843,038 | 8,055,096 | 89.3 | 91.1 | 787,942 | 8.9 |
| | 2020 | 4,978,356 | 4,692,091 | 4,170,353 | 83.8 | 88.9 | 521,738 | 11.1 |
| Indiana | 2018 | 4,899,251 | 4,500,196 | 4,168,374 | 85.1 | 92.6 | 331,822 | 7.4 |
| | 2016 | 4,856,797 | 4,839,038 | 4,149,560 | 85.4 | 85.8 | 689,478 | 14.2 |
| | 2020 | 2,348,787 | 2,243,758 | 2,094,770 | 89.2 | 93.4 | 148,988 | 6.6 |
| lowa | 2018 | 2,325,355 | 2,193,813 | 2,037,516 | 87.6 | 92.9 | 156,297 | 7.1 |
| | 2016 | 2,310,467 | 2,222,380 | 2,047,368 | 88.6 | 92.1 | 175,012 | 7.9 |
| | 2020 | 2,103,748 | 1,924,772 | 1,764,949 | 83.9 | 91.7 | 148,624 | 7.7 |
| Kansas | 2018 | 2,091,261 | 1,835,473 | 1,670,217 | 79.9 | 91.0 | 165,256 | 9.0 |
| | 2016 | 2,074,102 | 1,785,834 | 1,601,818 | 77.2 | 89.7 | 184,016 | 10.3 |
| | 2020 | 3,367,502 | 3,565,428 | 3,319,307 | 98.6 | 93.1 | 246,121 | 6.9 |
| Kentucky [5] | 2018 | 3,350,956 | 3,402,905 | 3,402,905 | 101.6 | 100.0 | 0 | 0.0 |
| | 2016 | 3,329,835 | 3,306,120 | 3,306,120 | 99.3 | 100.0 | - | |
| | 2020 | 3,463,372 | 3,093,004 | 2,963,901 | 85.6 | 95.8 | 129,103 | 4.2 |
| Louisiana | 2018 | 3,469,016 | 2,992,170 | 2,856,722 | 82.3 | 95.5 | 135,448 | 4.5 |
| | 2016 | 3,454,978 | 3,058,741 | 2,891,902 | 83.7 | 94.5 | 131,339 | 4.3 |
| | 2020 | 1,078,770 | 1,138,576 | 1,135,008 | 105.2 | 99.7 | 3,568 | 0.3 |
| Maine | 2018 | 1,064,497 | 1,057,967 | 1,054,068 | 99.0 | 99.6 | 3,899 | 0.4 |
| | 2016 | 1,056,410 | 1,065,100 | 1,059,270 | 100.3 | 99.5 | 5,830 | 0.5 |
| | 2020 | 4,316,921 | 4,298,942 | 4,142,347 | 96.0 | 96.4 | 156,595 | 3.6 |
| Maryland [6] | 2018 | 4,310,864 | 3,954,027 | 3,954,027 | 91.7 | 100.0 | _ | _ |
| | 2016 | 4,239,987 | 3,900,090 | 3,900,090 | 92.0 | 100.0 | - | - |



| State | Year | CVAP Total | Reported
Registrations | Active
Registrations | Active
Regs.
(% of
CVAP) | Active
Regs.
(% of
Total) | Inactive
Registrations | Inactive
Regs.
(% of
Total) |
|-------------------------|------|------------|---------------------------|-------------------------|-----------------------------------|------------------------------------|---------------------------|--------------------------------------|
| | 2020 | 5,057,192 | 4,812,909 | 4,400,254 | 87.0 | 91.4 | 412,655 | 8.6 |
| Massachusetts | 2018 | 4,993,001 | 4,574,967 | 3,947,897 | 79.1 | 86.3 | 627,070 | 13.7 |
| | 2016 | 4,924,459 | 4,534,974 | 3,994,635 | 81.1 | 88.1 | 540,339 | 11.9 |
| | 2020 | 7,562,464 | 8,105,524 | 7,209,300 | 95.3 | 88.9 | 896,224 | 11.1 |
| Michigan [7] | 2018 | 7,481,928 | 7,471,088 | 6,488,823 | 86.7 | 86.9 | 982,265 | 13.1 |
| | 2016 | 7,436,478 | 7,514,055 | 6,748,385 | 90.7 | 89.8 | 765,670 | 10.2 |
| | 2020 | 4,157,556 | 3,731,016 | 3,731,016 | 89.7 | 100.0 | | - |
| Minnesota [2],
[8] | 2018 | 4,079,652 | 3,422,515 | 3,422,515 | 83.9 | 100.0 | | |
| | 2016 | 4,007,159 | 3,473,972 | 3,473,972 | 86.7 | 100.0 | | - |
| | 2020 | 2,246,323 | 2,143,149 | 1,982,632 | 88.3 | 92.5 | 160,517 | 7.5 |
| Mississippi | 2018 | 2,234,722 | 2,079,732 | 1,880,197 | 84.1 | 90.4 | 199,535 | 9.6 |
| | 2016 | 2,220,616 | 2,072,395 | 1,888,433 | 85.0 | 91.1 | 183,962 | 8.9 |
| | 2020 | 4,650,318 | 4,338,133 | 3,963,980 | 85.2 | 91.4 | 374,153 | 8.6 |
| Missouri | 2018 | 4,606,843 | 4,127,333 | 3,803,881 | 82.6 | 92.2 | 323,452 | 7.8 |
| | 2016 | 4,567,771 | 4,215,860 | 3,812,576 | 83.5 | 90.4 | 403,284 | 9.6 |
| | 2020 | 831,760 | 747,439 | 675,971 | 81.3 | 90.4 | 71,468 | 9.6 |
| Montana [9] | 2018 | 810,760 | 706,173 | 616,642 | 76.1 | 87.3 | 89,531 | 12.7 |
| | 2016 | 797,198 | 694,370 | 574,334 | 72.0 | 82.7 | 120,036 | 17.3 |
| | 2020 | 1,388,950 | 1,266,730 | 1,168,708 | 84.1 | 92.3 | 98,022 | 7.7 |
| Nebraska [10] | 2018 | 1,368,000 | 1,219,276 | 1,096,862 | 80.2 | 90.0 | 122,414 | 10.0 |
| | 2016 | 1,352,947 | 1,211,101 | 1,091,951 | 80.7 | 90.2 | 119,150 | 9.8 |
| | 2020 | 2,111,932 | 2,039,162 | 1,835,401 | 86.9 | 90.0 | 203,761 | 10.0 |
| Nevada | 2018 | 2,031,213 | 1,773,566 | 1,563,750 | 77.0 | 88.2 | 209,816 | 11.8 |
| | 2016 | 1,942,764 | 1,678,883 | 1,468,559 | 75.6 | 87.5 | 210,324 | 12.5 |
| | 2020 | 1,070,215 | 1,087,145 | 1,087,145 | 101.6 | 100.0 | | |
| New Hampshire [2], [11] | 2018 | 1,048,883 | 988,148 | 988,148 | 94.2 | 100.0 | - | - |
| | 2016 | 1,035,684 | 988,398 | 988,398 | 95.4 | 100.0 | 0 | 0.0 |
| | 2020 | 6,170,130 | 6,310,564 | 5,896,836 | 95.6 | 93.4 | 413,728 | 6.6 |
| New Jersey | 2018 | 6,199,409 | 5,869,078 | 5,456,506 | 88.0 | 93.0 | 412,572 | 7.0 |
| | 2016 | 6,154,126 | 5,751,090 | 5,321,542 | 86.5 | 92.5 | 429,548 | 7.5 |
| | 2020 | 1,522,171 | 1,360,871 | 1,255,669 | 82.5 | 92.3 | 105,202 | 7.7 |
| New Mexico [12] | 2018 | 1,493,318 | 1,261,639 | 698,172 | 46.8 | 55.3 | 563,467 | 44.7 |
| | 2016 | 1,470,045 | 1,289,420 | 1,136,059 | 77.3 | 88.1 | 152,277 | 11.8 |
| | 2020 | 13,810,830 | 13,555,618 | 12,362,997 | 89.5 | 91.2 | 1,191,845 | 8.8 |
| New York [13] | 2018 | 13,866,648 | 12,695,763 | 11,676,266 | 84.2 | 92.0 | 1,019,497 | 8.0 |
| | 2016 | 13,704,991 | 16,200,892 | 16,200,892 | 118.2 | 100.0 | | |

| State | Year | CVAP Total | Reported
Registrations | Active
Registrations | Active
Regs.
(% of
CVAP) | Active
Regs.
(% of
Total) | Inactive
Registrations | Inactive
Regs.
(% of
Total) |
|--------------------------|------|------------|---------------------------|-------------------------|-----------------------------------|------------------------------------|---------------------------|--------------------------------------|
| | 2020 | 7,729,644 | 7,372,608 | 6,607,121 | 85.5 | 89.6 | 765,487 | 10.4 |
| North Carolina | 2018 | 7,509,879 | 7,095,209 | 5,898,244 | 78.5 | 83.1 | 1,196,965 | 16.9 |
| | 2016 | 7,296,335 | 6,924,469 | 5,930,252 | 81.3 | 85.6 | 994,217 | 14.4 |
| | 2020 | 567,545 | _ | - | | - | | - |
| North Dakota
[14] | 2018 | 564,475 | _ | - | - | - | | - |
| | 2016 | 571,119 | _ | _ | | _ | - | - |
| Northern | 2020 | - | 18,526 | 18,526 | | 100.0 | - | - |
| Mariana Islands | 2018 | | - | - | | - | - | - |
| [1], [2], [15] | 2016 | | - | - | | - | - | - |
| | 2020 | 8,879,469 | 8,073,829 | 8,073,829 | 90.9 | 100.0 | - | - |
| Ohio [2], [16] | 2018 | 8,830,185 | 8,070,917 | 8,070,917 | 91.4 | 100.0 | - | - |
| | 2016 | 8,765,154 | 7,861,025 | 7,861,025 | 89.7 | 100.0 | - | - |
| | 2020 | 2,875,059 | 2,259,107 | 2,021,846 | 70.3 | 89.5 | 237,261 | 10.5 |
| Oklahoma | 2018 | 2,835,451 | 2,120,843 | 1,857,700 | 65.5 | 87.6 | 263,143 | 12.4 |
| | 2016 | 2,807,548 | 2,157,450 | 1,817,461 | 64.7 | 84.2 | 339,989 | 15.8 |
| | 2020 | 3,162,204 | 2,944,588 | 2,944,588 | 93.1 | 100.0 | | |
| Oregon [17] | 2018 | 3,060,328 | 2,748,232 | 2,748,232 | 89.8 | 100.0 | | |
| | 2016 | 2,956,232 | 2,553,810 | 2,553,810 | 86.4 | 100.0 | | - |
| | 2020 | 9,810,201 | 9,035,061 | 8,280,348 | 84.4 | 91.6 | 754,713 | 8.4 |
| Pennsylvania
[18] | 2018 | 9,764,119 | 8,607,748 | 7,738,989 | 79.3 | 89.9 | 868,759 | 10.1 |
| [10] | 2016 | 9,752,322 | 8,722,975 | - | - | - | | - |
| | 2020 | 2,579,596 | 2,355,894 | 2,355,894 | 91.3 | 100.0 | - | - |
| Puerto Rico [2],
[19] | 2018 | 2,636,949 | _ | _ | | _ | - | _ |
| [10] | 2016 | 2,686,177 | 2,867,558 | 2,867,558 | 106.8 | 100.0 | | |
| | 2020 | 800,798 | 809,117 | 735,195 | 91.8 | 90.9 | 73,922 | 9.1 |
| Rhode Island | 2018 | 792,337 | 781,478 | 737,419 | 93.1 | 94.4 | 44,059 | 5.6 |
| | 2016 | 784,997 | 754,065 | 721,211 | 91.9 | 95.6 | 32,246 | 4.3 |
| | 2020 | 3,892,341 | 3,854,209 | 3,535,061 | 90.8 | 91.7 | 319,148 | 8.3 |
| South Carolina | 2018 | 3,799,298 | 3,538,580 | 3,538,580 | 93.1 | 100.0 | 396,653 | 11.2 |
| | 2016 | 3,677,799 | 3,157,027 | 3,157,027 | 85.8 | 100.0 | 275,292 | 8.7 |
| | 2020 | 653,394 | 635,256 | 578,683 | 88.6 | 91.1 | 56,573 | 8.9 |
| South Dakota | 2018 | 641,666 | 594,453 | 539,788 | 84.1 | 90.8 | 54,665 | 9.2 |
| | 2016 | 634,140 | 595,322 | 544,930 | 85.9 | 91.5 | 50,392 | 8.5 |
| | 2020 | 5,129,580 | 4,436,727 | 4,226,928 | 82.4 | 95.3 | 209,799 | 4.7 |
| Tennessee | 2018 | 5,016,103 | 4,163,359 | 3,764,513 | 75.0 | 90.4 | 398,846 | 9.6 |
| | 2016 | 4,919,574 | 4,110,318 | 3,534,800 | 71.9 | 86.0 | 575,518 | 14.0 |



| State | Year | CVAP Total | Reported
Registrations | Active
Registrations | Active
Regs.
(% of
CVAP) | Active
Regs.
(% of
Total) | Inactive
Registrations | Inactive
Regs.
(% of
Total) |
|---------------------------------|------|-------------|---------------------------|-------------------------|-----------------------------------|------------------------------------|---------------------------|--------------------------------------|
| | 2020 | 18,875,542 | 16,955,519 | 15,279,870 | 81.0 | 90.1 | 1,675,649 | 9.9 |
| Texas | 2018 | 18,174,345 | 15,615,925 | 13,790,247 | 75.9 | 88.3 | 1,653,986 | 10.6 |
| | 2016 | 17,523,904 | 14,382,387 | 11,942,651 | 68.2 | 83.0 | 1,288,225 | 9.0 |
| | 2020 | | 53,341 | 53,341 | | 100.0 | - | |
| U.S. Virgin
Islands [1], [2] | 2018 | | 51,095 | 51,095 | | 100.0 | _ | |
| | 2016 | - | 46,076 | 46,076 | - | 100.0 | _ | |
| | 2020 | 2,134,249 | 1,861,977 | 1,713,297 | 80.3 | 92.0 | 148,680 | 8.0 |
| Utah | 2018 | 2,028,176 | 1,658,457 | 1,433,917 | 70.7 | 86.5 | 224,540 | 13.5 |
| | 2016 | 1,945,001 | 1,577,069 | 1,414,758 | 72.7 | 89.7 | 162,311 | 10.3 |
| | 2020 | 498,705 | 489,277 | 440,920 | 88.4 | 90.1 | 48,357 | 9.9 |
| Vermont | 2018 | 494,550 | 489,385 | 447,709 | 90.5 | 91.5 | 41,676 | 8.5 |
| | 2016 | 494,717 | 472,289 | 440,347 | 89.0 | 93.2 | 31,942 | 6.8 |
| | 2020 | 6,226,623 | 5,975,561 | 5,763,187 | 92.6 | 96.4 | 212,374 | 3.6 |
| Virginia | 2018 | 6,145,893 | 5,666,627 | 5,272,602 | 85.8 | 93.0 | 394,025 | 7.0 |
| | 2016 | 6,062,304 | 5,604,106 | 5,066,666 | 83.6 | 90.4 | 537,440 | 9.6 |
| | 2020 | 5,409,035 | 5,255,466 | 4,892,871 | 90.5 | 93.1 | 362,595 | 6.9 |
| Washington | 2018 | 5,259,892 | 4,841,431 | 4,362,480 | 82.9 | 90.1 | 478,951 | 9.9 |
| | 2016 | 5,081,800 | 4,872,385 | 4,277,499 | 84.2 | 87.8 | 594,886 | 12.2 |
| | 2020 | 1,420,289 | 1,269,024 | 1,062,685 | 74.8 | 83.7 | 206,339 | 16.3 |
| West Virginia | 2018 | 1,428,859 | 1,245,827 | 961,894 | 67.3 | 77.2 | 283,933 | 22.8 |
| | 2016 | 1,451,557 | 1,254,768 | 1,142,180 | 78.7 | 91.0 | 112,588 | 9.0 |
| | 2020 | 4,412,888 | 3,834,164 | 3,834,164 | 86.9 | 100.0 | | |
| Wisconsin [2],
[20] | 2018 | 4,375,063 | 3,442,004 | 3,442,004 | 78.7 | 100.0 | | _ |
| [=0] | 2016 | 4,340,567 | 3,768,373 | 3,768,373 | 86.8 | 100.0 | | _ |
| | 2020 | 434,852 | 303,049 | 303,049 | 69.7 | 100.0 | | |
| Wyoming [2] | 2018 | 428,379 | 283,941 | 283,941 | 66.3 | 100.0 | - | - |
| | 2016 | 434,584 | 284,203 | 284,203 | 65.4 | 100.0 | - | - |
| | 2020 | 237,998,330 | 228,004,364 | 209,441,338 | 88.2 | 91.9 | 18,523,963 | 9.1 |
| U.S. Total | 2018 | 234,053,619 | 211,601,918 | 190,662,485 | 82.5 | 90.1 | 21,164,394 | 11.3 |
| | 2016 | 229,705,663 | 214,109,367 | 185,714,229 | 84.6 | 90.4 | 18,629,063 | 11.7 |

Voter Registration Table 1 Calculation Notes:

CVAP Total uses the 1-year ACS CVAP estimate. The 2020 data uses the 2019 CVAP, the 2018 data uses the 2017 CVAP, and the 2016 data uses the 2015 CVAP.

Reported Registrations uses question A1a for 2020, 2018, and 2016.

Active Registrations uses question A1b for 2020 and 2018 and question A3a for 2016.

Active Registrations (% of CVAP) uses question A1b divided by CVAP for 2020 and 2018 and question A3a divided by CVAP for 2016.

Active Registrations (% of Total) uses question A1b divided by A1a for 2020 and 2018 and question A3a divided by A1a for 2016.

Inactive Registrations uses question A1c for 2020 and 2018 and question A3b for 2016.

Inactive Registrations (% of Total) uses question A1c divided by question A1a for 2020 and 2018 and question A3b divided by question A1a for 2016.

Voter Registration Table 1 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- Because each percentage was calculated independently, the active registration (% of total) and inactive registration (% of total) rates may not sum to 100% for some states or at the national level.
- The citizen voting age population (CVAP) is an estimate of the number of U.S. citizens ages 18 years or older in the state. This report uses the 1-year American Community Survey (ACS) state estimate for 2019 instead of the 5-year estimate to ensure that the CVAP was as current as possible. The estimate for the year 2020 was not available by the time this report was finalized. The 2019 1-year CVAP does not include data that were collected as part of the decennial Census conducted in 2020. For consistency, the CVAP for the 2018 and 2016 general elections was the 1-year ACS state estimate for 2017 and 2015, respectively.
- Some states may report an active CVAP registration rate of 100% or more. This is because the 2019 CVAP was used to calculate the 2020 registration rate and because due to federal law, some ineligible voters may take up to two full election cycles to be removed from the voter registration rolls.
- The Reported Registrations column includes both active and inactive voters (if the state uses such a distinction).
- [1] The U.S. Census Bureau does not calculate a CVAP for the territories of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.
- [2] American Samoa, Guam, Idaho, Minnesota, New Hampshire, the Northern Mariana Islands, Ohio, Oregon, Puerto Rico, the U.S. Virgin Islands, Wisconsin, and Wyoming reported having only active registered voters.
- [3] American Samoa did not provide data for the 2016 EAVS.
- [4] California adjusted their number of total registrations (A1a) in 2018 after the data were initially released, so the total in this table does not match the total reported in the 2018 EAVS Comprehensive Report. California reported 63,659 fewer registrants in Riverside County in their correction of the 2018 EAVS data.
- [5] Kentucky reported having only active voters in the 2016 EAVS and reported having zero inactive voters in the 2018 EAVS.
- [6] Maryland reported having only active voters in the 2016 and the 2018 EAVS.
- [7] Michigan noted in a survey comment that "Voters reported in A1 are eligible to vote. Those defined as 'inactive' need only to confirm their address before receiving a ballot. Participation in past elections is not a factor in defining eligibility."
- [8] Minnesota noted in a survey comment that "Minnesota is NVRA exempt. Minnesota does not classify voters as inactive per NVRA."



- [9] Montana noted in a survey comment that in A1a, the "total registered/eligible voters consists of active and inactive. Montana reports total registered/eligible voters of 752,538. The difference is provisional, late registration and pending."
- [10] Nebraska noted in a survey comment that the state "does not have 'inactive' voters. The numbers in line [A1c] reflect the number of voters who were sent a section 8(d)(2) notice and have not responded."
- [11] New Hampshire began a rigorous 10-year verification of the checklist beginning April 1, 2021.
- [12] New Mexico's 2018 EAVS data on the number of active registrations contained an error; the correct number is 1,261,532.
- [13] New York reported having only active voters in the 2016 EAVS. This state also reported an uncharacteristically high number of active and total registrations in the 2016 EAVS compared to the registrations reported in the general elections of 2014, 2018, and 2020.
- [14] North Dakota does not have voter registration and does not provide data in Section A of the EAVS.
- [15] The Northern Mariana Islands did not participate in the 2016 or the 2018 EAVS. For 2020, the Northern Mariana Islands reported in a comment in A1 that "Voter[s] are taken out of the roster once inactive as per our Election Statute."
- [16] Ohio reported "Data not available" for the number of inactive registrations in item A1c in 2020. The state did not report inactive registrations in 2018 and 2016.
- [17] Oregon noted in a survey comment that they "do not track number of inactive voters."
- [18] Pennsylvania reported in the 2016 EAVS that the state could not "differentiate between active and inactive from our point in time snapshot of the voter registration numbers."
- [19] Puerto Rico did not participate in the 2018 EAVS because the territory did not hold federal elections in that year.
- [20] Wisconsin is exempt from the NVRA and does not classify inactive voters per NVRA definitions.

Voter Registration Table 2: Application Sources – Total Forms Received

| | | | | Regist | ration App | lication Source | | | |
|----------------------|-----------------------|------------|--------|-------------------------|------------|-----------------|------|-----------------------|------|
| State | Total
Applications | Mail, Emai | I, Fax | In Persoi
Election 0 | | Online | | Motor Veh
Departmo | |
| | | Total | % | Total | % | Total | % | Total | % |
| Alabama [1] | 1,439,361 | 38,936 | 2.7 | 121,744 | 8.5 | 391,331 | 27.2 | 802,149 | 55.7 |
| Alaska | 1,079,008 | 78,115 | 7.2 | 53,787 | 5.0 | 127,471 | 11.8 | 75,917 | 7.0 |
| American Samoa | 4,741 | 48 | 1.0 | 4,693 | 99.0 | | | | |
| Arizona | 2,943,553 | 280,196 | 9.5 | 29,111 | 1.0 | 1,329,327 | 45.2 | 1,022,403 | 34.7 |
| Arkansas | 556,911 | 114,258 | 20.5 | 106,480 | 19.1 | | | 265,023 | 47.6 |
| California | 13,498,938 | 666,363 | 4.9 | 450,494 | 3.3 | 5,975,098 | 44.3 | 2,997,325 | 22.2 |
| Colorado | 3,195,131 | 449,231 | 14.1 | 70,691 | 2.2 | 873,530 | 27.3 | 1,587,291 | 49.7 |
| Connecticut | 1,247,433 | 129,295 | 10.4 | 98,004 | 7.9 | 287,480 | 23.0 | 395,285 | 31.7 |
| Delaware | 707,749 | 255,305 | 36.1 | 46,356 | 6.5 | 151,652 | 21.4 | 252,208 | 35.6 |
| District of Columbia | 123,147 | 8,710 | 7.1 | 2,345 | 1.9 | 36,437 | 29.6 | 53,671 | 43.6 |
| Florida | 9,511,345 | 1,171,574 | 12.3 | 1,114,491 | 11.7 | 1,974,596 | 20.8 | 3,798,746 | 39.9 |
| Georgia [2] | 4,931,889 | 381,107 | 7.7 | 111,983 | 2.3 | 857,096 | 17.4 | 3,290,439 | 66.7 |
| Guam | 16,376 | | | 3,223 | 19.7 | 1,016 | 6.2 | 10,644 | 65.0 |
| Hawaii | 359,832 | 55,541 | 15.4 | 809 | 0.2 | 115,116 | 32.0 | 94,350 | 26.2 |
| Idaho [3] | 231,491 | 73,880 | 31.9 | 54,736 | 23.6 | 98,290 | 42.5 | - | - |
| Illinois | 1,240,995 | 410,720 | 33.1 | 184,666 | 14.9 | 1,196,195 | 96.4 | 647,798 | 52.2 |
| Indiana [4] | 2,667,738 | 451,272 | 16.9 | 40,514 | 1.5 | 537,526 | 20.1 | 842,829 | 31.6 |
| Iowa | 738,352 | 15,131 | 2.0 | 29,148 | 3.9 | 4,920 | 0.7 | 91,701 | 12.4 |
| Kansas | 817,434 | 148,506 | 18.2 | 65,901 | 8.1 | 257,786 | 31.5 | 257,918 | 31.6 |
| Kentucky [5] | 1,678,038 | 36,056 | 2.1 | 197,837 | 11.8 | 335,156 | 20.0 | 1,002,181 | 59.7 |
| Louisiana [6] | 998,149 | 148,232 | 14.9 | 157,764 | 15.8 | 474,312 | 47.5 | 171,370 | 17.2 |
| Maine | 337,136 | 45,861 | 13.6 | 244,664 | 72.6 | - | | 16,686 | 4.9 |
| Maryland | 3,511,883 | 99,604 | 2.8 | 77,617 | 2.2 | 1,258,781 | 35.8 | 1,983,252 | 56.5 |
| Massachusetts | 2,476,295 | 135,422 | 5.5 | 60,842 | 2.5 | 1,669,789 | 67.4 | 575,093 | 23.2 |
| Michigan [7] | 2,857,335 | 174,902 | 6.1 | 198,642 | 7.0 | 630,628 | 22.1 | 1,826,846 | 63.9 |
| Minnesota | 1,566,807 | 84,277 | 5.4 | 433,328 | 27.7 | 374,280 | 23.9 | 266,120 | 17.0 |
| Mississippi | 453,531 | 112,267 | 24.8 | 138,026 | 30.4 | - | | 164,594 | 36.3 |
| Missouri | 690,757 | 94,340 | 13.7 | 58,855 | 8.5 | 262,479 | 38.0 | 242,077 | 35.0 |
| Montana [8] | 359,986 | 138,645 | 38.5 | 86,235 | 24.0 | - | - | 86,123 | 23.9 |
| Nebraska [9] | 726,896 | 142,050 | 19.5 | 31,768 | 4.4 | 226,227 | 31.1 | 321,496 | 44.2 |
| Nevada | 1,069,550 | 111,299 | 10.4 | 21,209 | 2.0 | 439,355 | 41.1 | 255,919 | 23.9 |
| New Hampshire [10] | 810,583 | 5,783 | 0.7 | 804,800 | 99.3 | - | | - | - |
| New Jersey | 2,959,834 | 6,710 | 0.2 | 162 | 0.0 | 284,928 | 9.6 | 1,731,406 | 58.5 |
| New Mexico | 570,254 | 135,472 | 23.8 | 54,294 | 9.5 | 206,141 | 36.1 | 161,184 | 28.3 |
| New York [11] | 2,299,890 | 586,547 | 25.5 | 129,014 | 5.6 | | | 1,159,254 | 50.4 |
| North Carolina | 5,164,009 | 1,850,941 | 35.8 | 739,381 | 14.3 | 444,602 | 8.6 | 1,602,654 | 31.0 |
| North Dakota
[12] | | | | | | | - | | |



| | | | | Regist | ration App | lication Source | | | |
|-----------------------------|-----------------------|------------------|------|-----------|---------------------------------|-----------------|------|-----------------------------|------|
| State | Total
Applications | Mail, Email, Fax | | | In Person at
Election Office | | | Motor Vehicle
Department | |
| | | Total | % | Total | % | Total | % | Total | % |
| Northern
Mariana Islands | 1,291 | 36 | 2.8 | 1,291 | 100.0 | | | - | |
| Ohio | 2,995,502 | 449,093 | 15.0 | 350,575 | 11.7 | 1,140,233 | 38.1 | 696,384 | 23.2 |
| Oklahoma | 666,094 | 149,584 | 22.5 | 84,209 | 12.6 | 86,268 | 13.0 | 297,675 | 44.7 |
| Oregon | 1,955,345 | 135,106 | 6.9 | 56,931 | 2.9 | 579,602 | 29.6 | 783,103 | 40.0 |
| Pennsylvania | 3,814,150 | 355,683 | 9.3 | 40,358 | 1.1 | 1,237,715 | 32.5 | 1,717,266 | 45.0 |
| Puerto Rico | 121,352 | | | 121,352 | 100.0 | - | | - | |
| Rhode Island
[13] | 425,389 | | - | - | - | | - | - | |
| South Carolina | 2,119,337 | 416,765 | 19.7 | 390,876 | 18.4 | 358,852 | 16.9 | 901,668 | 42.5 |
| South Dakota | 163,450 | 40,568 | 24.8 | 37,949 | 23.2 | | | 75,140 | 46.0 |
| Tennessee [14] | 1,595,329 | 213,506 | 13.4 | 164,989 | 10.3 | 680,172 | 42.6 | 446,003 | 28.0 |
| Texas | 5,147,221 | 2,074,130 | 40.3 | 577,120 | 11.2 | 0 | 0.0 | 2,042,699 | 39.7 |
| U.S. Virgin
Islands | 1,878 | | | 1,692 | 90.1 | | | | |
| Utah | 2,280,767 | 55,629 | 2.4 | 218,318 | 9.6 | 526,018 | 23.1 | 366,842 | 16.1 |
| Vermont | 98,866 | 2,005 | 2.0 | 14,715 | 14.9 | 34,109 | 34.5 | 39,105 | 39.6 |
| Virginia | 3,880,532 | 176,330 | 4.5 | 114,381 | 2.9 | 713,010 | 18.4 | 2,728,717 | 70.3 |
| Washington | 3,068,727 | 449,717 | 14.7 | 137,107 | 4.5 | 769,418 | 25.1 | 1,402,506 | 45.7 |
| West Virginia | 517,145 | 24,332 | 4.7 | 21,822 | 4.2 | 174,240 | 33.7 | 156,752 | 30.3 |
| Wisconsin [15] | 920,760 | 70,386 | 7.6 | 166,419 | 18.1 | 560,518 | 60.9 | | _ |
| Wyoming | 86,021 | 4,035 | 4.7 | 81,819 | 95.1 | - | | - | |
| U.S. Total | 103,701,513 | 13,253,501 | 12.9 | 8,605,537 | 8.3 | 27,681,700 | 28.2 | 39,705,812 | 39.3 |

| | | | R | egistration App | olication Sourc | e | | |
|-----------------------------|---------------|--------------|----------------|-----------------|-----------------|-----------------------|-------------|----------|
| State | Public Assist | ance Offices | Disability Ser | vices Offices | | Forces
ent Offices | Other State | Agencies |
| | Total | % | Total | % | Total | % | Total | % |
| Alabama [1] | 39,093 | 2.7 | 6,477 | 0.4 | 292 | 0.0 | 16,445 | 1.1 |
| Alaska | 6,090 | 0.6 | 59 | 0.0 | 3,001 | 0.3 | 95 | 0.0 |
| American Samoa | - | - | - | - | - | _ | | - |
| Arizona | 8,059 | 0.3 | 296 | 0.0 | 7,754 | 0.3 | 13 | 0.0 |
| Arkansas | 18,507 | 3.3 | 466 | 0.1 | 67 | 0.0 | 5,406 | 1.0 |
| California | 177,354 | 1.3 | 10,931 | 0.1 | 6,669 | 0.0 | 116,545 | 0.9 |
| Colorado | 38,028 | 1.2 | 2,108 | 0.1 | 37 | 0.0 | - | |
| Connecticut | 5,060 | 0.4 | 146 | 0.0 | 731 | 0.1 | 805 | 0.1 |
| Delaware | 1,006 | 0.1 | 773 | 0.1 | 0 | 0.0 | 0 | 0.0 |
| District of Columbia | 197 | 0.2 | 54 | 0.0 | 207 | 0.2 | 1,059 | 0.9 |
| Florida | 31,752 | 0.3 | 3,414 | 0.0 | 1,298 | 0.0 | 776,330 | 8.2 |
| Georgia [2] | 16,419 | 0.3 | 33,856 | 0.7 | 103 | 0.0 | - | - |
| Guam | - | | - | | | _ | 1,493 | 9.1 |
| Hawaii | 533 | 0.1 | - | | - | - | 15 | 0.0 |
| Idaho [3] | - | - | - | | - | _ | | |
| Illinois | 145,211 | 11.7 | 4,819 | 0.4 | 10,642 | 0.9 | 98,720 | 8.0 |
| Indiana [4] | 20,059 | 0.8 | 624 | 0.0 | 0 | 0.0 | 74 | 0.0 |
| Iowa | 1,745 | 0.2 | 36 | 0.0 | 16 | 0.0 | 97 | 0.0 |
| Kansas | 2,348 | 0.3 | 109 | 0.0 | 79 | 0.0 | 2,135 | 0.3 |
| Kentucky [5] | 94,657 | 5.6 | 1,848 | 0.1 | 1,966 | 0.1 | _ | |
| Louisiana [6] | 32,529 | 3.3 | 4,042 | 0.4 | 2,915 | 0.3 | 6,985 | 0.7 |
| Maine | - | - | - | | - | - | _ | - |
| Maryland | 15,961 | 0.5 | 462 | 0.0 | 96 | 0.0 | - | |
| Massachusetts | 30,202 | 1.2 | 2,248 | 0.1 | _ | _ | 2,699 | 0.1 |
| Michigan [7] | 4,579 | 0.2 | 493 | 0.0 | 66 | 0.0 | _ | |
| Minnesota | _ | _ | _ | | _ | _ | | _ |
| Mississippi | 13,407 | 3.0 | 786 | 0.2 | | | - | |
| Missouri | 28,750 | 4.2 | 405 | 0.1 | 132 | 0.0 | 107 | 0.0 |
| Montana [8] | 2,889 | 0.8 | 2 | 0.0 | 132 | 0.0 | 0 | 0.0 |
| Nebraska [9] | 723 | 0.1 | 628 | 0.1 | 16 | 0.0 | - | - |
| Nevada | 38,576 | 3.6 | 850 | 0.1 | 320 | 0.0 | 512 | 0.0 |
| New Hampshire [10] | - | - | - | | - | - | - | - |
| New Jersey | 5,650 | 0.2 | 37,322 | 1.3 | 4,639 | 0.2 | 753,056 | 25.4 |
| New Mexico | 12,437 | 2.2 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| New York [11] | 117,552 | 5.1 | | | | - | 74,983 | 3.3 |
| North Carolina | 56,882 | 1.1 | 2,070 | 0.0 | 9 | 0.0 | 4,218 | 0.1 |
| North Dakota
[12] | - | | - | - | - | - | | - |
| Northern
Mariana Islands | - | - | - | - | - | - | | |
| Ohio | 214,770 | 7.2 | 4,693 | 0.2 | 397 | 0.0 | 50,967 | 1.7 |



| | Registration Application Source | | | | | | | | | |
|------------------------|---------------------------------|-----|-----------------------------|-----|--------|-----------------------|-------------|----------|--|--|
| State | Public Assistance Offices | | Disability Services Offices | | | Forces
ent Offices | Other State | Agencies | | |
| | Total | % | Total | % | Total | % | Total | % | | |
| Oklahoma | 16,688 | 2.5 | 572 | 0.1 | 18 | 0.0 | 45 | 0.0 | | |
| Oregon | 7,069 | 0.4 | 2,968 | 0.2 | | | 7,252 | 0.4 | | |
| Pennsylvania | 76,897 | 2.0 | - | - | 12 | 0.0 | - | - | | |
| Puerto Rico | | - | - | - | | - | - | - | | |
| Rhode Island
[13] | - | - | - | - | - | - | - | - | | |
| South Carolina | 42,870 | 2.0 | 480 | 0.0 | 433 | 0.0 | | | | |
| South Dakota | 3,406 | 2.1 | 51 | 0.0 | 4 | 0.0 | 1,413 | 0.9 | | |
| Tennessee [14] | 25,085 | 1.6 | 71 | 0.0 | 4,496 | 0.3 | 10,521 | 0.7 | | |
| Texas | 152,724 | 3.0 | 2,731 | 0.1 | 383 | 0.0 | 297,434 | 5.8 | | |
| U.S. Virgin
Islands | | | - | | | - | | - | | |
| Utah | 36 | 0.0 | 49 | 0.0 | 36 | 0.0 | 0 | 0.0 | | |
| Vermont | | - | - | | | - | 327 | 0.3 | | |
| Virginia | 6,677 | 0.2 | 510 | 0.0 | 26 | 0.0 | 21,345 | 0.6 | | |
| Washington | 36,187 | 1.2 | 1,737 | 0.1 | 20,907 | 0.7 | 13,028 | 0.4 | | |
| West Virginia | - | - | - | - | - | - | - | - | | |
| Wisconsin [15] | | - | - | | | - | - | | | |
| Wyoming | - | - | - | - | - | - | - | - | | |
| U.S. Total | 1,548,664 | 1.6 | 129,186 | 0.1 | 67,899 | 0.1 | 2,264,124 | 3.0 | | |

| | | | Registration Ap | plication Source | | | |
|-----------------------------|------------|-----------|-----------------|------------------|-----------------|--------|--|
| State | Registrati | on Drives | Other \$ | Sources | Not Categorized | | |
| | Total | % | Total | % | Total | % | |
| Alabama [1] | 20,402 | 1.4 | 2,492 | 0.2 | 0 | 0.0 | |
| Alaska | 0 | 0.0 | 734,473 | 68.1 | 0 | 0.0 | |
| American Samoa | | | - | | 0 | 0.0 | |
| Arizona | 141,550 | 4.8 | 124,844 | 4.2 | 0 | 0.0 | |
| Arkansas | 9,576 | 1.7 | 37,128 | 6.7 | 0 | 0.0 | |
| California | 83,435 | 0.6 | 927,582 | 6.9 | 2,087,142 | 15.5 | |
| Colorado | 86,182 | 2.7 | 88,033 | 2.8 | 0 | 0.0 | |
| Connecticut | 17 | 0.0 | 330,610 | 26.5 | 0 | 0.0 | |
| Delaware | 449 | 0.1 | - | | 0 | 0.0 | |
| District of
Columbia | 615 | 0.5 | 19,852 | 16.1 | 0 | 0.0 | |
| Florida | 689,415 | 7.2 | 23,199 | 0.2 | -73,470 | -0.8 | |
| Georgia [2] | - | - | 240,886 | 4.9 | 0 | 0.0 | |
| Guam | - | | - | | 0 | 0.0 | |
| Hawaii | 9 | 0.0 | 54,611 | 15.2 | 38,848 | 10.8 | |
| ldaho [3] | 30 | 0.0 | 11 | 0.0 | 4,544 | 2.0 | |
| Illinois | 7,459 | 0.6 | - | | -1,465,235 | -118.1 | |
| Indiana [4] | 2,879 | 0.1 | 771,710 | 28.9 | 251 | 0.0 | |
| lowa | 7 | 0.0 | 595,551 | 80.7 | 0 | 0.0 | |
| Kansas | 23,351 | 2.9 | 85,601 | 10.5 | -26,300 | -3.2 | |
| Kentucky [5] | 8,337 | 0.5 | - | - | 0 | 0.0 | |
| Louisiana [6] | - | - | - | | 0 | 0.0 | |
| Maine | 10,497 | 3.1 | 19,428 | 5.8 | 0 | 0.0 | |
| Maryland | - | | 76,110 | 2.2 | 0 | 0.0 | |
| Massachusetts | - | - | - | - | 0 | 0.0 | |
| Michigan [7] | 9,521 | 0.3 | 11,658 | 0.4 | 0 | 0.0 | |
| Minnesota | 14,768 | 0.9 | 394,034 | 25.1 | 0 | 0.0 | |
| Mississippi | - | | 24,451 | 5.4 | 0 | 0.0 | |
| Missouri | - | - | 3,612 | 0.5 | 0 | 0.0 | |
| Montana [8] | 20,155 | 5.6 | 25,805 | 7.2 | 0 | 0.0 | |
| Nebraska [9] | | | 3,988 | 0.5 | 0 | 0.0 | |
| Nevada | 135,528 | 12.7 | 65,982 | 6.2 | 0 | 0.0 | |
| New Hampshire
[10] | - | - | - | - | 0 | 0.0 | |
| New Jersey | - | | 135,961 | 4.6 | 0 | 0.0 | |
| New Mexico | 0 | 0.0 | 726 | 0.1 | 0 | 0.0 | |
| New York [11] | 14,048 | 0.6 | - | | 218,492 | 9.5 | |
| North Carolina | 172,695 | 3.3 | 291,692 | 5.6 | -1,135 | 0.0 | |
| North Dakota [12] | - | | - | | - | - | |
| Northern Mariana
Islands | - | - | - | | -36 | -2.8 | |
| Ohio | 88,390 | 3.0 | | | 0 | 0.0 | |



| | | | Registration Ap | plication Source | | | |
|---------------------|-----------|------------|-----------------|------------------|-----------------|-------|--|
| State | Registrat | ion Drives | Other S | Sources | Not Categorized | | |
| | Total | % | Total | % | Total | % | |
| Oklahoma | - | - | 31,035 | 4.7 | 0 | 0.0 | |
| Oregon | - | | 383,314 | 19.6 | 0 | 0.0 | |
| Pennsylvania | 78,724 | 2.1 | 307,495 | 8.1 | 0 | 0.0 | |
| Puerto Rico | - | | - | | 0 | 0.0 | |
| Rhode Island [13] | - | - | - | - | 425,389 | 100.0 | |
| South Carolina | - | | 7,393 | 0.3 | 0 | 0.0 | |
| South Dakota | 4,290 | 2.6 | 629 | 0.4 | 0 | 0.0 | |
| Tennessee [14] | _ | - | 50,486 | 3.2 | 0 | 0.0 | |
| Texas | 0 | 0.0 | - | | 0 | 0.0 | |
| U.S. Virgin Islands | _ | - | 186 | 9.9 | 0 | 0.0 | |
| Utah | 3,254 | 0.1 | 1,110,585 | 48.7 | 0 | 0.0 | |
| Vermont | 8,605 | 8.7 | _ | | 0 | 0.0 | |
| Virginia | 70,524 | 1.8 | 49,012 | 1.3 | 0 | 0.0 | |
| Washington | 31,136 | 1.0 | 206,984 | 6.7 | 0 | 0.0 | |
| West Virginia | - | - | 139,999 | 27.1 | 0 | 0.0 | |
| Wisconsin [15] | 4,623 | 0.5 | 118,814 | 12.9 | 0 | 0.0 | |
| Wyoming | - | - | 167 | 0.2 | 0 | 0.0 | |
| U.S. Total | 1,740,471 | 2.2 | 7,496,129 | 8.9 | 1,208,490 | 1.2 | |

Voter Registration Table 2 Calculation Notes:

Total Registration Applications Received uses question A3a.

Mail, Email, Fax, Total uses question A4a.

Mail, Email, Fax, % uses question A4a divided by question A3a.

In Person at Election Office, Total uses question A4b.

In Person at Election Office, % uses question A4b divided by question A3a.

Online, Total uses question A4c.

Online, % uses question A4c divided by question A3a.

Motor Vehicle Department, Total uses question A4d.

Motor Vehicle Department, % uses question A4d divided by question A3a.

Public Assistance Offices, Total uses question A4e.

Public Assistance Offices, % uses question A4e divided by question A3a.

Disability Services Offices, Total uses question A4f.

Disability Services Offices, % uses question A4f divided by question A3a.

Armed Forces Recruitment Offices, Total uses question A4g.

Armed Forces Recruitment Offices, % uses question A4g divided by question A3a.

Other State Agencies, Total uses question A4h.

Other State Agencies, % uses question A4h divided by question A3a.

Registration Drives, Total uses question A4i.

Registration Drives, % uses question A4i divided by question A3a.

Other Sources, Total uses questions A4j, A4k, and A4l.

Other Sources, % uses the sum of questions A4j, A4k, and A4l divided by question A3a.

Not Categorized, Total uses question A3a minus the sum of questions A4a to A4I. **Not Categorized,** % uses question A3a minus the sum of questions A4a to A4I, all divided by A3a.

Voter Registration Table 2 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- States have latitude in which registration application sources are offered to their citizens, so long
 as they do not conflict with federal law. Not all states offer each of the application sources that
 the EAVS collects data for.
- Questions A4j, A4k, and A4l were not mandatory. States and jurisdictions only reported data in these items if they offered another application source aside from those listed in questions A4a–A4i or if there were registration applications that could not be categorized in questions A4a–A4i.
- Negative numbers in the Not Categorized application source indicate that the sum of registrations received for each source account for more than the total number of registrations reported received by the state.
- Because each percentage was calculated independently, the percentage of applications received through each source may not sum to 100% for some states or at the national level.
- [1] Alabama noted in a survey comment that the state's A3a data come from an Election Systems & Software (ES&S) election survey. In addition, unknown applications sources were not identified.
- [2] Georgia noted in a survey comment that "Election Day registrations listed in A4j, A5j, A6j, and A7j represent applications submitted to poll workers on Election Day. Georgia law does not allow 'same day' registration. Changes made through applications turned in on Election Day are effective for future elections."
- [3] Idaho noted in survey comments for multiple counties that the state switched to a new voter registration system between the 2018 and the 2020 elections, which made it difficult to track some data for these questions.
- [4] Indiana noted in survey comments that "The data reported in A4a-I consists of data from county surveys (A4a-b, A4i) and SVRS [statewide voter registration system] (A4c-h, A4j, A4k, A4I). Counties do not always manually track the information requested in A4a-b and A4i and therefore aren't included in the sums that should match up to A3a."
- [5] Kentucky noted in a survey comment that "[D]rives by advocacy groups or political parties' is used for high school registrations."
- [6] Louisiana noted in a survey comment that "[V]oters submit registration applications for new registrations as well as for updates or changes to existing registrations. A4 totals reflect both new registrations and changes to registrations."
- [7] Michigan noted in a survey comment that "2020 is the first EAVS since Michigan implemented automatic voter registration and online voter registration, and became a member state of ERC [sic, likely referring to the Electronic Registration Information Center]."
- [8] Montana noted in a survey comment that in A4k, online preregistration indicated that a voter still needed to sign and submit a registration form to the county elections office.
- [9] Nebraska noted in survey comments that "[0]nline registrations via DMV website are currently in the DMV section; unable to split. Registrations received from drives by advocacy groups or political parties A4i are not separately categorized and are included in A4a."



- [10] New Hampshire noted in survey comments that it is not subject to the NVRA and does not have online voter registration.
- [11] New York noted in survey comments that "NYS DMV [New York State Department of Motor Vehicles] does allow voters to submit their registration data online, however it does not automatically register voters. After submittal to the DMV, the information is forwarded to the appropriate county board of elections to approve or deny the voter registration data. NYS BOE [New York State Board of Elections] used the term 'does not apply' instead of 'data not available' since online voter registration has been passed as law, but the statewide system was not available for the 2020 election year."
- [12] North Dakota does not have voter registration and does not provide data in Section A of EAVS.
- [13] Rhode Island reported "data not available" for all modes of registration. The state noted in a survey comment that "[D]ata for this section is unavailable. We rolled out a new voter registration system in December, 2019 so half of the voter registration records were processed in the old system and half in the new system."
- [14] Tennessee noted in survey comments that, for most of its counties, "[D]ata for agencies serving persons with disabilities in [A4]f is included with data for public assistance offices in [A4]e."
- [15] Wisconsin is exempt from the NVRA and does not classify inactive voters per NVRA definitions, receive registrations from NVRA agencies, or collect data on rejected registrations.

Voter Registration Table 3: Registration Applications Processed

| | | Registration Category | | | | | | | | | |
|--------------------------|-----------------------|-----------------------|-------|---|---------|-------------|------|-------------------------------------|-----|--|--|
| State | Total
Applications | New Val
Registrat | | Change of Na
or Address
jurisdict | (within | Change of A | | Preregistra
(under 18 ye
age) | | | |
| | | Total | % | Total | % | Total | % | Total | % | | |
| Alabama [1] | 1,439,361 | 611,844 | 42.5 | 1,231,402 | 85.6 | - | | | | | |
| Alaska | 1,079,008 | 69,208 | 6.4 | 993,700 | 92.1 | - | - | - | | | |
| American
Samoa | 4,741 | 2,263 | 47.7 | 133 | 2.8 | 160 | 3.4 | 0 | 0.0 | | |
| Arizona | 2,943,553 | 1,114,852 | 37.9 | 1,649,653 | 56.0 | 8,988 | 0.3 | 1,987 | 0.1 | | |
| Arkansas | 556,911 | 237,172 | 42.6 | 304,333 | 54.6 | 2,547 | 0.5 | 0 | 0.0 | | |
| California | 13,498,938 | 5,130,351 | 38.0 | 2,796,476 | 20.7 | 375,969 | 2.8 | 101,619 | 0.8 | | |
| Colorado [2] | 3,195,131 | 1,486,922 | 46.5 | 1,398,963 | 43.8 | 217,464 | 6.8 | 56,126 | 1.8 | | |
| Connecticut [3] | 1,247,433 | 426,102 | 34.2 | 609,363 | 48.8 | 211,754 | 17.0 | 214 | 0.0 | | |
| Delaware | 707,749 | 251,286 | 35.5 | 248,329 | 35.1 | 137,846 | 19.5 | 19,045 | 2.7 | | |
| District of Columbia [4] | 123,147 | 78,557 | 63.8 | 22,754 | 18.5 | 0 | 0.0 | 0 | 0.0 | | |
| Florida | 9,511,345 | 1,757,847 | 18.5 | 6,382,594 | 67.1 | 1,036,119 | 10.9 | 154,986 | 1.6 | | |
| Georgia | 4,931,889 | 896,843 | 18.2 | 2,840,383 | 57.6 | 771,590 | 15.6 | 53,882 | 1.1 | | |
| Guam | 16,376 | 7,898 | 48.2 | 2,288 | 14.0 | 2,735 | 16.7 | 262 | 1.6 | | |
| Hawaii | 359,832 | 115,831 | 32.2 | 55,982 | 15.6 | 2,260 | 0.6 | 4,049 | 1.1 | | |
| Idaho [5] | 231,491 | 143,814 | 62.1 | 80,981 | 35.0 | 14 | 0.0 | 4 | 0.0 | | |
| Illinois | 1,240,995 | 903,388 | 72.8 | - | - | | | - | | | |
| Indiana | 2,667,738 | 795,777 | 29.8 | 1,353,935 | 50.8 | - | | 47,781 | 1.8 | | |
| lowa [6] | 738,352 | 110,513 | 15.0 | | - | - | | 11,640 | 1.6 | | |
| Kansas | 817,434 | 282,686 | 34.6 | 769,790 | 94.2 | - | | - | | | |
| Kentucky | 1,678,038 | 265,594 | 15.8 | 828,745 | 49.4 | 177,953 | 10.6 | | | | |
| Louisiana [7] | 998,149 | 358,864 | 36.0 | 389,116 | 39.0 | | | 15,662 | 1.6 | | |
| Maine | 337,136 | 101,929 | 30.2 | 116,732 | 34.6 | 95,611 | 28.4 | 2,734 | 0.8 | | |
| Maryland [8] | 3,511,883 | 387,280 | 11.0 | 2,874,580 | 81.9 | 192,962 | 5.5 | | | | |
| Massachusetts | 2,476,295 | 438,236 | 17.7 | 1,076,032 | 43.5 | 511,823 | 20.7 | 49,525 | 2.0 | | |
| Michigan | 2,857,335 | 1,390,433 | 48.7 | 1,267,324 | 44.4 | - | | 41,248 | 1.4 | | |
| Minnesota | 1,566,807 | 541,563 | 34.6 | 478,932 | 30.6 | 300,457 | 19.2 | 11,773 | 0.8 | | |
| Mississippi [9] | 453,531 | 443,582 | 97.8 | - | - | - | | 8,949 | 2.0 | | |
| Missouri [10] | 690,757 | 690,757 | 100.0 | 1,939,231 | 280.7 | - | | - | | | |
| Montana | 359,986 | 60,304 | 16.8 | 150,667 | 41.9 | 136,272 | 37.9 | 1,536 | 0.4 | | |
| Nebraska [11] | 726,896 | 192,426 | 26.5 | 412,286 | 56.7 | 55,859 | 7.7 | - | | | |
| Nevada | 1,069,550 | 279,912 | 26.2 | 728,944 | 68.2 | | | 10,152 | 0.9 | | |
| New Hampshire
[12] | 810,583 | 125,916 | 15.5 | 575,516 | 71.0 | 103,537 | 12.8 | 32 | 0.0 | | |
| New Jersey | 2,959,834 | 878,539 | 29.7 | | | | | | | | |
| New Mexico
[13] | 570,254 | 161,546 | 28.3 | 387,804 | 68.0 | 7,580 | 1.3 | 11,648 | 2.0 | | |



| | | | | Re | gistration C | ategory | | | |
|--------------------------------|-----------------------|----------------------------|------|---|--------------|---|------|--|-----|
| State | Total
Applications | New Valid
Registrations | | Change of Na
or Address
jurisdict | (within | Change of Address
(cross-jurisdiction) | | Preregistrations
(under 18 years of
age) | |
| | | Total | % | Total | % | Total | % | Total | % |
| New York | 2,299,890 | 968,849 | 42.1 | 1,300,077 | 56.5 | 235,248 | 10.2 | 214,037 | 9.3 |
| North Carolina | 5,164,009 | 1,563,573 | 30.3 | 1,486,375 | 28.8 | | - | 0 | 0.0 |
| North Dakota
[14] | - | - | | | | | | - | |
| Northern
Mariana
Islands | 1,291 | 1,210 | 93.7 | 47 | 3.6 | 17 | 1.3 | 50 | 3.9 |
| Ohio | 2,995,502 | 1,316,156 | 43.9 | 1,078,627 | 36.0 | | | 14,703 | 0.5 |
| Oklahoma | 666,094 | 314,835 | 47.3 | 329,996 | 49.5 | - | | 3,774 | 0.6 |
| Oregon [15] | 1,955,345 | 354,524 | 18.1 | 1,561,949 | 79.9 | - | | 37,726 | 1.9 |
| Pennsylvania | 3,814,150 | 925,690 | 24.3 | 1,587,384 | 41.6 | 580,754 | 15.2 | 0 | 0.0 |
| Puerto Rico | 121,352 | 121,144 | 99.8 | - | | | | - | - |
| Rhode Island | 425,389 | 52,401 | 12.3 | 296,828 | 69.8 | 67,104 | 15.8 | 9,028 | 2.1 |
| South Carolina
[16] | 2,119,337 | 190,219 | 9.0 | 1,929,118 | 91.0 | - | - | - | |
| South Dakota | 163,450 | 64,295 | 39.3 | 73,069 | 44.7 | 24,733 | 15.1 | 1,068 | 0.7 |
| Tennessee | 1,595,329 | 728,882 | 45.7 | 487,345 | 30.5 | | | | |
| Texas | 5,147,221 | 2,820,912 | 54.8 | 2,257,372 | 43.9 | | | | |
| U.S. Virgin
Islands [17] | 1,878 | 1,084 | 57.7 | 769 | 40.9 | 25 | 1.3 | - | |
| Utah | 2,280,767 | 875,194 | 38.4 | 987,599 | 43.3 | 88,789 | 3.9 | 24,463 | 1.1 |
| Vermont | 98,866 | 91,710 | 92.8 | 0 | 0.0 | - | | 0 | 0.0 |
| Virginia | 3,880,532 | 604,701 | 15.6 | 1,268,274 | 32.7 | 484,416 | 12.5 | 46,266 | 1.2 |
| Washington
[18] | 3,068,727 | 807,358 | 26.3 | 1,489,191 | 48.5 | 325,384 | 10.6 | 9,242 | 0.3 |
| West Virginia
[19] | 517,145 | 144,808 | 28.0 | 323,187 | 62.5 | 37,444 | 7.2 | - | |
| Wisconsin [20] | 920,760 | 703,492 | 76.4 | 12,721 | 1.4 | 115,376 | 12.5 | 11 | 0.0 |
| Wyoming [21] | 86,021 | 45,933 | 53.4 | 39,921 | 46.4 | - | - | | |
| U.S. Total | 103,701,513 | 33,437,005 | 32.2 | 48,476,817 | 49.4 | 6,308,790 | 9.5 | 965,222 | 1.2 |

| | | | | Registratio | on Category | | | |
|-----------------------------|-----------|-------|------------|-------------|-------------|------|------------|----------|
| State | Dupli | icate | Invalid or | Rejected | Oti | her | Not Cate | egorized |
| | Total | % | Total | % | Total | % | Total | % |
| Alabama [1] | 16 | 0.0 | 7,499 | 0.5 | - | | -411,400 | -28.6 |
| Alaska | 6,749 | 0.6 | 9,351 | 0.9 | - | - | 0 | 0.0 |
| American
Samoa | 1,409 | 29.7 | 776 | 16.4 | _ | | 0 | 0.0 |
| Arizona | 112,693 | 3.8 | 53,770 | 1.8 | 1,610 | 0.1 | 0 | 0.0 |
| Arkansas | 12,764 | 2.3 | 95 | 0.0 | - | | 0 | 0.0 |
| California | 1,205,489 | 8.9 | 659,648 | 4.9 | 3,195,931 | 23.7 | 33,455 | 0.2 |
| Colorado [2] | 20,952 | 0.7 | 14,704 | 0.5 | | | 0 | 0.0 |
| Connecticut [3] | - | - | | | | - | 0 | 0.0 |
| Delaware | 28,664 | 4.1 | 22,579 | 3.2 | - | | 0 | 0.0 |
| District of
Columbia [4] | 19,579 | 15.9 | 2,257 | 1.8 | - | - | 0 | 0.0 |
| Florida | 14,071 | 0.1 | 196,141 | 2.1 | 4,378 | 0.0 | -34,791 | -0.4 |
| Georgia | 363,649 | 7.4 | 5,542 | 0.1 | - | - | 0 | 0.0 |
| Guam | 2,635 | 16.1 | 558 | 3.4 | - | | 0 | 0.0 |
| Hawaii | - | - | 14,508 | 4.0 | 108,714 | 30.2 | 58,488 | 16.3 |
| Idaho [5] | 2,751 | 1.2 | 257 | 0.1 | 574 | 0.2 | 3,096 | 1.3 |
| Illinois | 178,728 | 14.4 | 56,399 | 4.5 | | - | 102,480 | 8.3 |
| Indiana | 227,505 | 8.5 | 31,277 | 1.2 | 211,463 | 7.9 | 0 | 0.0 |
| lowa [6] | 44,505 | 6.0 | 744 | 0.1 | 570,950 | 77.3 | 0 | 0.0 |
| Kansas | 30,203 | 3.7 | - | - | - | | -265,245 | -32.4 |
| Kentucky | | | 405,746 | 24.2 | | - | 0 | 0.0 |
| Louisiana [7] | 14,458 | 1.4 | 11,893 | 1.2 | 208,156 | 20.9 | 0 | 0.0 |
| Maine | 5,492 | 1.6 | 466 | 0.1 | 14,172 | 4.2 | 0 | 0.0 |
| Maryland [8] | 56,487 | 1.6 | 574 | 0.0 | | | 0 | 0.0 |
| Massachusetts | 380,759 | 15.4 | 19,920 | 0.8 | | - | 0 | 0.0 |
| Michigan | 156,839 | 5.5 | 1,492 | 0.1 | | | -1 | 0.0 |
| Minnesota | 233,861 | 14.9 | 221 | 0.0 | | - | 0 | 0.0 |
| Mississippi [9] | | | 1,000 | 0.2 | - | | 0 | 0.0 |
| Missouri [10] | - | - | 25 | 0.0 | - | - | -1,939,256 | -280.7 |
| Montana | 10,873 | 3.0 | 334 | 0.1 | | | 0 | 0.0 |
| Nebraska [11] | 65,909 | 9.1 | 416 | 0.1 | - | - | 0 | 0.0 |
| Nevada | 22,676 | 2.1 | 27,866 | 2.6 | - | | 0 | 0.0 |
| New Hampshire [12] | 5,582 | 0.7 | 0 | 0.0 | - | - | 0 | 0.0 |
| New Jersey | 293,851 | 9.9 | 28,687 | 1.0 | 1,758,757 | 59.4 | 0 | 0.0 |
| New Mexico
[13] | - | - | 1,676 | 0.3 | | - | 0 | 0.0 |
| New York | 406,776 | 17.7 | 87,046 | 3.8 | - | - | -912,143 | -39.7 |
| North Carolina | 1,953,012 | 37.8 | 161,049 | 3.1 | - | - | 0 | 0.0 |



| | | | | Registratio | n Category | | | | |
|--------------------------------|-----------|-------|------------|-------------|------------|------|-----------------|------|--|
| State | Dupl | icate | Invalid or | Rejected | Oti | ner | Not Categorized | | |
| | Total | % | Total | % | Total | % | Total | % | |
| North Dakota
[14] | - | | - | | - | | - | - | |
| Northern
Mariana
Islands | - | - | 17 | 1.3 | - | - | -50 | -3.9 | |
| Ohio | 424,893 | 14.2 | 161,123 | 5.4 | - | - | 0 | 0.0 | |
| Oklahoma | 1,257 | 0.2 | 16,232 | 2.4 | - | - | 0 | 0.0 | |
| Oregon [15] | 1,146 | 0.1 | | | _ | - | 0 | 0.0 | |
| Pennsylvania | 354,136 | 9.3 | 314,328 | 8.2 | 51,858 | 1.4 | 0 | 0.0 | |
| Puerto Rico | 208 | 0.2 | | | - | - | 0 | 0.0 | |
| Rhode Island | - | - | 28 | 0.0 | - | - | 0 | 0.0 | |
| South Carolina
[16] | | | | | _ | - | 0 | 0.0 | |
| South Dakota | 160 | 0.1 | 18 | 0.0 | 154 | 0.1 | -47 | 0.0 | |
| Tennessee | 294,536 | 18.5 | 84,566 | 5.3 | - | - | 0 | 0.0 | |
| Texas | - | - | 68,937 | 1.3 | - | - | 0 | 0.0 | |
| U.S. Virgin
Islands [17] | | | | | _ | - | 0 | 0.0 | |
| Utah | 962 | 0.0 | 303,760 | 13.3 | | - | 0 | 0.0 | |
| Vermont | 5,037 | 5.1 | 2,119 | 2.1 | _ | - | 0 | 0.0 | |
| Virginia | 1,413,248 | 36.4 | 63,627 | 1.6 | - | - | 0 | 0.0 | |
| Washington
[18] | 430,440 | 14.0 | 866 | 0.0 | 6,246 | 0.2 | 0 | 0.0 | |
| West Virginia
[19] | 11,420 | 2.2 | 286 | 0.1 | - | - | 0 | 0.0 | |
| Wisconsin [20] | 10,709 | 1.2 | - | | 78,451 | 8.5 | 0 | 0.0 | |
| Wyoming [21] | - | - | 167 | 0.2 | - | - | 0 | 0.0 | |
| U.S. Total | 8,827,089 | 9.7 | 2,840,590 | 2.9 | 6,211,414 | 14.7 | -3,365,414 | -3.2 | |

Voter Registration Table 3 Calculation Notes:

Total Registration Applications Received uses question A3a.

New Valid Registrations, Total uses question A3b.

New Valid Registrations, % uses question A3b divided by A3a.

Change of Name, Party, or Address (within jurisdiction), Total uses question A3f.

Change of Name, Party, or Address (within jurisdiction), % uses question A3f divided by question A3a.

Change of Address (cross-jurisdiction), Total uses question A3g.

Change of Address (cross-jurisdiction), % uses question A3g divided by question A3a.

Preregistrations (under 18 years of age), Total uses question A3c.

Preregistrations (under 18 years of age), % uses question A3c divided by question A3a.

Duplicate Registrations, Total uses question A3d.

Duplicate Registrations, % uses question A3d divided by question A3a.

Invalid or Rejected Registrations, Total uses question A3e.

Invalid or Rejected Registrations, % uses question A3e divided by question A3a.

Other Registrations, Total uses the sum of questions A3h, A3i, and A3j.

Other Registrations, % uses the sum of questions A3h, A3i, and A3j, all divided by question A3a. Not Categorized Registrations, Total uses question A3a minus the sum of questions A3b to A3j. Not Categorized Registrations, % uses question A3a minus the sum of questions A3b to A3j, all divided by question A3a.

Voter Registration Table 3 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- Questions A3h, A3i, and A3j were not mandatory. States and jurisdictions only reported data in these items if there was another registration category aside from those listed in questions A3b-A3g or if there were registration applications that could not be categorized in questions A3b-A3g.
- Negative numbers in the Not Categorized registration category indicate that the sum of registrations received for each category account for more than the total number of registrations reported received by the state.
- Because each percentage was calculated independently, the percentage of applications in each category may not sum to 100% for some states or at the national level.
- Not all states track data to be able to provide responses for each registration category.
- [1] Alabama noted in a survey comment that "Totals are from ES&S [Election Systems & Software] election survey. A3c: we do not have pre-registration. A3f: due to the way we track data for changes to records, the number of changes resulting directly from registration forms could not be separated from the total number of changes made to voter's records."
- [2] Colorado noted in a survey comment that "[T]he increase in registrations is attributable to multiple factors. Colorado has seen a significant increase in population since 2016. The state conducted three elections in 2020, including the first presidential primary in 20 years. In addition, record turnout for the November 2020 general election contributed to the increased number of registrations. Another factor adding to the increase is the implementation of automatic voter registration in May 2020 in partnership with the Colorado Department of Revenue (CDOR). Automatic update to voter registration through CDOR was also implemented in 2019. This may also contribute to a somewhat inflated number as the addition of a ZIP+4 is counted as an update. Finally, with changes in personnel and as different perspectives are applied to data, queries tend to shift in an effort to obtain more accurate and inclusive data for reporting purposes."
- [3] Connecticut noted in a survey comment that the data necessary to respond to question A3 "is not retained in the system."
- [4] The District of Columbia noted in a survey comment that "A3b and A3c ([preregistrations] under 18, who turned 18) are total new registrations."
- [5] Idaho noted in survey comments for multiple counties that the state switched to a new voter registration system between the 2018 and the 2020 elections, which made it difficult to track some data for these questions.
- [6] lowa noted in a survey comment that "[A]II other sources category is due to limitation on system to report transaction source of update if it is not a change from previous listed source."
- [7] Louisiana noted in a survey comment that "[A]ddress changes across jurisdictions are counted as new registrations. 16- and 17-year-old citizens can apply to register to vote, but cannot vote until they are 18."
- [8] Maryland noted in a survey comment that "[T]he total of A3a is the sum of A3b, A3[c], A3d, and A3e. Maryland does not consider the registration changes listed in A3f and A3g as registrations, and therefore,



the source of these changes is not recorded. For A3c, individuals can register to vote starting at age 16, however they are not considered 'pre-registered.' 16- and 17-year-olds are considered registered voters, they just cannot vote until their 18th birthday."

- [9] Mississippi noted in survey comments that duplicate and rejected registrations are not tracked.
- [10] Missouri noted in a survey comment that "[C]hanges of names and address report as separate transactions. In addition to that anytime the LEA [local election administrator] does an address library cleanup process or any change to the voting record it will record as an address change but may not be indicated by the voter. Therefore, we are not including the registration forms for change of name and address is [sic] the total for this section."
- [11] Nebraska noted in a survey comment that "Nebraska law does not allow for pre-registrations for people not of voting age."
- [12] New Hampshire noted in survey comments that "NH uses voter registration forms for name, party, and address changes."
- [13] New Mexico noted that the data for these items are not consistently captured across counties at this time. The Secretary of State's office is exploring options to capture and include this information in future reports.
- [14] North Dakota does not have voter registration and does not provide data in Section A of the EAVS.
- [15] In Oregon, the number of cross-jurisdiction address changes is included in the number of overall changes to registrations. The state does not track the number of invalid/rejected registrations.
- [16] South Carolina noted in survey comments that for the state's A3d and A3e responses, "SC has no process to collect data on duplicate registrations or rejected registrations."
- [17] The U.S. Virgin Islands noted in survey comments that "A3c: the data was not tracked. A3d: before any individual is registered to vote, the individual['s] information is checked in the system to ensure the individual was not previously registered. A3e: a voter will not be registered to vote unless the individual provides the required information (birth paper, U.S. passport, etc.). Before the process begins, the prospective voter is informed what document and information is required to begin the process."
- [18] Washington noted in survey comments that the data reported in this question covered the period "between 2018-10-08 and 2020-11-03."
- [19] West Virginia noted in survey comments that "[D]uplicate registrations are based on DMV and online registrations."
- [20] Wisconsin is exempt from the NVRA and does not classify inactive voters per NVRA definitions.
- [21] Wyoming noted in survey comments that "[M]ultiple changes may have occurred on the same form. A3a includes a total, but the total could be less. For example, a voter could have submitted one form to change their party and address. The data currently reflects that change as 2 forms. A3g. Counties do not receive forms for out-of-county address changes. Those numbers are reflected in new jurisdictions as new registrations."

Voter Registration Table 4: Voter List Maintenance – Confirmation Notices

| | | | Result of Confirmation Notice | | | | | | | | |
|--------------------------|-------------------|-----------------------|-------------------------------|-----------|----------------|------|---------------------|------|--|--|--|
| | Confirmation Sent | | Recei | ved Confi | mation From Vo | oter | Confirma | | | | |
| State | Sem | | Valid | | Invali | d | Returne
Undelive | | | | |
| | Total | %
Active
Voters | Total | % | Total | % | Total | % | | | |
| Alabama [1] | - | | 1,826 | | 25,755 | | 3 | | | | |
| Alaska | 91,667 | 15.4 | 1,108 | 1.2 | - | - | 30,692 | 33.5 | | | |
| American Samoa | 4,741 | 29.0 | 4,741 | 100.0 | 0 | 0.0 | 0 | 0.0 | | | |
| Arizona | 2,480,620 | 58.0 | 75,275 | 3.0 | 422,319 | 17.0 | 328,161 | 13.2 | | | |
| Arkansas | 432,798 | 30.7 | 89,906 | 20.8 | 33,312 | 7.7 | 45,003 | 10.4 | | | |
| California [2] | 6,682,336 | 30.7 | 609,638 | 9.1 | 557,041 | 8.3 | 477,436 | 7.1 | | | |
| Colorado | 705,625 | 18.6 | 13,885 | 2.0 | 14,104 | 2.0 | | | | | |
| Connecticut | 178,993 | 7.7 | 55,787 | 31.2 | 92,022 | 51.4 | 25,292 | 14.1 | | | |
| Delaware [3] | 89,271 | 12.6 | | | | | | | | | |
| District of Columbia [4] | 571,363 | 110.3 | 26,306 | 4.6 | 15,582 | 2.7 | 72,114 | 12.6 | | | |
| Florida | 1,295,491 | 8.9 | 121,655 | 9.4 | 142,275 | 11.0 | 219,736 | 17.0 | | | |
| Georgia | 1,060,235 | 14.7 | 72,979 | 6.9 | 4,018 | 0.4 | 186,456 | 17.6 | | | |
| Guam | 5,874 | 10.5 | | | | | 1,153 | 19.6 | | | |
| Hawaii [5] | 101,013 | 13.3 | 14,576 | 14.4 | 4,271 | 4.2 | - | - | | | |
| Idaho | 36,438 | 3.5 | 2,912 | 8.0 | | | 315 | 0.9 | | | |
| Illinois | 5,106,813 | 56.1 | 333,135 | 6.5 | 181,526 | 3.6 | 457,373 | 9.0 | | | |
| Indiana [6] | | | | | | | - | - | | | |
| lowa [7] | 123,320 | 5.9 | - | - | | - | - | - | | | |
| Kansas | 227,808 | 12.9 | 9,203 | 4.0 | 43,892 | 19.3 | 16,588 | 7.3 | | | |
| Kentucky [8] | 366,101 | 11.0 | - | | - | | - | | | | |
| Louisiana [9] | 325,975 | 11.0 | | | | | | - | | | |
| Maine [10] | 2,147 | 0.2 | 0 | 0.0 | 733 | 34.1 | | | | | |
| Maryland [11] | 238,027 | 5.7 | 3,587 | 1.5 | 436 | 0.2 | | - | | | |
| Massachusetts
[12] | 608,691 | 13.8 | | | | | | - | | | |
| Michigan | 207,229 | 2.9 | 1,143 | 0.6 | 27,214 | 13.1 | 20,030 | 9.7 | | | |
| Minnesota [13] | - | - | | | | | | | | | |
| Mississippi | 82,826 | 4.2 | | | | | | _ | | | |
| Missouri [14] | 381,716 | 9.6 | 149,017 | 39.0 | 39,299 | 10.3 | 78,034 | 20.4 | | | |
| Montana | 107,111 | 15.8 | 8,491 | 7.9 | 2,344 | 2.2 | 26,537 | 24.8 | | | |
| Nebraska | 160,117 | 13.7 | 27,030 | 16.9 | 24,931 | 15.6 | 21,046 | 13.1 | | | |
| Nevada [15] | 361,871 | 19.7 | 158,854 | 43.9 | 26,222 | 7.2 | 153,156 | 42.3 | | | |
| New Hampshire [16] | 15,180 | 1.4 | 112 | 0.7 | - | | 4,834 | 31.8 | | | |
| New Jersey [17] | 311,385 | 5.3 | | | | | | - | | | |
| New Mexico [18] | 136,426 | 10.9 | 0 | 0.0 | 3 | 0.0 | 9,348 | 6.9 | | | |



| | | | Result of Confirmation Notice | | | | | | | | |
|-----------------------------|----------------------|-----------------------|-------------------------------|----------|----------------|------|---------------------|------|--|--|--|
| | Confirmation
Sent | | Receiv | ed Confi | mation From Vo | ter | Confirma | | | | |
| State | Sent | | Valid | | Invalid | 1 | Returne
Undelive | | | | |
| | Total | %
Active
Voters | Total | % | Total | % | Total | % | | | |
| New York | 159,462 | 1.3 | 23,345 | 14.6 | 31,315 | 19.6 | 19,065 | 12.0 | | | |
| North Carolina | 873,911 | 13.2 | | | - | | 263,271 | 30.1 | | | |
| North Dakota [19] | - | | - | | - | | | | | | |
| Northern Mariana
Islands | 4,907 | 26.5 | | | - | | 50 | 1.0 | | | |
| Ohio | 712,068 | 8.8 | 109,453 | 15.4 | 34,224 | 4.8 | 48,535 | 6.8 | | | |
| Oklahoma | 181,034 | 9.0 | 18,688 | 10.3 | 2,954 | 1.6 | 27,775 | 15.3 | | | |
| Oregon | 329,443 | 11.2 | - | | - | | | | | | |
| Pennsylvania | 753,942 | 9.1 | 74,955 | 9.9 | 41,087 | 5.4 | 111,594 | 14.8 | | | |
| Puerto Rico [20] | - | | | | - | | | | | | |
| Rhode Island | 83,980 | 11.4 | - | | - | - | | | | | |
| South Carolina | 75,796 | 2.1 | 17,001 | 22.4 | 487 | 0.6 | 1,829 | 2.4 | | | |
| South Dakota | 17,795 | 3.1 | 216 | 1.2 | 179 | 1.0 | 12,298 | 69.1 | | | |
| Tennessee | 137,130 | 3.2 | 19,496 | 14.2 | 1,724 | 1.3 | 23,078 | 16.8 | | | |
| Texas | 1,068,037 | 7.0 | 758,850 | 71.1 | 111,387 | 10.4 | - | | | | |
| U.S. Virgin Islands
[21] | | | | | | | | | | | |
| Utah | 20,225 | 1.2 | 42 | 0.2 | 2,306 | 11.4 | 17,877 | 88.4 | | | |
| Vermont | 66,126 | 15.0 | 21,774 | 32.9 | 44,352 | 67.1 | 0 | 0.0 | | | |
| Virginia [22] | 189,162 | 3.3 | 11,379 | 6.0 | - | - | 4,981 | 2.6 | | | |
| Washington | 481,684 | 9.8 | 150,796 | 31.3 | 44,754 | 9.3 | 6,407 | 1.3 | | | |
| West Virginia [23] | 10,291 | 1.0 | 68 | 0.7 | 227 | 2.2 | 434 | 4.2 | | | |
| Wisconsin [24] | 345,893 | 9.0 | 21,241 | 6.1 | | - | 93,419 | 27.0 | | | |
| Wyoming [25] | - | | | | - | - | - | - | | | |
| U.S. Total | 28,010,094 | 14.3 | 3,008,470 | 12.1 | 1,972,295 | 8.1 | 2,803,920 | 11.9 | | | |

| | | Result of Confirmation Notice | | | | | | | | | |
|--------------------------|-----------|-------------------------------|---------|------|----------|----------|--|--|--|--|--|
| State | Status U | nknown | Oti | her | Not Cate | egorized | | | | | |
| | Total | % | Total | % | Total | % | | | | | |
| Alabama [1] | - | | - | | - | | | | | | |
| Alaska | 59,867 | 65.3 | - | - | 0 | 0.0 | | | | | |
| American Samoa | 0 | 0.0 | - | - | 0 | 0.0 | | | | | |
| Arizona | 1,650,963 | 66.6 | 3,902 | 0.2 | 0 | 0.0 | | | | | |
| Arkansas | 264,968 | 61.2 | 3,276 | 0.8 | -3,667 | -0.8 | | | | | |
| California [2] | 4,508,305 | 67.5 | 510,244 | 7.6 | 19,672 | 0.3 | | | | | |
| Colorado | 677,636 | 96.0 | | | 0 | 0.0 | | | | | |
| Connecticut | 5,911 | 3.3 | | | -19 | 0.0 | | | | | |
| Delaware [3] | | | | | 89,271 | 100.0 | | | | | |
| District of Columbia [4] | 457,361 | 80.0 | - | - | 0 | 0.0 | | | | | |
| Florida | 590,070 | 45.5 | 7,030 | 0.5 | 214,725 | 16.6 | | | | | |
| Georgia | 796,782 | 75.2 | - | - | 0 | 0.0 | | | | | |
| Guam | 4,721 | 80.4 | - | - | 0 | 0.0 | | | | | |
| Hawaii [5] | - | - | 42,370 | 41.9 | 39,796 | 39.4 | | | | | |
| Idaho | 33,211 | 91.1 | - | - | 0 | 0.0 | | | | | |
| Illinois | 4,134,779 | 81.0 | | | 0 | 0.0 | | | | | |
| Indiana [6] | - | - | - | - | - | - | | | | | |
| lowa [7] | 65,857 | 53.4 | | | 57,463 | 46.6 | | | | | |
| Kansas | 7,715 | 3.4 | | | 150,410 | 66.0 | | | | | |
| Kentucky [8] | | - | | | 366,101 | 100.0 | | | | | |
| Louisiana [9] | | | | | 325,975 | 100.0 | | | | | |
| Maine [10] | 1,414 | 65.9 | | | 0 | 0.0 | | | | | |
| Maryland [11] | 234,004 | 98.3 | | | 0 | 0.0 | | | | | |
| Massachusetts
[12] | - | - | - | - | 608,691 | 100.0 | | | | | |
| Michigan | 158,842 | 76.7 | - | | 0 | 0.0 | | | | | |
| Minnesota [13] | - | - | - | - | - | - | | | | | |
| Mississippi | 82,826 | 100.0 | - | - | 0 | 0.0 | | | | | |
| Missouri [14] | - | - | - | | 115,366 | 30.2 | | | | | |
| Montana | 69,633 | 65.0 | 106 | 0.1 | 0 | 0.0 | | | | | |
| Nebraska | 87,110 | 54.4 | - | - | 0 | 0.0 | | | | | |
| Nevada [15] | 23,639 | 6.5 | - | | 0 | 0.0 | | | | | |
| New Hampshire [16] | 10,234 | 67.4 | - | - | 0 | 0.0 | | | | | |
| New Jersey [17] | 311,385 | 100.0 | | - | 0 | 0.0 | | | | | |
| New Mexico [18] | 127,075 | 93.1 | - | - | 0 | 0.0 | | | | | |
| New York | 83,889 | 52.6 | - | | 1,848 | 1.2 | | | | | |



| | | Result of Confirmation Notice | | | | | | | | | |
|-----------------------------|------------|-------------------------------|-----------|-------|-----------------|-------|--|--|--|--|--|
| State | Status U | Inknown | Oti | her | Not Categorized | | | | | | |
| | Total | % | Total | % | Total | % | | | | | |
| North Carolina | 563,120 | 64.4 | 47,520 | 5.4 | 0 | 0.0 | | | | | |
| North Dakota [19] | - | - | - | - | - | | | | | | |
| Northern Mariana
Islands | - | - | - | - | 4,857 | 99.0 | | | | | |
| Ohio | 519,856 | 73.0 | | | 0 | 0.0 | | | | | |
| Oklahoma | 131,617 | 72.7 | | - | 0 | 0.0 | | | | | |
| Oregon | - | | 329,443 | 100.0 | 0 | 0.0 | | | | | |
| Pennsylvania | 206,085 | 27.3 | 320,221 | 42.5 | 0 | 0.0 | | | | | |
| Puerto Rico [20] | - | | | - | - | | | | | | |
| Rhode Island | - | | | - | 83,980 | 100.0 | | | | | |
| South Carolina | 52,132 | 68.8 | 4,347 | 5.7 | 0 | 0.0 | | | | | |
| South Dakota | 5,102 | 28.7 | | - | 0 | 0.0 | | | | | |
| Tennessee | 92,832 | 67.7 | | | 0 | 0.0 | | | | | |
| Texas | 197,800 | 18.5 | | - | 0 | 0.0 | | | | | |
| U.S. Virgin Islands
[21] | - | | - | - | - | - | | | | | |
| Utah | - | | | - | 0 | 0.0 | | | | | |
| Vermont | 0 | 0.0 | | | 0 | 0.0 | | | | | |
| Virginia [22] | 172,802 | 91.4 | | - | 0 | 0.0 | | | | | |
| Washington | 279,727 | 58.1 | | | 0 | 0.0 | | | | | |
| West Virginia [23] | 9,408 | 91.4 | 154 | 1.5 | 0 | 0.0 | | | | | |
| Wisconsin [24] | 231,233 | 66.9 | - | - | 0 | 0.0 | | | | | |
| Wyoming [25] | - | | | - | - | - | | | | | |
| U.S. Total | 16,909,911 | 65.8 | 1,268,613 | 9.7 | 2,074,469 | 7.4 | | | | | |

Voter Registration Table 4 Calculation Notes:

Confirmation Notices Sent, Total uses question A8a.

Confirmation Notices Sent as % of Active Voters uses question A8a divided by question A1b.

Confirmation Notices Received - Valid, Total uses question A8b.

Confirmation Notices Received - Valid, % uses question A8b divided by question A8a.

Confirmation Notices Received - Invalid, Total uses question A8c.

Confirmation Notices Received - Invalid, % uses question A8c divided by question A8a.

Confirmation Notice Returned Undeliverable, Total uses question A8d.

Confirmation Notice Returned Undeliverable, % uses question A8d divided by question A8a.

Status Unknown, Total uses question A8e.

Status Unknown, % uses question A8e divided by question A8a.

Other Confirmation Notices, Total uses the sum of questions A8f, A8g, and A8h.

Other Confirmation Notices, % uses the sum of questions A8f, A8g, and A8h, all divided by question A8a.

Not Categorized Confirmation Notices, Total uses question A8a minus the sum of questions A8b to A8h.

Not Categorized Confirmation Notices, % uses question A8a minus the sum of questions A8b to A8h, all divided by question A8a.

Voter Registration Table 4 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- Questions A8f, A8g, and A8h were not mandatory. States and jurisdictions only reported data in these items if there was another confirmation notice status aside from those listed in questions A8b-A8e or if there were registration applications that could not be categorized in questions A8b-A8e.
- Negative numbers in the Not Categorized confirmation notices category indicate that the sum of confirmation notices for each category account for more than the total number of confirmation notices reported by the state.
- Because each percentage was calculated independently, the percentage of confirmation notices in each category may not sum to 100% for some states or at the national level.
- Not all states track data to be able to provide responses for each confirmation notice category.
- States that are exempt from the NVRA are not required to send confirmation notices pursuant to
 the NVRA, although they may send confirmation notices (or other similar notices) pursuant to
 state law or practice. States that do not use confirmation notices typically use other sources of
 data to identify potentially ineligible voters.
- [1] Alabama noted in a survey comment that "[W]e do not have a report that has the total number of confirmation notices sent." Because Alabama does not report the total number of confirmation notices sent, the number of 'Not Categorized' confirmation notices cannot be calculated. For the same reason, their responses were not included when calculating the total 'Not Categorized' confirmation notices at the national level.
- [2] California has increased list maintenance training statewide to all county elections officials, including training regarding when to send confirmation notices per the NVRA and updated California state law.
- [3] Delaware noted in a survey comment that "In 2019, the state of DE changed voter registration vendors-from an in-house mainframe system to a cloud based provider. The data request is unavailable due to the differences in the 2 systems. The information requested was not tracked and/or converted to the new system."
- [4] The District of Columbia notes that the data reported in EAVS under A8a (Confirmation Notices Sent) do not comprise list maintenance activities. This has caused confusion when receiving a Freedom of Information Act (FOIA) request for D2 notices, and this number does not match the figure in A8a.
- [5] Hawaii noted in survey comments that three of its four counties that submit EAVS data do not "have counts of confirmed, invalidated, undeliverable, or unknown."
- [6] Indiana noted in a survey comment that "Indiana's understanding is this aligns with voter list maintenance activities. Indiana does not send the removal notices referenced by the EAC survey, Indiana provided the number of voter records cancelled due to being in inactive status for more than 2 federal general elections for question A9e."
- [7] lowa noted in a survey comment that the state's "system does not track follow up status information."
- [8] Kentucky noted in a survey comment that "[O]ur system tracks all undeliverable mail to qualify for the 8(d)2 notifications. Two separate batches have been sent during this time period. We have not yet finished scanning and categorizing the returns. Therefore, the only data available is the number sent."



- [9] Louisiana noted in a survey comment that "[C]onfirmation notices are sent pursuant to 52 USC §20507(d)(2). The Department of State only collects the total number of sent confirmation notices."
- [10] Maine noted in a survey comment that "A8d: see A8e, voters made inactive if CACC [Change of Address Confirmation Card] undeliverable."
- [11] Maryland noted in a survey comment that "A8d data is included in A8e."
- [12] Massachusetts noted in a survey comment that the state "cannot provide data on result of [confirmation] notices."
- [13] Minnesota is NVRA exempt and responded "Does not apply" to all items regarding confirmation notices (A8).
- [14] Missouri noted in a survey comment that "A8a does not total [because] we do not track all information requested."
- [15] Nevada reported in survey comments that two of its counties did not track confirmation notices.
- [16] New Hampshire noted in a survey comment that "NH does not send confirmation notices, but does send 30-day letters."
- [17] New Jersey does not track confirmation notices returned by the voter or returned undeliverable.
- [18] New Mexico noted that the data for these items are not consistently captured across counties at this time. The Secretary of State's office is exploring options to capture and include this information on future reports.
- [19] North Dakota does not have voter registration and does not provide data in Section A of the EAVS.
- [20] Puerto Rico is NVRA exempt and responded "Does not apply" to all items regarding confirmation notices (A8).
- [21] The U.S. Virgin Islands are NVRA exempt and responded "Data not available" to all items regarding confirmation notices (A8).
- [22] Virginia does not currently track returned confirmation notices.
- [23] West Virginia reported in a survey comment that "[S]ome counties tracked undeliverables as 'no response,' so they are included in status unknown totals."
- [24] Wisconsin is exempt from NVRA; however, the state sent notices to voters who have not voted in a four-year period, as well as Electronic Registration Information Center (ERIC) mover mailings. Notices are sent to voters who register to vote or whose voter information may be out of date.
- [25] Wyoming is NVRA exempt and responded "Does not apply" to all items regarding confirmation notices (A8).

Voter Registration Table 5: Voter List Maintenance – Removal Actions

| | Voters Rer | noved | | | Re | eason fo | r Removal | | | Reason for Removal | | | | | | | | |
|----------------------|------------|--------------|---------|------|---------|----------|------------------------------------|------|------------|--------------------|--|--|--|--|--|--|--|--|
| State | Total | % of
Reg. | Moved O | | Death | | Failure to F
Confirma
Notice | tion | Voter's Re | quest | | | | | | | | |
| | | Voters | Total | % | Total | % | Total | % | Total | % | | | | | | | | |
| Alabama | 136,557 | 3.7 | 9,069 | 6.6 | 94,396 | 69.1 | 266 | 0.2 | 230 | 0.2 | | | | | | | | |
| Alaska | 53,132 | 8.2 | 3,691 | 6.9 | 8,485 | 16.0 | 30,358 | 57.1 | 8,729 | 16.4 | | | | | | | | |
| American
Samoa | 2,124 | 13.0 | 0 | 0.0 | 336 | 15.8 | 1,788 | 84.2 | 0 | 0.0 | | | | | | | | |
| Arizona | 350,841 | 7.4 | 82,095 | 23.4 | 71,706 | 20.4 | 121,011 | 34.5 | 28,516 | 8.1 | | | | | | | | |
| Arkansas | 175,336 | 9.6 | 12,448 | 7.1 | 37,185 | 21.2 | 116,787 | 66.6 | 560 | 0.3 | | | | | | | | |
| California [1] | 1,635,987 | 6.3 | 496,397 | 30.3 | 355,332 | 21.7 | 351,301 | 21.5 | 60,293 | 3.7 | | | | | | | | |
| Colorado | 416,819 | 9.9 | 104,155 | 25.0 | 62,005 | 14.9 | 210,941 | 50.6 | 32,908 | 7.9 | | | | | | | | |
| Connecticut | 53,652 | 2.1 | 19,812 | 36.9 | 18,986 | 35.4 | 3,443 | 6.4 | 10,438 | 19.5 | | | | | | | | |
| Delaware | 39,772 | 5.4 | 8,254 | 20.8 | 6,210 | 15.6 | 24,900 | 62.6 | 108 | 0.3 | | | | | | | | |
| District of Columbia | 67,400 | 10.8 | 25,864 | 38.4 | 7,979 | 11.8 | 33,124 | 49.1 | - | - | | | | | | | | |
| Florida | 1,009,246 | 6.6 | 210,587 | 20.9 | 334,033 | 33.1 | 320,706 | 31.8 | 124,558 | 12.3 | | | | | | | | |
| Georgia [2] | 505,728 | 6.6 | 6,700 | 1.3 | 137,645 | 27.2 | 257,010 | 50.8 | 3,100 | 0.6 | | | | | | | | |
| Guam | 9,722 | 17.4 | 44 | 0.5 | 717 | 7.4 | 8,961 | 92.2 | | _ | | | | | | | | |
| Hawaii | 47,670 | 5.7 | 4,309 | 9.0 | 15,152 | 31.8 | 23,620 | 49.5 | 4,516 | 9.5 | | | | | | | | |
| Idaho | 24,639 | 2.4 | 739 | 3.0 | 431 | 1.7 | 9,082 | 36.9 | 0 | 0.0 | | | | | | | | |
| Illinois | 643,336 | 6.6 | 305,984 | 47.6 | 161,055 | 25.0 | 171,920 | 26.7 | - | | | | | | | | | |
| Indiana [3] | 1,023,732 | 21.8 | 8,716 | 0.9 | 4 | 0.0 | 94,837 | 9.3 | | _ | | | | | | | | |
| Iowa | 126,968 | 5.7 | 22,424 | 17.7 | 52,262 | 41.2 | 48,771 | 38.4 | 817 | 0.6 | | | | | | | | |
| Kansas | 134,771 | 7.0 | 18,601 | 13.8 | 40,484 | 30.0 | 65,020 | 48.2 | 588 | 0.4 | | | | | | | | |
| Kentucky | 100,181 | 2.8 | 7,534 | 7.5 | 77,442 | 77.3 | 0 | 0.0 | 874 | 0.9 | | | | | | | | |
| Louisiana [4] | 296,761 | 9.6 | 125,794 | 42.4 | 72,493 | 24.4 | 44,947 | 15.1 | 12,479 | 4.2 | | | | | | | | |
| Maine | 153,846 | 13.5 | 122,310 | 79.5 | 23,713 | 15.4 | 1,942 | 1.3 | 709 | 0.5 | | | | | | | | |
| Maryland | 260,666 | 6.1 | 58,583 | 22.5 | 73,564 | 28.2 | 122,649 | 47.1 | 863 | 0.3 | | | | | | | | |
| Massachusetts | 804,445 | 16.7 | 523,079 | 65.0 | 89,088 | 11.1 | 131,641 | 16.4 | 9,136 | 1.1 | | | | | | | | |
| Michigan [5] | 239,780 | 3.0 | 46,047 | 19.2 | 187,608 | 78.2 | 0 | 0.0 | 6,125 | 2.6 | | | | | | | | |
| Minnesota [6] | 206,475 | 5.5 | 72,296 | 35.0 | 61,389 | 29.7 | 72,090 | 34.9 | | | | | | | | | | |
| Mississippi | 89,640 | 4.2 | 17,485 | 19.5 | 50,463 | 56.3 | 18,500 | 20.6 | 1,109 | 1.2 | | | | | | | | |
| Missouri | 411,661 | 9.5 | 119,044 | 28.9 | 119,144 | 28.9 | 150,562 | 36.6 | 2,369 | 0.6 | | | | | | | | |
| Montana [7] | 73,718 | 9.9 | 8,231 | 11.2 | 14,758 | 20.0 | 38,110 | 51.7 | 3,000 | 4.1 | | | | | | | | |
| Nebraska | 94,352 | 7.4 | 18,252 | 19.3 | 27,308 | 28.9 | 20,697 | 21.9 | 23,706 | 25.1 | | | | | | | | |
| Nevada | 157,592 | 7.7 | 41,145 | 26.1 | 27,699 | 17.6 | 65,045 | 41.3 | 22,303 | 14.2 | | | | | | | | |
| New
Hampshire | 140,979 | 13.0 | 129,428 | 91.8 | 6,255 | 4.4 | | | | - | | | | | | | | |
| New Jersey | 264,136 | 4.2 | 58,588 | 22.2 | 114,301 | 43.3 | 84,871 | 32.1 | 474 | 0.2 | | | | | | | | |
| New Mexico | 79,636 | 5.9 | 4,268 | 5.4 | 27,582 | 34.6 | 31,919 | 40.1 | 10,897 | 13.7 | | | | | | | | |
| New York | 580,170 | 4.3 | 248,905 | 42.9 | 158,216 | 27.3 | 100,411 | 17.3 | 10,439 | 1.8 | | | | | | | | |



| | Voters Ren | noved | | | Re | eason fo | r Removal | | | |
|--------------------------------|------------|-------|-----------------------|------|-----------|----------|------------------------------------|------|---------|------|
| State | Total | | Moved Ou
Jurisdict | | Death | | Failure to F
Confirma
Notice | tion | | |
| | | | Total | % | Total | % | Total | % | Total | % |
| North Carolina | 1,283,363 | 17.4 | 506,445 | 39.5 | 130,915 | 10.2 | 589,764 | 46.0 | 3,692 | 0.3 |
| North Dakota
[8] | - | | | | | - | - | | | - |
| Northern
Mariana
Islands | 5,049 | 27.3 | | - | 108 | 2.1 | 4,907 | 97.2 | | - |
| Ohio | 984,190 | 12.2 | 267,042 | 27.1 | 170,651 | 17.3 | 441,576 | 44.9 | 94,541 | 9.6 |
| Oklahoma | 234,034 | 10.4 | 91,344 | 39.0 | 43,757 | 18.7 | 88,285 | 37.7 | 959 | 0.4 |
| Oregon [9] | 106,692 | 3.6 | 20,197 | 18.9 | 58,802 | 55.1 | 9,766 | 9.2 | 17,457 | 16.4 |
| Pennsylvania
[10] | 883,947 | 9.8 | 416,884 | 47.2 | 196,386 | 22.2 | 263,009 | 29.8 | 6,376 | 0.7 |
| Puerto Rico | 761,087 | 32.3 | 266 | 0.0 | 136,822 | 18.0 | 623,275 | 81.9 | 0 | 0.0 |
| Rhode Island | 49,304 | 6.1 | 9,927 | 20.1 | 12,366 | 25.1 | 21,369 | 43.3 | 1,434 | 2.9 |
| South Carolina
[11] | 140,077 | 3.6 | 33,796 | 24.1 | 81,939 | 58.5 | 14,749 | 10.5 | 570 | 0.4 |
| South Dakota | 24,151 | 3.8 | 1,105 | 4.6 | 9,994 | 41.4 | 10,854 | 44.9 | 567 | 2.3 |
| Tennessee | 508,768 | 11.5 | 194,624 | 38.3 | 83,756 | 16.5 | 218,348 | 42.9 | 3,499 | 0.7 |
| Texas | 1,751,446 | 10.3 | 144,214 | 8.2 | 272,826 | 15.6 | 505,668 | 28.9 | 11,010 | 0.6 |
| U.S. Virgin
Islands [12] | 1,931 | 3.6 | 275 | 14.2 | 1,614 | 83.6 | - | - | 42 | 2.2 |
| Utah | 67,468 | 3.6 | 12,488 | 18.5 | 20,810 | 30.8 | 33,956 | 50.3 | 185 | 0.3 |
| Vermont | 44,352 | 9.1 | 0 | 0.0 | 9,605 | 21.7 | 18,876 | 42.6 | 5,286 | 11.9 |
| Virginia | 879,921 | 14.7 | 569,837 | 64.8 | 93,716 | 10.7 | 188,774 | 21.5 | 13,886 | 1.6 |
| Washington | 305,845 | 5.8 | 84,754 | 27.7 | 61,104 | 20.0 | 4,192 | 1.4 | 41,969 | 13.7 |
| West Virginia | 94,032 | 7.4 | 9,767 | 10.4 | 27,536 | 29.3 | 53,729 | 57.1 | 333 | 0.4 |
| Wisconsin [13] | 198,061 | 5.2 | 37,490 | 18.9 | 68,968 | 34.8 | 75,624 | 38.2 | 676 | 0.3 |
| Wyoming | 45,866 | 15.1 | 1,176 | 2.6 | 3,495 | 7.6 | 40,973 | 89.3 | 26 | 0.1 |
| U.S. Total | 18,781,054 | 8.2 | 5,342,509 | 28.5 | 4,020,596 | 21.4 | 5,984,924 | 32.1 | 582,352 | 3.5 |

| | | | | Reaso | n for Removal | | | |
|-------------------------|-------------|------------|------------|-----------|---------------|------|---------|-----------|
| State | Felony or C | Conviction | Mental Inc | ompetence | Oth | ier | Not Car | tegorized |
| | Total | % | Total | % | Total | % | Total | % |
| Alabama | 5,573 | 4.1 | 127 | 0.1 | 26,896 | 19.7 | 0 | 0.0 |
| Alaska | 1,869 | 3.5 | 0 | 0.0 | - | - | 0 | 0.0 |
| American
Samoa | 0 | 0.0 | 0 | 0.0 | | _ | 0 | 0.0 |
| Arizona | 13,476 | 3.8 | 418 | 0.1 | 33,619 | 9.6 | 0 | 0.0 |
| Arkansas | 4,317 | 2.5 | 57 | 0.0 | 4,419 | 2.5 | -437 | -0.2 |
| California [1] | 19,069 | 1.2 | 672 | 0.0 | 352,014 | 21.5 | 909 | 0.1 |
| Colorado | 5,183 | 1.2 | | | 1,627 | 0.4 | 0 | 0.0 |
| Connecticut | 973 | 1.8 | - | - | - | - | 0 | 0.0 |
| Delaware | 300 | 0.8 | - | - | - | - | 0 | 0.0 |
| District of
Columbia | 433 | 0.6 | - | - | | - | 0 | 0.0 |
| Florida | 15,903 | 1.6 | 1,993 | 0.2 | 2,756 | 0.3 | -1,290 | -0.1 |
| Georgia [2] | 54,730 | 10.8 | 312 | 0.1 | 46,231 | 9.1 | 0 | 0.0 |
| Guam | | | - | | | - | 0 | 0.0 |
| Hawaii | 73 | 0.2 | 0 | 0.0 | - | - | 0 | 0.0 |
| Idaho | 21 | 0.1 | 0 | 0.0 | 6,016 | 24.4 | 8,350 | 33.9 |
| Illinois | 4,377 | 0.7 | | | | - | 0 | 0.0 |
| Indiana [3] | 1 | 0.0 | - | - | 5,318 | 0.5 | 914,856 | 89.4 |
| Iowa | 2,645 | 2.1 | 49 | 0.0 | - | - | 0 | 0.0 |
| Kansas | 3,377 | 2.5 | 20 | 0.0 | 7,351 | 5.5 | -670 | -0.5 |
| Kentucky | 13,358 | 13.3 | 973 | 1.0 | - | - | 0 | 0.0 |
| Louisiana [4] | 14,817 | 5.0 | 115 | 0.0 | 26,116 | 8.8 | 0 | 0.0 |
| Maine | | - | - | - | 5,172 | 3.4 | 0 | 0.0 |
| Maryland | 3,910 | 1.5 | 44 | 0.0 | 1,053 | 0.4 | 0 | 0.0 |
| Massachusetts | 747 | 0.1 | - | - | 50,754 | 6.3 | 0 | 0.0 |
| Michigan [5] | | - | - | - | | - | 0 | 0.0 |
| Minnesota [6] | - | - | - | - | 700 | 0.3 | 0 | 0.0 |
| Mississippi | 1,240 | 1.4 | 33 | 0.0 | 810 | 0.9 | 0 | 0.0 |
| Missouri | 12,371 | 3.0 | 1,566 | 0.4 | 6,605 | 1.6 | 0 | 0.0 |
| Montana [7] | 69 | 0.1 | 4 | 0.0 | 9,546 | 12.9 | 0 | 0.0 |
| Nebraska | 3,395 | 3.6 | 0 | 0.0 | 994 | 1.1 | 0 | 0.0 |
| Nevada | 1,337 | 0.8 | 63 | 0.0 | | - | 0 | 0.0 |
| New
Hampshire | 26 | 0.0 | - | - | 5,270 | 3.7 | 0 | 0.0 |
| New Jersey | 5,902 | 2.2 | 0 | 0.0 | | - | 0 | 0.0 |
| New Mexico | 4,970 | 6.2 | - | | | - | 0 | 0.0 |
| New York | 4,439 | 0.8 | 98 | 0.0 | | - | 57,662 | 9.9 |
| North Carolina | 16,788 | 1.3 | 0 | 0.0 | 35,759 | 2.8 | 0 | 0.0 |



| | | | | Reaso | n for Removal | | | |
|--------------------------------|----------------------|-----|------------|---------------------|---------------|-------|---------|-----------|
| State | Felony or Conviction | | Mental Inc | Mental Incompetence | | Other | | tegorized |
| | Total | % | Total | % | Total | % | Total | % |
| North Dakota
[8] | | | | | | - | | |
| Northern
Mariana
Islands | 34 | 0.7 | | | - | - | 0 | 0.0 |
| Ohio | 10,361 | 1.1 | 19 | 0.0 | - | - | 0 | 0.0 |
| Oklahoma | 3,335 | 1.4 | 150 | 0.1 | 6,204 | 2.7 | 0 | 0.0 |
| Oregon [9] | | - | | | 470 | 0.4 | 0 | 0.0 |
| Pennsylvania
[10] | 6 | 0.0 | 194 | 0.0 | 1,092 | 0.1 | 0 | 0.0 |
| Puerto Rico | | - | 697 | 0.1 | 27 | 0.0 | 0 | 0.0 |
| Rhode Island | 810 | 1.6 | 2 | 0.0 | 3,396 | 6.9 | 0 | 0.0 |
| South Carolina [11] | 7,078 | 5.1 | | | 1,945 | 1.4 | 0 | 0.0 |
| South Dakota | 1,613 | 6.7 | 2 | 0.0 | 16 | 0.1 | 0 | 0.0 |
| Tennessee | 7,354 | 1.4 | | | 1,187 | 0.2 | 0 | 0.0 |
| Texas | 4,697 | 0.3 | 730 | 0.0 | 812,301 | 46.4 | 0 | 0.0 |
| U.S. Virgin
Islands [12] | | - | 0 | 0.0 | | - | 0 | 0.0 |
| Utah | 29 | 0.0 | | | - | - | 0 | 0.0 |
| Vermont | | - | | | 10,585 | 23.9 | 0 | 0.0 |
| Virginia | 10,480 | 1.2 | 1,020 | 0.1 | 2,208 | 0.3 | 0 | 0.0 |
| Washington | 2,767 | 0.9 | 170 | 0.1 | 110,889 | 36.3 | 0 | 0.0 |
| West Virginia | 1,285 | 1.4 | 2 | 0.0 | 1,380 | 1.5 | 0 | 0.0 |
| Wisconsin [13] | 3,855 | 1.9 | 112 | 0.1 | 11,336 | 5.7 | 0 | 0.0 |
| Wyoming | 46 | 0.1 | 1 | 0.0 | 149 | 0.3 | 0 | 0.0 |
| U.S. Total | 269,439 | 1.6 | 9,643 | 0.1 | 1,592,211 | 10.4 | 979,380 | 5.2 |

Voter Registration Table 5 Calculation Notes:

Voters Removed, Total uses question A9a.

Voters Removed, % Registered Voters uses question A9a divided by question A1a.

Moved Out of Jurisdiction, Total uses question A9b.

Moved Out of Jurisdiction, % uses question A9b divided by question A9a.

Death, Total uses question A9c.

Death, % uses question A9c divided by question A9a.

Failure to Return Confirmation Notice, Total uses question A9e.

Failure to Return Confirmation Notice, % uses question A9e divided by question A9a.

Voter's Request, Total uses question A9g.

Voter's Request, % uses question A9g divided by question A9a.

Felony or Conviction, Total uses question A9d.

Felony or Conviction, % uses question A9d divided by question A9a.

Mental Incompetence, Total uses question A9f.

Mental Incompetence, % uses question A9f divided by question A9a.

Other, Total uses the sum of questions A9h, A9i, and A9j.

Other, % uses the sum of questions A9h, A9i, and A9i, all divided by question A9a.

Not Categorized, Total uses question A9a minus the sum of questions A9b to A9j.

Not Categorized, % uses question A9a minus the sum of questions A9b to A9j, all divided by question A9a.

Voter Registration Table 5 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- Questions A9h, A9i, and A9g were not mandatory. States and jurisdictions only reported data in these items if there was another reason for registration removals aside from those listed in questions A9b-A9g or if there were registration removals that could not be categorized in questions A9b-A9e.
- Negative numbers in the Not Categorized registration removals category indicate that the sum of registration removals for each category account for more than the total number of registration removals reported received by the state.
- Because each percentage was calculated independently, the percentage of confirmation notices in each category may not sum to 100% for some states or at the national level.
- Not all states track data to be able to provide responses for each registration removal category. In addition, not all states may remove registrations for the listed reason.
- [1] California has increased list maintenance training statewide to all county elections officials, including training regarding removal actions per the NVRA and updated California state law.
- [2] Georgia noted in a survey comment that "A9b represents voters who moved out of the state."
- [3] Indiana noted in a survey comment that "[T]he data reported in A9b–j consists of data from the ad hoc report (A9b–d, A9g–j) and SVRS [statewide voter registration system] (A9e). Indiana provided the number of voter records cancelled due to being in inactive status for more than 2 federal general elections for question A9e. These statistics represent the majority of cancellations for this reason, based on the county user selecting the option to run this process in batch. However, county users have the option to also cancel voters one-by-one for this reason, but those statistics are not included in the counts for question A9e."
- [4] Louisiana noted in a survey comment that "[I]rregularities include voters that were cancelled by the registrar of voters because the registrant provided insufficient or incorrect data, or user processing error. Challenge 21 includes voters who were registered in another state or not a United States citizen, or were otherwise not qualified to be registered for reasons other than change of residence."
- [5] Michigan noted in a survey comment that "A9d: in MI, registered voters cannot cast a ballot while they are incarcerated serving sentence; however, their registration is never cancelled. Felony convictions alone do not disqualify voters from casting a ballot."
- [6] Minnesota noted in a survey comment that "A9d and A9f: voter is not removed but status changes to 'challenged.' A9e: did not vote or update registration in prior four years. A9g: voter request not tracked separately, is included in A9h."
- [7] Montana noted in a survey comment that "A9d: felony cancellations as reported in voter registration database."
- [8] North Dakota does not have voter registration and does not provide data in Section A of the EAVS.
- [9] Oregon reported in a survey comment that "[I]ncarcerated voters are inactivated not removed."
- [10] Pennsylvania reported in a survey comment that "PA won't be reporting declared mentally incompetent in future surveys. The cancellation option is no longer available to county officials."



- [11] South Carolina reported in a survey comment that "A9f: it is rare for voters to be removed for this reason and would be included under 'other' (A9h)."
- [12] The U.S. Virgin Islands reported in a survey comment that the territory "no longer purges voters who did not vote in the past two general election. A voter can only be removed off the voting roll due to their death, request to be removed or move out of territory, or convicted of a felony. The voter will be reinstated once they serve their sentence. ESVI [Election System of the Virgin Islands] is planning to do more outreach to voters including notifying voters of voting centers, their respective voting centers, voter registration status to name a few."
- [13] Wisconsin is exempt from the NVRA and does not classify inactive voters per NVRA definitions. Only active voters are registered and eligible to vote in Wisconsin. Wisconsin's registered voters count for this report includes military voters, even though they are not required to "register" in Wisconsin. Wisconsin requires voters to re-register each time their address changes. For the purposes of this report, voters are only counted as being "removed" from the voter rolls if they did not re-register at a new address. Even voters who move within the same jurisdiction must re-register in Wisconsin; therefore, Wisconsin does not track these voters separately.

Chapter 4. Military and Overseas Voting in 2020: UOCAVA

Key Findings

The Election Administration and Voting Survey (EAVS) Section B collected data from states and municipalities on individuals covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) during the 2020 federal general election. Election officials were asked a variety of questions relating to UOCAVA voting practices, including the total number of registered UOCAVA voters, the use of the Federal Post Card Application (FPCA), the quantity and method of ballots transmitted to and returned by UOCAVA voters, and the use of the Federal Write-In Absentee Ballot (FWAB).¹ Among the results of this section, notable findings include:

- Just over 40% of registered UOCAVA voters held legal voting residence in three states: California, Florida, and Washington.
- Continuing a trend that began with the 2016 EAVS, overseas citizens made up a larger percentage of registered UOCAVA voters than did members of the uniformed services.
- More than 1.2 million ballots were transmitted to UOCAVA voters by election offices. More than 900,000 of these ballots were returned by UOCAVA voters and were submitted for counting.
- UOCAVA voters increasingly used electronic methods to receive and return their absentee ballots, but rates differed by UOCAVA voter type, with more overseas citizens using electronic options than uniformed services members, who continue to rely primarily on postal mail.
- The most common reason for UOCAVA ballot rejection was that the ballot was received after a state's UOCAVA absentee ballot receipt deadline.
- FWAB usage continued to increase in 2020, with more UOCAVA voters using this backup ballot to cast their vote than in previous election cycles.

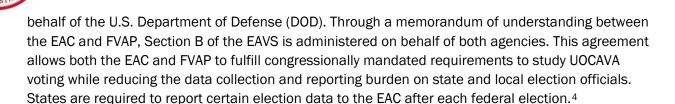
Introduction

The U.S. Election Assistance Commission (EAC) is required by the Help America Vote Act of 2002 (HAVA) to collect data from states² and to report on absentee voting by uniformed services members and overseas citizens.³ Since 2014, the EAC has fulfilled this reporting mandate in partnership with the Federal Voting Assistance Program (FVAP), the agency designated to administer UOCAVA on

¹ The response rate among local jurisdictions for EAVS Section B was 99.9%; five counties in Arkansas did not provide Section B data. In addition, the response rate for individual items varied. Results reported in this chapter include only states for which data are available for a given question. State and national totals include all available jurisdiction-level data. National-level percentages reported in this chapter used casewise deletion.

² Throughout this report, unless otherwise specified, the term "state" can be understood to apply to the 50 U.S. states, the District of Columbia and five U.S. territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that submit Election Administration Policy Survey and EAVS data.

³ The Help America Vote Act of 2002 (HAVA), 52 U.S.C. § 20901. The EAC works with FVAP to collect comprehensive data from the states on all of the ballots sent and received by voters covered under UOCAVA (52 U.S.C. § 20301(b)(11)).



This chapter examines UOCAVA data from the 2020 EAVS, including use of the FPCA by UOCAVA voters, ballots transmitted to UOCAVA voters by states, ballots returned by UOCAVA voters, UOCAVA ballots counted, UOCAVA ballots rejected, and usage of the FWAB by UOCAVA voters. Where appropriate, information about state laws and procedures related to UOCAVA voting, collected as part of the EAC's 2020 Election Administration Policy Survey (Policy Survey), is presented to provide context for the EAVS results.

Federal Laws Regulating Military and Overseas Voting

The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA)

UOCAVA protects the voting rights of members of the uniformed services who are stationed away from their voting residence, the spouses and other eligible family of uniformed services members, and U.S. citizens residing outside of the United States. It requires all states, territories, and the District of Columbia to allow these citizens to register to vote and to cast an absentee ballot for all federal elections. For the estimated 1.4 million uniformed services members and approximately 600,000 military spouses and voting age dependents stationed away from their legal voting residence as well as the estimated 2.9 million voting age U.S. citizens who live, study, or work overseas, the absentee voting process is different from and can be more challenging than the voting process for non-military voters residing in the United States.

Citizens protected by UOCAVA include:

- Members of the uniformed services (Army, Navy, Marine Corps, Air Force, Coast Guard, United States Public Health Service Commissioned Corps, and National Oceanic and Atmospheric Administration [NOAA] Commissioned Officer Corps) who are stationed away from their legal voting residence;
- Members of the U.S. Merchant Marine;
- Eligible family members of the above; and
- U.S. citizens residing outside the United States.

⁴ Section 703(a) HAVA amended section 102 of UOCAVA.

⁵ Throughout this report, the term "uniformed services voter" refers to U.S. citizens who are active members of the uniformed services or a spouse or dependent family member thereof. "Overseas citizen" refers to non-military U.S. citizens who reside overseas.

⁶ Information was provided by FVAP to Fors Marsh Group via email on May 10, 2021, and was current as of March 31, 2021

⁷ Federal Voting Assistance Program, "2018 Overseas Citizen Population Analysis," at https://www.fvap.gov/info/reports-surveys/overseas-citizen-population-analysis. The results of the 2020 Overseas Citizen Population Analysis were not available at the time of this report's publication.

Among the challenges UOCAVA sought to address was the wide variability in rules and procedures governing registration and voting across states, which made it difficult for uniformed services members and overseas citizens to navigate the voting process. UOCAVA established the FPCA, which serves as a combination registration and ballot request application that is accepted in all U.S. states and territories. In addition, the FWAB functions as a backup ballot that can be cast by UOCAVA voters who make a timely request for, but do not receive, a regular absentee ballot. Although states and localities still maintain and administer elections according to their own laws and procedures for registration and absentee voting among uniformed services members and overseas citizens, the provisions of UOCAVA established some uniformity in the absentee voting process for these voters.

The Military and Overseas Voter Empowerment Act of 2009 (MOVE)

Historically, UOCAVA ballots were transmitted from election offices to voters primarily through the mail. Given long mailing times and high mobility rates for this population of voters, this practice meant that many UOCAVA voters were unable to receive and return their absentee ballot before state ballot return deadlines. The MOVE Act amended UOCAVA to establish additional requirements to protect military and overseas citizens' voting rights. ¹⁰ These new rules required that all states and territories provide UOCAVA voters with an option to request and receive registration and absentee ballot request materials electronically, directed states to establish an electronic means of transmitting blank ballots to UOCAVA voters, and required states to provide free access to a system whereby voters can verify the status of their ballot. Additionally, absentee ballots must be transmitted no less than 45 days before a federal election to all UOCAVA voters who submit an absentee ballot request before this deadline. These additional provisions aimed to ensure uniformed services members and overseas citizens not only have the right to vote, but that they have sufficient time to receive and return their absentee ballots ahead of state deadlines.

The UOCAVA Voting Process

Although the specific path may differ depending on the policies and procedures in one's state of voting residence and on a voter's particular situation and preferences, in general, the UOCAVA voting process can be summarized in six basic steps, as illustrated in Figure 1.¹¹

- 1. Register and request an absentee ballot: UOCAVA-eligible citizens can do this either by completing a state application form or an FPCA, the federal form that functions as both a registration and absentee ballot request and is accepted in all states and U.S. territories.
- 2. <u>Submit the registration and ballot request</u>: Completed applications must be submitted to the appropriate state or local election office by mail or by an electronic means permitted by the

⁸ The United States Department of Justice. (2020, February 18). *The Uniformed and Overseas Citizens Absentee Voting Act.* https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act.

⁹ Section 103 of UOCAVA provides a mechanism for uniformed services members and overseas citizen voters to cast a FWAB (see 52 U.S.C.§ 20303).

¹⁰ Military and Overseas Voter Empowerment (MOVE) Act of 2008 statutory language can be found at https://www.fvap.gov/uploads/FVAP/Policies/moveact.pdf.

¹¹ Adapted from an FVAP infographic. For more detailed information about state policies related to UOCAVA voting, see Chapter 2 of this report.



M Directly Through **Election Office Voter Registers and** Requests a UOCAVA **Ballot by Deadline VOTING** ((•)) By Mail Use the **Election Office** Transmits Ballot to Voter FWAB (if no State Ballot) Electronically **Voter Fills Out Ballot** By Mail **State Ballot Voter Returns Ballot to Election** Office by Deadline By Other State-Approved **Election Office** Method **Ballot** is **Processes** Rejected Returned Ballots Ballot is

Figure 1. The UOCAVA Voting Process

state. All states accept FPCAs by mail; states may also accept FPCAs via email, fax, the state's online voter registration portal, or by another mode.

Counted

- 3. Application processing: Once received, registration and absentee ballot request applications are processed by the election office. If an application fails to meet any state requirements (e.g., the form is not completed correctly, is submitted after the registration deadline, or the applicant is deemed ineligible), then it may be rejected. If an application meets all requirements and is accepted, it remains valid as a registration and ballot request, meaning that the voter will retain UOCAVA status and have an absentee ballot transmitted to them for the duration specified by state policy.
- 4. <u>Ballot transmission</u>: Election officials transmit absentee ballots to registered UOCAVA voters no later than 45 days before a federal election (ballots may be transmitted later if the ballot request is submitted by the state deadline but less than 45 days before an election). Ballots

- may be transmitted to a voter by mail or through some other state-approved electronic means of transmission, as requested by the voter.
- 5. Complete and return absentee ballot: UOCAVA voters complete and return their absentee ballot to the appropriate election office for processing. Ballots may be returned and submitted for processing either by mail or through some other means allowed by a state. The FWAB may be used as a backup ballot by UOCAVA voters who do not receive a regular absentee ballot, or if the ballot does not arrive in time to be completed and returned ahead of state deadlines.
- 6. <u>Ballot processing and counting</u>: Completed absentee ballots that are returned and submitted for counting to an election office must be received by state deadlines and meet other state requirements. State policies on when completed ballots must be postmarked and when they must be returned to an election office in order to be eligible to be counted vary widely.

UOCAVA Registration and Ballot Requests

The 2016 general election was the first time that registered overseas citizens outnumbered registered uniformed services members covered by UOCAVA. This trend continued in 2020, with uniformed services members or eligible family members accounting for 42.3% of registered UOCAVA voters and overseas citizens accounting for 57.4% of this population.¹²

Registered UOCAVA voters' legal voting residences ¹³ are disproportionately concentrated in just a few U.S. states. In 2020, the states with the largest numbers of registered UOCAVA voters were Florida (191,628), California (187,213), and Washington (127,976). ¹⁴ Together, these three states represented 40.4% of all registered UOCAVA voters reported in the 2020 EAVS. Twenty-two local jurisdictions ¹⁵ reported having 10,000 or more registered UOCAVA voters, and seven reported more

¹² The total number of registered and eligible UOCAVA voters was collected in item B1a of the 2020 EAVS. The number of registered and eligible uniformed services UOCAVA voters was collected in item B1b; the percentage of uniformed services UOCAVA voters was calculated by dividing B1b by B1a. The number of registered and eligible overseas citizen UOCAVA voters was collected in item B1c; the percentage of overseas citizen UOCAVA voters was calculated by dividing B1c by B1a. Casewise deletion at the state level was used in calculating the national percentage. In total, 870 jurisdictions in 10 states did not report data in B1; this count excludes jurisdictions in Maine, which reported UOCAVA data at the state level and not the jurisdiction level. A total of 8,167 registered and eligible voters reported in B1a were not classified as either uniformed services or overseas citizens. These percentages exclude the seven states that did not report the number of registered UOCAVA voters as well as the state and territory that did not subdivide this number by UOCAVA voter type.

13 According to FVAP's guidance for service members, "Your voting residence is within your state of legal residence or domicile. It is the address that you consider your permanent home and where you had a physical presence. Your state of legal residence is used for state income tax purposes, determines eligibility to vote for federal and state elections, and qualification for in-state tuition rates." For more information, see https://www.fvap.gov/military-voter/voting-residence.

14 The total number of registered and eligible UOCAVA voters in a state was calculated by summing B1a across all jurisdictions for each state.

¹⁵ What constitutes a jurisdiction for EAVS reporting is defined by how each state chose to provide data. For the 2020 EAVS, most states reported data on the county level (or county equivalent, such as parishes for Louisiana). Illinois, Maryland, Missouri, and Virginia reported data for independent cities in addition to counties. The territories, the District of Columbia, and Alaska each reported as a single jurisdiction. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Wisconsin reported data on the township level. Maine also reported its UOCAVA data in Section B as a separate jurisdiction, because this information was only collected at the state level. Michigan reported data for the county level, but most election administration activities take place in the 1,520 local election jurisdictions in the state.

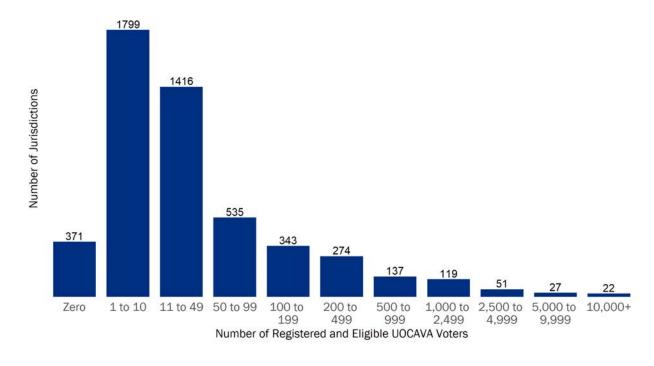
than 15,000 registered and eligible UOCAVA voters. These seven jurisdictions accounted for 15.3% of all registered UOCAVA voters (see Table 1).

Table 1. Seven Jurisdictions Accounted for 15% of All Registered UOCAVA Voters

| Jurisdictions With More Than 15,000 UOCAVA Voters | | | | | | | | | |
|---|--|--|--|--|--|--|--|--|--|
| Jurisdiction | Number of Registered and
Eligible UOCAVA Voters in 2020 | | | | | | | | |
| Los Angeles County, CA | 67,392 | | | | | | | | |
| King County, WA | 31,766 | | | | | | | | |
| Pierce County, WA | 27,023 | | | | | | | | |
| Miami-Dade County, FL | 17,495 | | | | | | | | |
| New York County, NY | 17,008 | | | | | | | | |
| San Diego County, CA | 16,074 | | | | | | | | |
| Broward County, FL | 15,154 | | | | | | | | |

Source: Information on the number of registered and eligible UOCAVA voters was item B1a of the 2020 EAVS. Alaska reported 16,194 total registered UOCAVA voters and reported as a single jurisdiction in the EAVS; however, it was not included in the table because the table focuses on localities rather than complete states.

Figure 2. Most Jurisdictions Had Fewer Than 50 Registered UOCAVA Voters



Source: Information for the number of registered and eligible UOCAVA voters was collected in item B1a of the 2020 EAVS.

Conversely, of the 5,094 local jurisdictions for which the number of registered UOCAVA voters was available, 80.9% reported fewer than 100 registered UOCAVA voters, including 371 jurisdictions that reported having zero UOCAVA voters in 2020. Figure 2 shows the number of registered UOCAVA voters by jurisdiction.

Election offices reported receiving 764,691 FPCAs ahead of the 2020 general election, which was almost double the 420,861 FPCAs that states reported receiving ahead of the 2016 general election. Overall, 30.3% of these registration and absentee ballot requests came from uniformed services members, and 66.9% were submitted by overseas citizens. States reported rejecting 2.7% of the FPCAs received, of which 15.2% were rejected because the election office received the form after their state's absentee ballot request deadline. The FPCA rejection rate among uniformed services members was slightly higher than among overseas citizens, with 3.3% of military FPCAs rejected compared to 2.3% of FPCAs submitted by overseas citizens.

UOCAVA Ballots Transmitted

In 2020, election offices in the 50 states, five U.S. territories, and the District of Columbia reported transmitting 1,249,601 ballots to UOCAVA voters. ¹⁹ Figure 3 shows the number of ballots sent out from election offices or transmitted for each state. The states colored in dark blue represent the states that distributed the most ballots to UOCAVA voters. The states colored in light blue are the states that distributed the fewest ballots to UOCAVA voters.

¹⁶ Data on the total number of FPCAs submitted was collected in item B2a of the 2020 EAVS. In 2016, this data was collected in item B20a. For 2020, the percentage of FPCAs received from uniformed services members was calculated as B2b/B2a. The percentage of FPCAs received from overseas citizen voters was calculated as B2c/B2a. Casewise deletion was used at the state level in calculating these percentages.

¹⁷ The total number of FPCAs rejected was collected in item B3a in the 2020 EAVS; the percentage of FPCAs rejected was calculated as B3a/B2a. The percentage of FPCAs rejected because they were received late was calculated as B4a/B3a. Casewise deletion was used at the state level in calculating these percentages.

¹⁸ The percentage of rejected FPCAs from uniformed services voters was calculated as B3b/B2b. The percentage of rejected FPCAs from overseas citizen voters was calculated as B3c/B2c. Overall, 6.9% of rejected FPCAs were not categorized by UOCAVA voter type. Casewise deletion was used at the state level in calculating these percentages.
¹⁹ The number of transmitted UOCAVA ballots was collected in item B5a of the 2020 EAVS. The number of ballots transmitted to UOCAVA voters was reported by all but 36 jurisdictions. Rhode Island did not report data on the number of ballots transmitted.



ME NH WA MT ND MN MI OH ID WY SD IA CT OR NV CO NE MO KY WV MD UT KS AR NC MS OK GA AS GU MP FL 9.001-27.000 No Data 1,900-3,500

Figure 3. Ballot Transmissions Were the Highest in States With Large UOCAVA Populations

Source: Information on the number of transmitted UOCAVA ballots was collected in item B5a of the 2020 EAVS. State-level data were aggregated from jurisdiction data. Cutoff points in the graph were selected to reflect states that had the lowest and highest number of UOCAVA ballots transmitted and to differentiate among the states in between the lowest and highest UOCAVA ballot transmission numbers.

3,501-9,000

27,001+

0-1,899

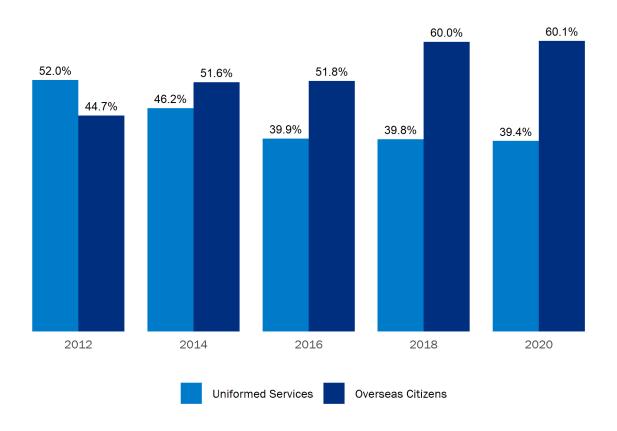
Of the UOCAVA ballots transmitted, 39.4% were sent to uniformed services members, and 60.1% were transmitted to overseas citizen voters.²⁰ Figure 4 shows that the percentage of ballots transmitted to overseas citizens has continued to rise steadily over the last several election cycles, increasing by 15.4 percentage points since the 2012 general election.

Although the nationwide percentage of ballots sent to overseas citizens was greater than the percentage sent to uniformed services members, the proportion of ballots sent to overseas citizens or uniformed services members varied by state. Kentucky and Louisiana, for example, reported that UOCAVA ballots were split about evenly between uniformed services members and overseas citizen voters; however, the District of Columbia and Massachusetts reported that the vast majority of UOCAVA ballots were transmitted to overseas citizens (97.1% and 94.2%, respectively). In Alaska, American Samoa, New Mexico, the Northern Mariana Islands, and the U.S. Virgin Islands, more than

²⁰ The percentage of UOCAVA ballots transmitted to uniformed services voters was calculated as B5b/B5a. The percentage of UOCAVA ballots transmitted to overseas citizen voters was calculated as B5c/B5a. Casewise deletion was used at the state level when calculating these percentages. An additional 1% of the transmitted ballots could not be classified by voter type.

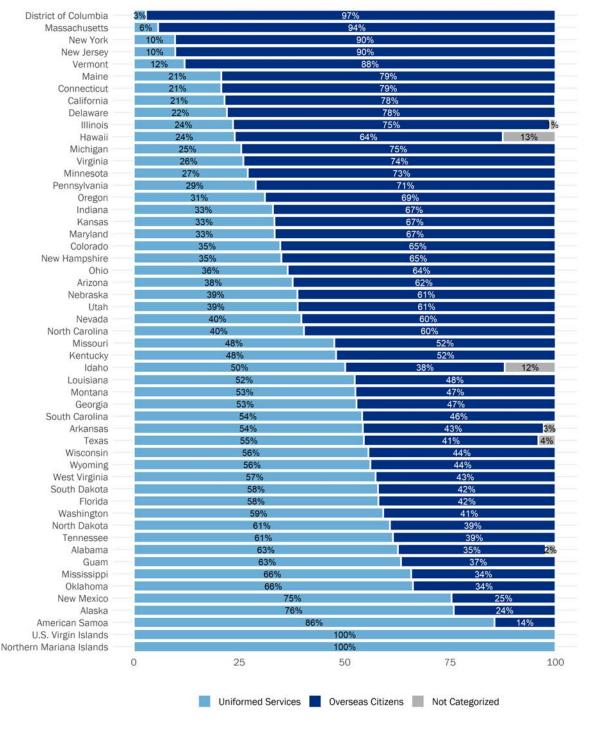
three-quarters of UOCAVA ballots were transmitted to uniformed services members. Figure 5 shows the percentage of ballots transmitted to uniformed services voters versus overseas citizen voters.

Figure 4. Steady Increase in the Percentage of UOCAVA Ballots Transmitted to Overseas Citizens
Relative to Uniformed Services Members



Source: The percentage of UOCAVA ballots transmitted to uniformed services voters was calculated as $B1b/B1a \times 100$ for the 2012, 2014, and 2016 EAVS and $B5b/B5a \times 100$ for the 2018 and the 2020 EAVS. The percentage of UOCAVA ballots transmitted to overseas citizens was calculated as $B1c/B1a \times 100$ for the 2012, 2014, and 2016 EAVS, and $B5c/B5a \times 100$ for the 2018 and the 2020 EAVS. Casewise deletion was used at the state level in calculating these percentages; percentages may not sum to 100%. Ballots that were not classified as being from either overseas citizens or uniformed services voters were not included in this analysis.

Figure 5. Twenty-Four States Transmitted More UOCAVA Ballots to Uniformed Services Members
Than to Overseas Citizens



Source: The percentage of UOCAVA ballots transmitted to overseas citizens was calculated as $B5c/B5a \times 100$ for the 2020 EAVS. The percentage of UOCAVA ballots transmitted to uniformed services voters was calculated as $B5b/B5a \times 100$ for the 2020 EAVS. The percentage of uncategorized ballots was calculated as $(B5a-B5b-B5c)/B5a \times 100$ for the 2020 EAVS. Casewise deletion was used at the state level in calculating these percentages; percentages may not sum to 100%. Rhode Island did not report data on the number of ballots transmitted.

Modes of UOCAVA Ballot Transmission

Over the last several election cycles, the modes by which absentee ballots have been transmitted to voters have changed substantially. Since the passage of the MOVE Act, transmission of ballots to UOCAVA voters has increasingly occurred electronically. Email was the most popular method of ballot transmission for the 2020 general election, with 62.3% of absentee ballots transmitted to UOCAVA voters via email, 32% transmitted via postal mail, and 7.9% sent to voters through some other mode of transmission (e.g., fax or online systems). ²¹ By comparison, during the previous presidential election cycle in 2016, among states that provided data on transmission by mode, 59.8% of ballots were transmitted via email, and in 2018, email represented 56.6% of UOCAVA ballots that were transmitted. ²² Figure 6 displays the percentage of ballots transmitted by mail, email, or other modes for the 2020 general election.

Modes of ballot transmission differed based on UOCAVA voter type. The transmission mode among uniformed services members was almost evenly split between mail transmission (47.8%) and email transmission (46.7%). For ballots transmitted to overseas citizens, most ballots were transmitted by email (70.9%) while ballots transmitted by mail accounted for 22.2% of ballots transmitted. For both groups, between 7% and 7.9% of ballots were transmitted by other modes, including fax and online ballot delivery portals.

Overall, 1% of all ballots transmitted to UOCAVA voters were returned as undeliverable, including mailed ballots returned to sender, emailed ballots that bounced back, and ballots that were undeliverable by other modes, such as an incorrect fax number.²³

²¹ The percentage of ballots transmitted by email was calculated as B7a/B5a for the 2020 EAVS. The percentage of ballots transmitted by postal mail was calculated as B6a/B5a. The percentage of ballots transmitted by other modes of transmission was calculated as B8a/B5a. Casewise deletion was used at the state level in these calculations. All but three states reported ballots transmitted by mode in 2020. Two additional states did not report the number of ballots transmitted by email. These states were excluded from calculations of the percentage of ballots transmitted by a given mode. However, the percentages by mode did not change substantively when transmitted ballots from these states were included in analysis.

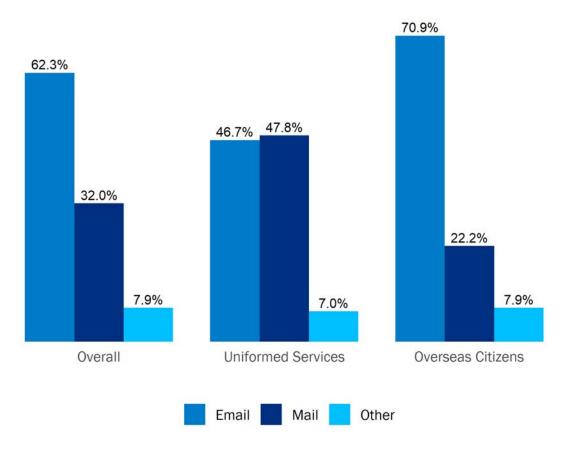
²² Until 2018, questions about mode of ballot receipt and return were asked in relation to the 45-day MOVE Act transmission deadline. Specifically, "How many UOCAVA absentee ballots did your jurisdiction transmit to UOCAVA voters using the following modes of transmission, before and after the 45-day deadline?" Starting in 2018, the survey was updated so that mode questions did not include this distinction. The percentage of ballots transmitted by email was calculated as B7a/B5a for the 2018 EAVS. The percentage of ballots transmitted by email was calculated as B24Total/B1a for the 2016 EAVS. Casewise deletion was used at the state level in these calculations. In 2016, 27 of the 55 states that answered the EAVS provided information on transmission by mode.

²³ The percentage of ballots returned as undeliverable was calculated as B13a/B5a. Casewise deletion was used at the state level in calculating this percentage. States and jurisdictions vary in the extent to which they are able to capture and report undeliverable ballots, overall and by mode of transmission.

ANTED STATES

Figure 6. Modes of Ballot Transmission Differ for Overseas Citizens and Uniformed Services

Members



Source: The percentages of UOCAVA ballots transmitted overall were calculated as $B7a/B5a \times 100$ for email, $B6a/B5a \times 100$ for postal mail, and $B8a/B5a \times 100$ for other modes. The percentages of UOCAVA ballots transmitted to uniformed services voters were calculated as $B7b/B5b \times 100$ for email, $B6b/B5b \times 100$ for postal mail, and $B8b/B5b \times 100$ for other modes. The percentages of UOCAVA ballots transmitted for overseas citizens were calculated as $B7c/B5c \times 100$ for email, $B6c/B5c \times 100$ for postal mail, and $B8c/B5c \times 100$ for other modes. Casewise deletion was used at the state level in calculating these percentages; percentages may not sum to 100%.

UOCAVA Ballots Returned and Submitted for Counting

States reported 911,614 regular absentee ballots: 73% of those transmitted to voters (through any mode) were returned and submitted for counting by UOCAVA voters for the 2020 general election. ²⁴ This is a 39% increase over 2016, when 655,844 regular absentee ballots were returned by UOCAVA voters. ²⁵ Figure 7 shows the UOCAVA ballot return totals by state in 2020. The states colored in dark

²⁴ The total number of returned UOCAVA ballots was collected in item B9a in the 2020 EAVS. The percentage of transmitted UOCAVA ballots that were returned was calculated as B9a/B5a. Casewise deletion at the state level was used in calculating this percentage. More than 82% of jurisdictions reported the number of ballots returned and submitted for counting. FWABs were reported separately from regular UOCAVA absentee ballots and were not included in these figures. Because more than one ballot may be transmitted to an individual voter (e.g., because the original was returned undeliverable or was spoiled and replaced), this rate likely underestimates the rate of ballot return by UOCAVA voters.
²⁵ The total number of returned UOCAVA ballots was collected in item B2a in the 2016 EAVS.

blue represent the states that had the highest ballot return totals. The states colored in light blue were the states that had the lowest ballot return totals.

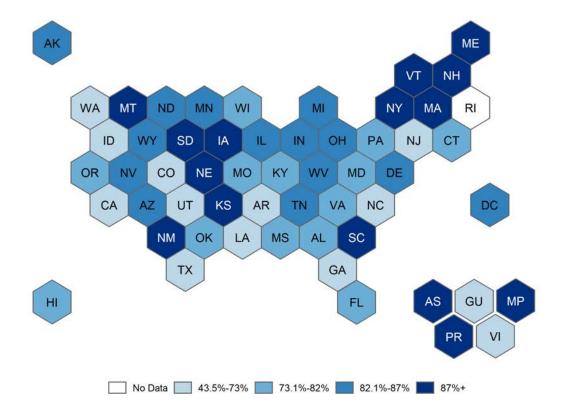


Figure 7. UOCAVA Ballot Return Rates Were the Highest in the Northeast and Midwest

Source: The percentage of transmitted UOCAVA ballots that were returned by voters was calculated as $B9a/B5a \times 100$. Casewise deletion was used at the state level in calculating the percentages shown in this map. States are grouped by quartiles rounded to the nearest integer.

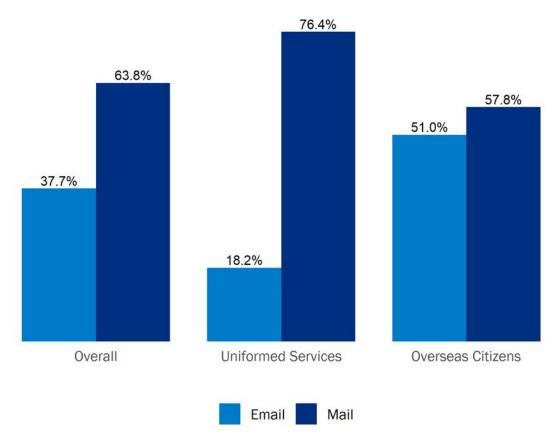
Of the ballots returned to election offices, 36.3% were returned by uniformed services members, and 62.9% were returned by overseas citizens. ²⁶ Overall, 63.8% of absentee ballots returned and submitted for counting by UOCAVA voters were returned to the election office via postal mail, 37.7% were returned by email, and 16.5% were returned through some other mode (e.g., fax or an online system). ²⁷ Twenty-three states indicated that they do not allow or did not report email ballot return.

²⁶ The percentage of UOCAVA ballots returned by uniformed services members was calculated as B9b/B9a. The percentage of UOCAVA ballots returned by overseas citizen voters was calculated as B9c/B9a. Casewise deletion was used at the state level in calculating these percentages.

²⁷ The percentage of UOCAVA ballots returned by postal mail was calculated as B10a/B9a. The percentage of UOCAVA ballots returned by email was calculated as B11a/B9a. The percentage of UOCAVA ballots returned by some other mode was calculated as B12a/B9a. Casewise deletion was used at the state level in calculating these percentages. Four states did not report the number of ballots returned by mode and were excluded from all mode analysis. In addition, 23 states did not report ballots returned via email, and 28 did not report ballots returned by some other mode. If all states are included in the analysis, 61.8% of ballots were returned via mail, 23.1% via email, 11.7% by some other mode, and 3.3% of returned ballots were not categorized by mode.

Among the states that reported UOCAVA ballots returned by email, 42.5% of ballots were returned through email, and 45.2% were returned via mail.²⁸

Figure 8. Although Many UOCAVA Voters, Especially Overseas Citizens, Use Email to Return Their Completed Absentee Ballot, Postal Mail Is the Primary Mode of Ballot Return



Source: The percentages of UOCAVA ballots returned by mode overall were calculated as $B10a/B9a \times 100$ for postal mail and $B11a/B9a \times 100$ for email. The percentages of UOCAVA ballots returned by mode for uniformed services members were calculated as $B10b/B9b \times 100$ for postal mail and $B11b/B9b \times 100$ for email. The percentages of UOCAVA ballots returned by mode for overseas citizens were calculated as $B10c/B9c \times 100$ for postal mail and $B11c/B9c \times 100$ for email. Casewise deletion was used at the state level in calculating these percentages, and because percentages for each type of voter and each mode of return were calculated independently and only states that reported data for a given mode of return were included in the analysis, the percentages do not sum to 100%. Other modes of ballot return are not shown here.

Although postal mail was the most common mode of ballot return for both uniformed services and overseas citizen voters, uniformed services members used email return far less than overseas

²⁸ Thirty-three states reported at least one email ballot returned (item B11a in the 2020 EAVS). The percentage of ballots returned by email was calculated as B11a/B9a among states reporting at least one email ballot returned (item B11a in the 2020 EAVS). The percentage of ballots returned by mail was calculated as B10a/B9a among states reporting at least one email ballot returned (item B11a in 2020 EAVS). Casewise deletion was used at the state level in calculating these percentages.

citizens, with just 18.2% using email to return an absentee ballot versus 51% of overseas citizens.²⁹ Figure 8 displays the method of ballot return for UOCAVA voters by type.

Overall, 889,837 regular absentee ballots returned by UOCAVA voters were counted in the 2020 general election. Of these votes, 63.1% were cast by overseas citizens and 36.5% by uniformed services voters.³⁰ The overall rejection rate for regular absentee ballots returned by UOCAVA voters was 2.1%, less than half the overall rejection rate of 5.7% reported in 2018.³¹ The overall rejection rate did not differ significantly across UOCAVA voter types.³²

Figure 9 shows the number of rejected UOCAVA ballots returned and submitted by voters for counting in each state. The states that are colored in dark blue represent the states that reported the highest number of rejected ballots, and the states that are colored in light blue reported the lowest number of rejected ballots.

Rejected ballots were divided into three reasons for rejection: missed deadline, problem with voter signature, and lacked postmark.³³ By far the most common reason for rejection was that a ballot was received after a state's deadline for UOCAVA absentee ballot receipt. Of the 19,060returned UOCAVA ballots rejected, 8,188 were rejected because they were received after the state deadline, which was 43.5% of all UOCAVA ballot rejections.³⁴ Voter signature problems were responsible for 19.6% of all UOCAVA ballot rejections, 3.3% of ballot rejections were the result of postmark issues, and 47.3% of rejections were caused by some other issue.³⁵

²⁹ The percentage of UOCAVA ballots returned by email by uniformed services members was calculated as B11b/B9b. The percentage of UOCAVA ballots returned by email by overseas citizens was calculated as B11c/B9c. Of note, two of the states with the largest numbers of UOCAVA voters—California and Florida—do not allow email return of absentee ballots.
³⁰ The total number of UOCAVA ballots that were returned by voters and counted was collected in item B14a of the 2020 EAVS. The percentage of ballots that were returned by uniformed services members was calculated as B14b/B14a. The percentage of ballots that were returned by overseas citizen voters was calculated as B14c/B14a. Casewise deletion was used at the state level in calculating these percentages. An additional 12,919 (1.5%) UOCAVA absentee ballots counted were not classified by voter type.

³¹ Before survey revisions were made in the 2018 EAVS, UOCAVA ballot rejection data included both regular absentee ballots and FWABs, making direct comparisons with years before 2018 complicated. The 2016 ballot rejection rate was calculated as (B16a+B16b+B16c)/B26b and produced an overall rejection rate of 2.4%.

³² The rejection rate for UOCAVA ballots was calculated as B18a/B9a for the 2018 and 2020 EAVS. The percentage of ballots rejected from uniformed services voters was calculated as B18b/B9b. The percentage of ballots rejected from overseas citizen voters was calculated as B18c/B9c. Casewise deletion was used at the state level in calculating these percentages. The rejection rate for returned ballots was 2% for uniformed services members, 2.1% for overseas citizens, and 6.3% among rejected ballots not classified by voter type.

³³ Two states (Mississippi and Rhode Island) and four U.S. territories (American Samoa, the Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands) did not report the number of ballots rejected. The number of ballots rejected was reported for 81.7% of jurisdictions nationwide. Most of these jurisdictions also subdivided rejected ballots by reason for rejection. New Jersey was not able to separate regular UOCAVA ballots from FWABs; information on all of the UOCAVA ballots rejected in New Jersey in the 2018 election is available in the survey comments.

³⁴ The total number of UOCAVA ballots rejected for being received after the state deadline was item B19a of the 2020 EAVS. The percentage of UOCAVA ballots rejected for being received late was calculated as B19a/B18a. Casewise deletion was used at the state level in calculating this percentage.

³⁵ The percentage of UOCAVA ballots rejected because of signature issues was calculated as B20a/B18a. The percentage of UOCAVA ballots rejected because of postmark issues was calculated as B21a/B18a. The percentage of UOCAVA ballots rejected for other reasons was calculated as B22a/B18a. Casewise deletion was used at the state level in calculating these percentages. The increase in "other" reasons for rejection may reflect a large increase in the use of this category by certain states, in particular New York with 2,098 (71.5% of their rejections) and Virginia 2,531 (217.3% of their rejections). These two states accounted for more than half of the total "other" rejections.



ME NH MT ND MN WI MI WA MA RI OH CT ID SD IA IL IN PA NJ OR NV CO WV MD DE NE MO KY UT CA AZ KS AR VA NC DC NM OK LA MS AL SC GA TX GU MP AS PR No Data 0%-0.5% 0.51%-1.5% 1.51%-3.5%

Figure 9. UOCAVA Ballot Rejection Rates Vary Significantly Across States

Source: The percentage of returned UOCAVA ballots that were rejected includes regular UOCAVA absentee ballots that were rejected (item B18a in the 2020 EAVS), divided by the total number of regular UOCAVA absentee ballots received (item B9a in the 2020 EAVS). Casewise deletion was used at the state level in calculating the percentages shown in this map. Cutoff points in the graph were selected to reflect states that had the lowest and highest percentage of UOCAVA ballot rejection rates and to differentiate among the states in between the lowest and highest UOCAVA ballot rejection rates.

Uniformed services members and overseas citizen UOCAVA ballots were rejected for similar reasons. Missing the deadline was the most common reason for rejection among both populations—44.7% for uniformed services members and 41.3% for overseas citizens. Signature issues were the cause of 27.3% of ballot rejections for ballots returned by uniformed services members, almost twice the percentage of overseas citizen ballots rejected for this reason (13.7%).³⁶

³⁶ The percentage of ballots rejected for missing the deadline was calculated as B19b/B18b for uniformed services voters and B19c/B18c for overseas citizens. The percentage of ballots rejected because of signature issues was calculated as B20b/B18b for uniformed services voters and B20c/B18c for overseas citizens. Casewise deletion was used at the state level in calculating these percentages.

Federal Write-In Absentee Ballots

If a regular absentee ballot does not arrive in time for an individual to vote, the FWAB functions as a backup ballot that can be used to vote for all federal offices and, in some states, state and local offices as well.

The Federal Write-In Absentee Ballot (FWAB)

The FWAB is a special type of UOCAVA ballot that may be used as a backup in the event that a voter's regular absentee ballot does not arrive in time to vote. In most states, a UOCAVA voter must have registered and requested an absentee ballot in order to use the FWAB.

Although the 33,027 FWABs submitted in 2020 made up a relatively small proportion (3.8%) of all the UOCAVA ballots returned, there was a 41.1% increase in the volume of FWABs reported compared to the 2016 presidential election.³⁷ Despite the increase from previous elections, FWAB usage remains a relatively small proportion of the UOCAVA methods of voting among both uniformed services members and overseas citizen voters. However, the FWAB resulted in 23,897 additional UOCAVA voters' ballots counted in the 2020 general election, with 24.2% of these additional voters from uniformed services members and 73.2% from overseas citizens.³⁸ Thirteen states and territories reported that they received no FWABs during the 2020 presidential election.³⁹

Roughly one in four (8,438 or 25.6%) of the 33,027 FWABs submitted in the 2020 general election were not counted. Of these, 3,965 FWABs—47.1% of the rejected FWABs—were replaced by a regular absentee ballot, making the backup ballot unnecessary.⁴⁰ The rate of uncounted FWABs returned by uniformed services members was similar to the rate of uncounted FWABs returned by overseas citizens—27.6% and 21.5%, respectively.⁴¹ The other major reason FWABs went uncounted (and the

³⁷ The percentage of all ballots returned that were FWABs was calculated using the total number of FWABs received (B23a) divided by the total number of UOCAVA ballots received (the sum of B9a and B23a). Casewise deletion was used at the state level in calculating this percentage. The total number of FWABs received was collected in item B23a in the 2020 EAVS and the sum of B31a, B31b, B31c, and B31d in the 2016 EAVS. In 2016, states reported receiving 23,412 FWABs. For 2020, The total number of FWABs returned was based on 82.1% of jurisdictions for which this information was available.

³⁸ The total number of FWABs received and counted was item B24a of the 2020 EAVS. The number of FWABs counted from uniformed services members was item B24b, and the number of FWABs counted from overseas citizens was item B24c. The percentage of counted FWABs returned by uniformed services members was calculated as B24b/B24a. The percentage of counted FWABs returned by overseas citizens was calculated as B24c/B24a. Casewise deletion was used at the state level in calculating this percentage.

³⁹ American Samoa, Guam, and Puerto Rico reported receiving zero FWABs. Georgia, Iowa, Oregon, and South Carolina reported FWABs with regular UOCAVA ballots because they could not separate the two types.

⁴⁰ The number of FWABs rejected because the voter's regular absentee ballot was received and counted was item B26a of the 2020 EAVS. The percentage of rejected FWABs that were rejected for this reason was calculated as B26a/(B25a+B26a+B27a). Casewise deletion at the state level was used in calculating the percentage.

⁴¹ The total percentage of FWABs rejected was calculated as (B25a+B26a+B27a)/B23a. The percentage of FWABs rejected from uniformed services members was calculated as (B25b+B26b+B27b)/B23b. The percentage of FWABs rejected from overseas citizen voters was calculated as (B25c+B26c+B27c)/B23c. Casewise deletion was used at the state level in calculating these percentages.

only other reason states reported via the EAVS) was because they were received after the ballot receipt deadline (13.1% of rejected FWABs). 42

 $^{^{42}}$ The percentage of rejected FWABs that were rejected because they were received after the deadline was calculated as B25a/(B25a+B26a+B27a). Casewise deletion at the state level was used in this calculation.

Appendix A: Descriptive Tables

UOCAVA Table 1: Registered and Eligible UOCAVA Voters

| | _ | | | | | | |
|----------------------|----------------------|---------|-------------------------------|------------|----------|-------|--------------------|
| | | | Registe | red UOCAVA | Voters | | |
| State | All UOCAVA
Voters | | Uniformed Services
Members | | Citizens | | gorized by
Type |
| | | Total | % | Total | % | Total | % |
| Alabama [1] | | - | | | | | - |
| Alaska | 16,194 | 12,285 | 75.9 | 3,909 | 24.1 | 0 | 0.0 |
| American
Samoa | 214 | 183 | 85.5 | 31 | 14.5 | 0 | 0.0 |
| Arizona | 21,661 | 8,187 | 37.8 | 13,474 | 62.2 | 0 | 0.0 |
| Arkansas | 3,347 | 1,671 | 49.9 | 1,291 | 38.6 | 385 | 11.5 |
| California | 187,213 | 42,249 | 22.6 | 144,779 | 77.3 | 185 | 0.1 |
| Colorado | 42,291 | 15,114 | 35.7 | 27,177 | 64.3 | 0 | 0.0 |
| Connecticut [2] | | - | | | | | |
| Delaware | 2,899 | 640 | 22.1 | 2,259 | 77.9 | 0 | 0.0 |
| District of Columbia | 6,003 | 186 | 3.1 | 5,817 | 96.9 | 0 | 0.0 |
| Florida | 191,628 | 120,241 | 62.7 | 71,387 | 37.3 | 0 | 0.0 |
| Georgia | 27,252 | 14,223 | 52.2 | 13,029 | 47.8 | 0 | 0.0 |
| Guam | 120 | 76 | 63.3 | 44 | 36.7 | 0 | 0.0 |
| Hawaii | 4,835 | 1,212 | 25.1 | 3,262 | 67.5 | 361 | 7.5 |
| Idaho | 3,886 | 1,959 | 50.4 | 1,925 | 49.5 | 2 | 0.1 |
| Illinois | 30,274 | 7,585 | 25.1 | 22,626 | 74.7 | 63 | 0.2 |
| Indiana | 23,188 | 11,376 | 49.1 | 11,812 | 50.9 | 0 | 0.0 |
| Iowa | 6,772 | 2,182 | 32.2 | 4,580 | 67.6 | 10 | 0.1 |
| Kansas [3] | | | | | | | |
| Kentucky | 6,887 | 3,402 | 49.4 | 3,485 | 50.6 | 0 | 0.0 |
| Louisiana | 8,950 | 4,701 | 52.5 | 4,249 | 47.5 | 0 | 0.0 |
| Maine | 6,527 | 1,369 | 21.0 | 5,158 | 79.0 | 0 | 0.0 |
| Maryland | 27,454 | 9,228 | 33.6 | 18,226 | 66.4 | 0 | 0.0 |
| Massachusetts | 29,184 | 1,719 | 5.9 | 27,465 | 94.1 | 0 | 0.0 |
| Michigan | 26,866 | 6,833 | 25.4 | 20,033 | 74.6 | 0 | 0.0 |
| Minnesota | 19,243 | 5,230 | 27.2 | 14,013 | 72.8 | 0 | 0.0 |
| Mississippi | 3,721 | 2,446 | 65.7 | 1,275 | 34.3 | 0 | 0.0 |
| Missouri [1] | - | - | | | - | | - |
| Montana | 5,110 | 2,549 | 49.9 | 2,561 | 50.1 | 0 | 0.0 |
| Nebraska | 3,059 | 1,206 | 39.4 | 1,853 | 60.6 | 0 | 0.0 |
| Nevada | 8,847 | 3,515 | 39.7 | 5,332 | 60.3 | 0 | 0.0 |
| New Hampshire | 7,165 | 2,506 | 35.0 | 4,659 | 65.0 | 0 | 0.0 |
| New Jersey | 26,959 | 2,654 | 9.8 | 24,305 | 90.2 | 0 | 0.0 |



| | | | Registe | red UOCAVA | Voters | | |
|-----------------------------|----------------------|---------|-------------------------------|------------|----------|--------------------|--------------------|
| State | All UOCAVA
Voters | | Uniformed Services
Members | | Citizens | Not Categ
Voter | gorized by
Type |
| | | Total | % | Total | % | Total | % |
| New Mexico | 6,365 | 4,813 | 75.6 | 1,552 | 24.4 | 0 | 0.0 |
| New York | 67,931 | 6,913 | 10.2 | 61,018 | 89.8 | 0 | 0.0 |
| North Carolina | 33,413 | 14,886 | 44.6 | 18,527 | 55.4 | 0 | 0.0 |
| North Dakota
[4] | | - | | | | | |
| Northern
Mariana Islands | 25 | 25 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Ohio [5] | | | | | | | |
| Oklahoma | 8,647 | 5,768 | 66.7 | 2,879 | 33.3 | 0 | 0.0 |
| Oregon | 20,477 | 6,370 | 31.1 | 14,107 | 68.9 | 0 | 0.0 |
| Pennsylvania | 35,597 | 11,515 | 32.3 | 24,082 | 67.7 | 0 | 0.0 |
| Puerto Rico [6] | 587 | | | | | 587 | 100.0 |
| Rhode Island [7] | 3,084 | - | | | - | 3,084 | 100.0 |
| South Carolina | 15,062 | 8,147 | 54.1 | 6,915 | 45.9 | 0 | 0.0 |
| South Dakota | 3,583 | 2,214 | 61.8 | 1,369 | 38.2 | 0 | 0.0 |
| Tennessee | 17,927 | 11,017 | 61.5 | 6,910 | 38.5 | 0 | 0.0 |
| Texas | 85,972 | 46,908 | 54.6 | 35,574 | 41.4 | 3,490 | 4.1 |
| U.S. Virgin
Islands | 13 | 13 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Utah | 7,707 | 3,150 | 40.9 | 4,557 | 59.1 | 0 | 0.0 |
| Vermont [8] | | | | | | | |
| Virginia | 41,063 | 14,841 | 36.1 | 26,222 | 63.9 | 0 | 0.0 |
| Washington | 127,976 | 84,227 | 65.8 | 43,749 | 34.2 | 0 | 0.0 |
| West Virginia | 2,531 | 1,459 | 57.6 | 1,072 | 42.4 | 0 | 0.0 |
| Wisconsin | 25,956 | 18,240 | 70.3 | 7,716 | 29.7 | 0 | 0.0 |
| Wyoming | 1,964 | 1,095 | 55.8 | 869 | 44.2 | 0 | 0.0 |
| U.S. Total | 1,253,629 | 528,328 | 42.3 | 717,134 | 57.4 | 8,167 | 0.7 |

UOCAVA Table 1 Calculation Notes:

Registered Voters - All UOCAVA Voters, Total uses question B1a.

Registered Voters - Uniformed Services Members, Total uses question B1b.

Registered Voters - Uniformed Services Members, % uses question B1b divided by question B1a.

Registered Voters - Overseas Citizens, Total uses question B1c.

Registered Voters - Overseas Citizens, % uses question B1c divided by question B1a.

Registered Voters – Not Categorized by Voter Type, Total uses question B1a minus the sum of questions B1b and B1c.

Registered Voters – Not Categorized by Voter Type, % uses question B1a minus the sum of questions B1b and B1c, all divided by question B1a.

UOCAVA Table 1 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- [1] Alabama and Missouri reported that data on the number of registered UOCAVA voters were not available.
- [2] Connecticut reported that data on the number of registered UOCAVA voters were "not collected due to COVID."
- [3] Kansas did not provide any response to item B1.
- [4] North Dakota does not have voter registration.
- [5] Ohio noted in a survey comment that "As Ohio permits UOCAVA voters to register by several means other than a FPCA or FWAP [sic], we cannot accurately provide the actual number of UOCAVA voters in our state."
- [6] Puerto Rico noted in a survey comment that "At this moment, PR SEC doesn't have the data break down by categories." This abbreviation was not defined by the state.
- [7] Rhode Island noted in a survey comment that "[A]ccording to RI general law all UOCAVA mail ballots are consolidated into one mail ballot category."
- [8] Vermont reported that item B1 did not apply to the state.



UOCAVA Table 2: Federal Post Card Applications (FPCA)

| | | | | FPCAs Received | 1 | | |
|----------------------|-------------------------|---------------|---------------------------------|----------------|---------------------------------|---------|---------------------------------|
| | | Uniformed Ser | vices Members | Overseas | Citizens | Not Cat | egorized |
| State | Total FPCAs
Received | Total | % of Total
FPCAs
Received | Total | % of Total
FPCAs
Received | Total | % of Total
FPCAs
Received |
| Alabama | 3,578 | 2,320 | 64.8 | 1,258 | 35.2 | 0 | 0.0 |
| Alaska | 3,001 | 2,049 | 68.3 | 952 | 31.7 | 0 | 0.0 |
| American
Samoa | 12 | 8 | 66.7 | 4 | 33.3 | 0 | 0.0 |
| Arizona | 21,889 | 6,375 | 29.1 | 10,242 | 46.8 | 5,272 | 24.1 |
| Arkansas | 956 | 421 | 44.0 | 547 | 57.2 | -12 | -1.3 |
| California | 117,618 | 22,131 | 18.8 | 85,296 | 72.5 | 10,191 | 8.7 |
| Colorado [1] | 11,584 | 2,288 | 19.8 | 9,296 | 80.2 | 0 | 0.0 |
| Connecticut [2] | - | | | - | | | |
| Delaware | 2,918 | 644 | 22.1 | 2,274 | 77.9 | 0 | 0.0 |
| District of Columbia | 2,353 | 186 | 7.9 | 2,167 | 92.1 | 0 | 0.0 |
| Florida | 39,113 | 17,839 | 45.6 | 21,274 | 54.4 | 0 | 0.0 |
| Georgia | 3,945 | 1,175 | 29.8 | 2,770 | 70.2 | 0 | 0.0 |
| Guam | 55 | 35 | 63.6 | 20 | 36.4 | 0 | 0.0 |
| Hawaii | 4,534 | 1,106 | 24.4 | 2,938 | 64.8 | 490 | 10.8 |
| Idaho | 3,285 | 1,515 | 46.1 | 1,770 | 53.9 | 0 | 0.0 |
| Illinois | 25,678 | 5,838 | 22.7 | 19,777 | 77.0 | 63 | 0.2 |
| Indiana | 7,991 | 2,359 | 29.5 | 5,632 | 70.5 | 0 | 0.0 |
| lowa [3] | 6,772 | | | | | 6,772 | 100.0 |
| Kansas | 5,611 | 2,691 | 48.0 | 3,705 | 66.0 | -785 | -14.0 |
| Kentucky | 7,667 | 3,738 | 48.8 | 3,929 | 51.2 | 0 | 0.0 |
| Louisiana [4] | 1,552 | | - | | - | 1,552 | 100.0 |
| Maine [5] | | | - | | - | - | - |
| Maryland | 27,492 | 9,239 | 33.6 | 18,253 | 66.4 | 0 | 0.0 |
| Massachusetts | 25,487 | 1,295 | 5.1 | 24,192 | 94.9 | 0 | 0.0 |
| Michigan [6] | 20,945 | 4,879 | 23.3 | 16,066 | 76.7 | 0 | 0.0 |
| Minnesota | 19,154 | 5,217 | 27.2 | 13,937 | 72.8 | 0 | 0.0 |
| Mississippi [7] | 3,717 | | - | | - | 3,717 | 100.0 |
| Missouri [8] | 1,803 | | | | | 1,803 | 100.0 |
| Montana [9] | 3,976 | 1,989 | 50.0 | 1,987 | 50.0 | 0 | 0.0 |
| Nebraska | 2,853 | 1,097 | 38.5 | 1,756 | 61.5 | 0 | 0.0 |
| Nevada | 8,738 | 3,448 | 39.5 | 5,290 | 60.5 | 0 | 0.0 |
| New
Hampshire | 7,165 | 2,506 | 35.0 | 4,659 | 65.0 | 0 | 0.0 |
| New Jersey | 25,152 | 2,557 | 10.2 | 22,595 | 89.8 | 0 | 0.0 |
| New Mexico | 2,159 | 687 | 31.8 | 1,472 | 68.2 | 0 | 0.0 |

| | | | | FPCAs Received | d | | |
|-------------------------------------|-------------------------|---------------|---------------------------------|----------------|---------------------------------|--------------|---------------------------------|
| | | Uniformed Ser | vices Members | Overseas | s Citizens | Not Cat | egorized |
| State | Total FPCAs
Received | Total | % of Total
FPCAs
Received | Total | % of Total
FPCAs
Received | Total | % of Total
FPCAs
Received |
| New York | 67,931 | 6,913 | 10.2 | 61,018 | 89.8 | 0 | 0.0 |
| North Carolina | 25,573 | 10,088 | 39.4 | 15,485 | 60.6 | 0 | 0.0 |
| North Dakota | 339 | 189 | 55.8 | 150 | 44.2 | 0 | 0.0 |
| Northern
Mariana
Islands [10] | 25 | 25 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Ohio [11] | 25,719 | 9,311 | 36.2 | 16,408 | 63.8 | 0 | 0.0 |
| Oklahoma | 8,311 | 5,582 | 67.2 | 2,729 | 32.8 | 0 | 0.0 |
| Oregon [12] | 2,683 | - | - | - | - | 2,683 | 100.0 |
| Pennsylvania | 32,027 | 9,330 | 29.1 | 22,697 | 70.9 | 0 | 0.0 |
| Puerto Rico
[13] | | | | - | | - | |
| Rhode Island
[14] | - | | - | - | - | - | - |
| South Carolina
[6], [15] | | | | | | - | |
| South Dakota | 74 | 59 | 79.7 | 15 | 20.3 | 0 | 0.0 |
| Tennessee | 16,713 | 10,266 | 61.4 | 6,447 | 38.6 | 0 | 0.0 |
| Texas | 87,645 | 45,751 | 52.2 | 35,526 | 40.5 | 6,368 | 7.3 |
| U.S. Virgin
Islands | 6 | 6 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Utah | 4,299 | 1,208 | 28.1 | 3,091 | 71.9 | 0 | 0.0 |
| Vermont [15] | - | | | - | | - | |
| Virginia [6] | 40,408 | 14,524 | 35.9 | 25,884 | 64.1 | 0 | 0.0 |
| Washington | 27,524 | 5,206 | 18.9 | 22,318 | 81.1 | 0 | 0.0 |
| West Virginia | 1,632 | 823 | 50.4 | 809 | 49.6 | 0 | 0.0 |
| Wisconsin [16] | 3,886 | 759 | 19.5 | 3,127 | 80.5 | 0 | 0.0 |
| Wyoming | 1,143 | 669 | 58.5 | 474 | 41.5 | 0 | 0.0 |
| U.S. Total | 764,691 | 226,341 | 30.3 | 500,236 | 66.9 | 38,114 | 5.0 |



| | | | | FPCAs | s Rejected | | | | | |
|----------------------|----------------------------|---------------------------|------------------|---|------------|--|---------|---------------------------------|--|--|
| | Total | 0/ - 5 | Uniformed
Mem | | Overseas | s Citizens | Not Cat | egorized | | |
| State | Total
FPCAs
Rejected | % of
FPCAs
Received | Total | % of
Received
from
Uniformed
Services | Total | % of
Received
from
Overseas
Citizens | Total | % of Total
FPCAs
Rejected | | |
| Alabama | 43 | 1.2 | 34 | 1.5 | 6 | 0.5 | 3 | 7.0 | | |
| Alaska | 57 | 1.9 | 45 | 2.2 | 12 | 1.3 | 0 | 0.0 | | |
| American
Samoa | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | - | | |
| Arizona | 42 | 0.2 | 18 | 0.3 | 20 | 0.2 | 4 | 9.5 | | |
| Arkansas | 7 | 0.7 | 6 | 1.4 | 7 | 1.3 | -6 | -85.7 | | |
| California | 9,602 | 8.2 | 2,830 | 12.8 | 6,644 | 7.8 | 128 | 1.3 | | |
| Colorado [1] | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | - | | |
| Connecticut [2] | - | - | - | - | | - | - | - | | |
| Delaware | 11 | 0.4 | 2 | 0.3 | 9 | 0.4 | 0 | 0.0 | | |
| District of Columbia | 73 | 3.1 | 0 | 0.0 | 73 | 3.4 | 0 | 0.0 | | |
| Florida | 896 | 2.3 | 360 | 2.0 | 530 | 2.5 | 6 | 0.7 | | |
| Georgia | 244 | 6.2 | 73 | 6.2 | 171 | 6.2 | 0 | 0.0 | | |
| Guam | 26 | 47.3 | 15 | 42.9 | 11 | 55.0 | 0 | 0.0 | | |
| Hawaii | 13 | 0.3 | 0 | 0.0 | 0 | 0.0 | 13 | 100.0 | | |
| Idaho | 37 | 1.1 | 15 | 1.0 | 19 | 1.1 | 3 | 8.1 | | |
| Illinois | 364 | 1.4 | 72 | 1.2 | 290 | 1.5 | 2 | 0.5 | | |
| Indiana | 74 | 0.9 | 15 | 0.6 | 59 | 1.0 | 0 | 0.0 | | |
| Iowa [3] | - | - | - | - | - | - | - | - | | |
| Kansas | 39 | 0.7 | 17 | 0.6 | 22 | 0.6 | 0 | 0.0 | | |
| Kentucky | 1,415 | 18.5 | 740 | 19.8 | 675 | 17.2 | 0 | 0.0 | | |
| Louisiana [4] | 2 | 0.1 | | | | - | 2 | 100.0 | | |
| Maine [5] | - | - | - | - | - | - | - | - | | |
| Maryland | 50 | 0.2 | 15 | 0.2 | 35 | 0.2 | 0 | 0.0 | | |
| Massachusett
s | 156 | 0.6 | 37 | 2.9 | 119 | 0.5 | 0 | 0.0 | | |
| Michigan [6] | - | - | | | | _ | | - | | |
| Minnesota | 220 | 1.1 | 86 | 1.6 | 134 | 1.0 | 0 | 0.0 | | |
| Mississippi [7] | 1 | 0.0 | 0 | | 1 | - | 0 | 0.0 | | |
| Missouri [8] | | | - | | | - | | - | | |
| Montana [9] | 5 | 0.1 | 3 | 0.2 | 2 | 0.1 | 0 | 0.0 | | |
| Nebraska | 13 | 0.5 | 7 | 0.6 | 6 | 0.3 | 0 | 0.0 | | |
| Nevada | 36 | 0.4 | 14 | 0.4 | 22 | 0.4 | 0 | 0.0 | | |
| New
Hampshire | 4 | 0.1 | 0 | 0.0 | 4 | 0.1 | 0 | 0.0 | | |
| New Jersey | 14 | 0.1 | 1 | 0.0 | 13 | 0.1 | 0 | 0.0 | | |
| New Mexico | 442 | 20.5 | 214 | 31.1 | 228 | 15.5 | 0 | 0.0 | | |
| New York | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | - | | |

| | | | | FPCAs | Rejected | | | |
|-------------------------------------|----------------------------------|-------|---|---------------------|--|----------|---------------------------------|----------|
| | Total | % of | | d Services
ibers | Overseas | Citizens | Not Cat | egorized |
| State | FPCAs FPCAs
Rejected Received | Total | % of
Received
from
Uniformed
Services | Total | % of
Received
from
Overseas
Citizens | Total | % of Total
FPCAs
Rejected | |
| North Carolina | 318 | 1.2 | 109 | 1.1 | 209 | 1.3 | 0 | 0.0 |
| North Dakota | 140 | 41.3 | 79 | 41.8 | 61 | 40.7 | 0 | 0.0 |
| Northern
Mariana
Islands [10] | 0 | 0.0 | 0 | 0.0 | 0 | - | 0 | - |
| Ohio [11] | 860 | 3.3 | 272 | 2.9 | 405 | 2.5 | 183 | 21.3 |
| Oklahoma | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | - |
| Oregon [12] | - | - | _ | _ | - | | _ | _ |
| Pennsylvania | 69 | 0.2 | 17 | 0.2 | 52 | 0.2 | 0 | 0.0 |
| Puerto Rico
[13] | | | | | | | | |
| Rhode Island
[14] | - | - | - | - | - | - | - | - |
| South Carolina
[6], [15] | - | - | - | - | - | - | - | - |
| South Dakota | 2 | 2.7 | 1 | 1.7 | 1 | 6.7 | 0 | 0.0 |
| Tennessee | 562 | 3.4 | 494 | 4.8 | 68 | 1.1 | 0 | 0.0 |
| Texas | 3,894 | 4.4 | 1,617 | 3.5 | 1,258 | 3.5 | 1,019 | 26.2 |
| U.S. Virgin
Islands | 0 | 0.0 | 0 | 0.0 | 0 | - | 0 | - |
| Utah | 8 | 0.2 | 6 | 0.5 | 2 | 0.1 | 0 | 0.0 |
| Vermont [15] | | | | | | - | | |
| Virginia [6] | 121 | 0.3 | 52 | 0.4 | 69 | 0.3 | 0 | 0.0 |
| Washington | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | |
| West Virginia | 7 | 0.4 | 5 | 0.6 | 2 | 0.2 | 0 | 0.0 |
| Wisconsin [16] | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | - |
| Wyoming | 7 | 0.6 | 4 | 0.6 | 3 | 0.6 | 0 | 0.0 |
| U.S. Total | 19,874 | 2.7 | 7,275 | 3.3 | 11,242 | 2.3 | 1,357 | 6.8 |

UOCAVA Table 2 Calculation Notes:

Total FPCAs received uses question B2a.

FPCAs received - Uniformed Services Members, Total uses question B2b.

FPCAs received – Uniformed Services Members, Pct of Total FPCAs Received uses question B2b divided by question B2a.

FPCAs received - Overseas Citizens, Total uses question B2c.

FPCAs received – Overseas Citizens, Pct of Total FPCAs Received uses question B2c divided by question B2a.

FPCAs received – Not Categorized by Voter Type, Total uses question B2a minus the sum of questions B2b and B2c.

FPCAs received – Not Categorized by Voter Type, Pct of Total FPCAs Received uses question B2a minus the sum of questions B2b and B2c, all divided by question B2a.

Total FPCAs rejected uses question B3a.



Percent of FPCAs received that were rejected uses question B3a divided by question B2a.

FPCAs rejected - Uniformed Services Members, Total uses question B3b.

FPCAs rejected – Uniformed Services Members, % uses question B3b divided by question B2b.

FPCAs rejected - Overseas Citizens, Total uses question B3c.

FPCAs rejected – Overseas Citizens, % uses question B3c divided by question B2c.

FPCAs rejected – Not Categorized by Voter Type, Total uses question B3a minus the sum of questions B3b and B3c.

FPCAs rejected – Not Categorized by Voter Type, % uses question B3a minus the sum of questions B3b and B3c, all divided by question B3a.

UOCAVA Table 2 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage calculations at the national level (U.S. Total) only used data from the states that provided data for the numerator and denominator of the calculation.
- Negative numbers in the Not Categorized FPCAs received or rejected categories indicate that the sum of FPCAs for uniformed services members and overseas citizens in that category account for more than the total number of FPCAs reported by the state in the corresponding category.
- [1] Connecticut reported that data on FPCAs were not available and that "[N]o distinction [was] made for these voters."
- [2] Colorado noted in a survey comment that "FPCAs are not rejected; if not completed by the voter, the voter is incomplete or pending."
- [3] lowa reported data on the total number of FPCAs received but not on how many were received by voter type or how many FPCAs were rejected. This state noted in a survey comment that "[S]ystem does not allow me to show breakdown between these two types of UOCAVA voters." The state also noted that "FPCAs can be accepted up to and including Election Day."
- [4] Louisiana reported data on the total number of FPCAs received and rejected and noted in a survey comment that "[T]he Department of State only collects data for the totals."
- [5] Maine reported that the EAVS items related to FPCAs did not apply to the state.
- [6] Michigan, South Carolina, and Virginia reported that data on rejected FPCAs were not available.
- [7] Mississippi reported in a survey comment that "FPCA by military or out of county not clearly defined in SEMS [Statewide Elections Management System]."
- [8] Missouri reported data on the total number of FPCAs received but not on how many were received by voter type or how many FPCAs were rejected.
- [9] Montana noted in survey comments that the state "accepts absentee registrations up until 8PM on Election Day."
- [10] The Northern Mariana Islands reported in survey comments that "[0]ur office did not receive any FPCA applicants."
- [11] Ohio noted for multiple counties that "[T]otal in B3a includes B4a; however, source information [for [military/overseas voters] for B4a is not tracked. [B]ecause of this, B3b + B3c will not always equal B3a."
- [12] Oregon reported in survey comments that the state is "unable to separate uniformed services from non-military overseas" and that data on rejected FPCAs is not tracked.
- [13] Puerto Rico reported that data on FPCAs was not available, with a survey comment that "all the requests were made by email."
- [14] Rhode Island noted in a survey comment that "[A]ccording to RI general law all UOCAVA mail ballots are consolidated into one mail ballot category."
- [15] South Carolina and Vermont reported that data on FPCAs were not available.

[16] Wisconsin state statute does not require rejected registrations or FPCAs to be tracked.



| State | UOCAVA
Ballots | UOCAVA
Ballots | UOCAVA Bal | llots Counted | UOCAVA Ballots Rejected | | |
|----------------------|-------------------|-------------------|------------|---------------|-------------------------|---------------|--|
| State | Transmitted | Returned | Total | % of Returned | Total | % of Returned | |
| Alabama | 6,682 | 5,144 | 5,091 | 99.0 | 53 | 1.0 | |
| Alaska | 16,152 | 13,598 | 13,422 | 98.7 | 176 | 1.3 | |
| American
Samoa | 214 | 214 | 214 | 100.0 | 0 | 0.0 | |
| Arizona | 21,679 | 18,483 | 18,435 | 99.7 | 48 | 0.3 | |
| Arkansas | 3,042 | 2,206 | 2,104 | 95.4 | 465 | 21.1 | |
| California | 162,295 | 97,301 | 95,872 | 98.5 | 1,419 | 1.5 | |
| Colorado | 45,558 | 29,631 | 28,762 | 97.1 | 869 | 2.9 | |
| Connecticut | 9,950 | 7,874 | 7,689 | 97.7 | 185 | 2.3 | |
| Delaware | 2,899 | 2,429 | 2,305 | 94.9 | 124 | 5.1 | |
| District of Columbia | 6,003 | 4,990 | 4,990 | 100.0 | 9 | 0.2 | |
| Florida | 144,678 | 117,965 | 115,975 | 98.3 | 2,127 | 1.8 | |
| Georgia [1] | 28,454 | 18,867 | 18,475 | 97.9 | 392 | 2.1 | |
| Guam | 120 | 69 | 65 | 94.2 | 4 | 5.8 | |
| Hawaii | 4,623 | 3,624 | 3,503 | 96.7 | 36 | 1.0 | |
| Idaho [2] | 4,449 | 3,230 | 3,442 | 106.6 | 90 | 2.8 | |
| Illinois | 29,614 | 24,358 | 23,302 | 95.7 | 462 | 1.9 | |
| Indiana | 10,325 | 8,814 | 8,773 | 99.5 | 34 | 0.4 | |
| lowa [1] | 6,776 | 6,000 | 5,980 | 99.7 | 29 | 0.5 | |
| Kansas | 5,551 | 4,990 | 4,980 | 99.8 | 23 | 0.5 | |
| Kentucky | 6,252 | 4,669 | 4,664 | 99.9 | 5 | 0.1 | |
| Louisiana [3] | 9,131 | 6,132 | 5,872 | 95.8 | 260 | 4.2 | |
| Maine | 6,421 | 5,701 | 5,674 | 99.5 | 21 | 0.4 | |
| Maryland | 29,060 | 21,593 | 21,315 | 98.7 | 278 | 1.3 | |
| Massachusetts | 28,533 | 24,890 | 24,685 | 99.2 | 140 | 0.6 | |
| Michigan | 27,026 | 22,492 | 21,464 | 95.4 | 1,028 | 4.6 | |
| Minnesota | 19,383 | 15,943 | 15,407 | 96.6 | 536 | 3.4 | |
| Mississippi | 3,717 | 2,967 | 2,965 | 99.9 | 0 | 0.0 | |
| Missouri | 13,458 | 10,821 | 10,716 | 99.0 | 105 | 1.0 | |
| Montana [4] | 4,944 | 4,323 | 4,312 | 99.7 | 11 | 0.3 | |
| Nebraska | 2,978 | 2,643 | 2,627 | 99.4 | 16 | 0.6 | |
| Nevada | 8,850 | 7,258 | 7,224 | 99.5 | 34 | 0.5 | |
| New Hampshire | 7,165 | 6,327 | 6,167 | 97.5 | 160 | 2.5 | |
| New Jersey | 26,959 | 11,732 | 11,634 | 99.2 | 81 | 0.7 | |
| New Mexico | 6,292 | 6,292 | 5,261 | 83.6 | 71 | 1.1 | |
| New York [5] | 58,393 | 69,585 | 66,706 | 95.9 | 2,936 | 4.2 | |
| North Carolina | 58,993 | 26,802 | 26,386 | 98.4 | 416 | 1.6 | |
| North Dakota | 1,900 | 1,633 | 1,624 | 99.4 | 18 | 1.1 | |

| State | UOCAVA
Ballots | UOCAVA
Ballots | UOCAVA Bal | lots Counted | UOCAVA Ballots Rejected | | |
|------------------------------------|-------------------|-------------------|------------|---------------|-------------------------|---------------|--|
| | Transmitted | Returned | Total | % of Returned | Total | % of Returned | |
| Northern
Mariana
Islands [6] | 25 | 25 | 25 | 100.0 | | - | |
| Ohio | 25,742 | 21,601 | 21,388 | 99.0 | 213 | 1.0 | |
| Oklahoma | 8,687 | 6,355 | 6,204 | 97.6 | 151 | 2.4 | |
| Oregon [1] | 20,477 | 16,751 | 16,534 | 98.7 | 217 | 1.3 | |
| Pennsylvania | 33,772 | 26,952 | 25,589 | 94.9 | 1,363 | 5.1 | |
| Puerto Rico [7] | 587 | 587 | 587 | 100.0 | | - | |
| Rhode Island
[8] | - | - | - | - | - | - | |
| South Carolina
[1], [9] | 14,874 | 12,963 | 12,906 | 99.6 | 57 | 0.4 | |
| South Dakota | 3,159 | 3,059 | 2,939 | 96.1 | 122 | 4.0 | |
| Tennessee | 17,927 | 14,884 | 14,444 | 97.0 | 440 | 3.0 | |
| Texas | 85,972 | 62,651 | 59,380 | 94.8 | 1,399 | 2.2 | |
| U.S. Virgin
Islands [10] | 13 | 8 | 8 | 100.0 | | | |
| Utah | 9,087 | 5,820 | 5,798 | 99.6 | 22 | 0.4 | |
| Vermont | 2,753 | 2,753 | 2,723 | 98.9 | 30 | 1.1 | |
| Virginia | 41,063 | 33,045 | 31,880 | 96.5 | 1,165 | 3.5 | |
| Washington | 134,777 | 64,632 | 63,954 | 99.0 | 678 | 1.0 | |
| West Virginia | 2,549 | 2,167 | 2,162 | 99.8 | 5 | 0.2 | |
| Wisconsin [11] | 17,642 | 14,057 | 13,530 | 96.3 | 527 | 3.7 | |
| Wyoming | 1,976 | 1,714 | 1,704 | 99.4 | 10 | 0.6 | |
| U.S. Total | 1,249,601 | 911,614 | 889,837 | 97.6 | 19,060 | 2.1 | |

UOCAVA Table 3 Calculation Notes:

UOCAVA Ballots Transmitted uses question B5a.

UOCAVA Ballots Returned uses question B9a.

UOCAVA Ballots Counted, Total uses question B14a.

UOCAVA Ballots Counted, % of Returned uses question B14a divided by B9a.

UOCAVA Ballots Rejected, Total uses question B18a.

UOCAVA Ballots Rejected, % of Returned uses question B18a divided by B9a.

UOCAVA Table 3 Data Notes:

General Notes:

Casewise deletion at the state level was used in calculating national percentages. The percentage
calculations at the national level (U.S. Total) only used data from those states that provided data
for the numerator and denominator of the calculation.

[1] Georgia, Iowa, Oregon, and South Carolina reported that data on FWABs were included in the EAVS items related to UOCAVA absentee ballots because FWABs cannot be distinguished from regular UOCAVA absentee ballots.



- [2] Kootenai County in Idaho responded "Data not available" to the number of UOCAVA ballots returned (B9a) and reported 317 UOCAVA ballots counted (B14a). Because of these responses, the total number of UOCAVA ballots received at the state level was lower than the total number of UOCAVA ballots counted, and the percentage of counted ballots exceeded 100% in Idaho.
- [3] Louisiana noted in a survey comment that "[T]he registrar sometimes transmits multiple ballots to voter (i.e. the voter did not [receive] the original ballot or the original ballot is returned as undeliverable)."
- [4] Montana noted in a survey comment that "[B]allots issued may exceed voter registration due to replacement ballot issued."
- [5] New York noted in a survey comment that "While the UOCAVA data reflects information provided by the counties, it does not address the variable that voters may return more than one ballot. The following further addresses this variable:
 - (1) If voters have electronic access to their ballot, they could potentially download and print the documents more than once and subsequently return them to the county boards.
 - (2) Some county boards mail a ballot to every UOCAVA voter, regardless of their transmission preference. Due to this, voters who already received their ballot electronically, completed and returned it, may subsequently receive a physical ballot in the mail. This may result in such voters returning this additional ballot.
 - (3) Additional data collected by NYS BOE [New York State Board of Elections] has shown that more than 1700 UOCAVA voters returned multiple ballots, although the data does not report how many ballots each of these voters returned."
- [6] The Northern Mariana Islands and the U.S. Virgin Islands reported that items related to rejected UOCAVA absentee ballots did not apply.
- [7] Puerto Rico reported that data in items related to rejected UOCAVA absentee ballots did not apply.
- [8] Rhode Island noted in a survey comment that "[A]ccording to RI general law all UOCAVA mail ballots are consolidated into one mail ballot category."
- [9] South Carolina noted in a survey comment that "UOCAVA ballots counted equals UOCAVA ballots returned before deadline. No data available on UOCAVA ballots that may have been challenged."
- [10] The U.S. Virgin Islands reported that items related to rejected UOCAVA absentee ballots did not apply, with a survey comment that "[T]he five voters did not return their ballots that were sent to them."
- [11] In Wisconsin, other methods of transmitting UOCAVA ballots include online ballot delivery, fax, or email. There were some UOCAVA voters who voted at the polls on Election Day, rather than by UOCAVA absentee ballot; these voters are not included in Section B but are included in the numbers for Section D. Wisconsin does not have a postmark requirement for absentee ballots; absentee ballots must be received by the local clerk before polls close on Election Day. Many Wisconsin jurisdictions track the return of ballots received after Election Day, but they are not required to do so. Counts reported for "Ballot not received on time/missed deadline" represent the ballots that have been tracked in this way. In Wisconsin, ballots missing a postmark are counted if they otherwise qualify; therefore, there are no ballots rejected for this reason.

UOCAVA Table 4: Federal Write-In Absentee Ballots (FWAB)

| | Total | FWABs | Counted | FWABs I | Rejected | FWABs Not | Categorized |
|----------------------|-------------------|-------|------------------------|---------|------------------------|-----------|------------------------|
| State | FWABs
Received | Total | % of Total
Received | Total | % of Total
Received | Total | % of Total
Received |
| Alabama | 254 | 190 | 74.8 | 64 | 25.2 | 0 | 0.0 |
| Alaska | 155 | 97 | 62.6 | 58 | 37.4 | 0 | 0.0 |
| American
Samoa | 0 | 0 | | 0 | | 0 | |
| Arizona | 236 | 186 | 78.8 | 50 | 21.2 | 0 | 0.0 |
| Arkansas | 45 | 43 | 95.6 | 2 | 4.4 | 0 | 0.0 |
| California [1] | 3,474 | 1,723 | 49.6 | 1,575 | 45.3 | 176 | 5.1 |
| Colorado | 150 | 146 | 97.3 | 4 | 2.7 | 0 | 0.0 |
| Connecticut [2] | | | | | | | |
| Delaware | 87 | 64 | 73.6 | 23 | 26.4 | 0 | 0.0 |
| District of Columbia | 380 | 309 | 81.3 | 71 | 18.7 | 0 | 0.0 |
| Florida | 1,726 | 833 | 48.3 | 883 | 51.2 | 10 | 0.6 |
| Georgia [3] | - | - | | | - | | |
| Guam | 0 | 0 | - | 0 | | 0 | |
| Hawaii | 12 | 12 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Idaho | 30 | 12 | 40.0 | 23 | 76.7 | -5 | -16.7 |
| Illinois | 1,156 | 916 | 79.2 | 240 | 20.8 | 0 | 0.0 |
| Indiana | 1,534 | 1,170 | 76.3 | 40 | 2.6 | 324 | 21.1 |
| lowa [3] | - | | - | - | - | | |
| Kansas | 169 | 141 | 83.4 | 27 | 16.0 | 1 | 0.6 |
| Kentucky [4] | 106 | - | - | - | - | 106 | 100.0 |
| Louisiana | 30 | 28 | 93.3 | 2 | 6.7 | 0 | 0.0 |
| Maine | 106 | 97 | 91.5 | 9 | 8.5 | 0 | 0.0 |
| Maryland | 943 | 491 | 52.1 | 452 | 47.9 | 0 | 0.0 |
| Massachusetts | 647 | 646 | 99.8 | 1 | 0.2 | 0 | 0.0 |
| Michigan [5] | 949 | 329 | 34.7 | 620 | 65.3 | 0 | 0.0 |
| Minnesota | 506 | 333 | 65.8 | 173 | 34.2 | 0 | 0.0 |
| Mississippi | 3 | 3 | 100.0 | 1 | 33.3 | -1 | -33.3 |
| Missouri | 301 | 301 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Montana | 61 | 56 | 91.8 | 5 | 8.2 | 0 | 0.0 |
| Nebraska | 81 | 80 | 98.8 | 1 | 1.2 | 0 | 0.0 |
| Nevada | 222 | 221 | 99.5 | 1 | 0.5 | 0 | 0.0 |
| New
Hampshire | 86 | 85 | 98.8 | 1 | 1.2 | 0 | 0.0 |
| New Jersey | 9,333 | 9,269 | 99.3 | 55 | 0.6 | 9 | 0.1 |
| New Mexico
[6] | 131 | 83 | 63.4 | 48 | 36.6 | 0 | 0.0 |
| New York | 3,088 | 1,637 | 53.0 | 1,424 | 46.1 | 27 | 0.9 |



| State | Total
FWABs
Received | FWABs Counted | | FWABs Rejected | | FWABs Not Categorized | |
|------------------------------------|----------------------------|---------------|------------------------|----------------|------------------------|-----------------------|------------------------|
| | | Total | % of Total
Received | Total | % of Total
Received | Total | % of Total
Received |
| North Carolina | 921 | 910 | 98.8 | 11 | 1.2 | 0 | 0.0 |
| North Dakota | 29 | 29 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Northern
Mariana
Islands [7] | - | | | | | | |
| Ohio [8] | 789 | 466 | 59.1 | 313 | 39.7 | 10 | 1.3 |
| Oklahoma | 207 | 162 | 78.3 | 45 | 21.7 | 0 | 0.0 |
| Oregon [3] | | | | | | | |
| Pennsylvania | 242 | 235 | 97.1 | 7 | 2.9 | 0 | 0.0 |
| Puerto Rico | 0 | 0 | | 0 | | 0 | |
| Rhode Island
[9] | - | - | - | - | - | - | |
| South Carolina [3] | | | | | | | |
| South Dakota | 14 | 12 | 85.7 | 2 | 14.3 | 0 | 0.0 |
| Tennessee | 456 | 232 | 50.9 | 224 | 49.1 | 0 | 0.0 |
| Texas | 2,839 | 912 | 32.1 | 1,925 | 67.8 | 2 | 0.1 |
| U.S. Virgin
Islands [10] | | | | | | | - |
| Utah [2] | - | | | - | | - | |
| Vermont [11] | | | | | | | |
| Virginia [12] | 448 | 448 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| Washington | 898 | 894 | 99.6 | 4 | 0.4 | 0 | 0.0 |
| West Virginia | 45 | 39 | 86.7 | 6 | 13.3 | 0 | 0.0 |
| Wisconsin [13] | 137 | 56 | 40.9 | 48 | 35.0 | 33 | 24.1 |
| Wyoming | 1 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 |
| U.S. Total | 33,027 | 23,897 | 72.6 | 8,438 | 25.6 | 692 | 2.1 |

UOCAVA Table 4 Calculation Notes:

Total FWABs Received uses question B23a.

FWABs Counted, Total uses question B24a.

FWABs Counted, % uses question B24a divided by question B23a.

FWABs Rejected, Total uses the sum of questions B25a, B26a, and B27a.

FWABs Rejected, % uses the sum of questions B25a, B26a, and B27a, all divided by B23a.

FWABs Not Categorized, Total uses question B23a minus the sum of questions B24a, B25a,B26a, and B27a.

FWABs Not Categorized, % uses question B23a minus the sum of questions B24a, B25a, B26a, and B27a, all divided by question B23a.

UOCAVA Table 4 Data Notes:

General Notes:

- Casewise deletion at the state level was used in calculating national percentages. The percentage
 calculations at the national level (U.S. Total) only used data from those states that provided data
 for the numerator and denominator of the calculation.
- Negative numbers in the Not Categorized FWABs category indicate that the sum of counted and rejected FWABs account for more than the total number of FWABs received as reported by the state.
- The EAVS tracks data on FWABs that were rejected because they were received after the ballot receipt deadline (B25), because the voter's regular absentee ballot was received and counted (B26), and for other reasons (B27).
- [1] In California, a large number of FWAB rejections occurred because regular vote-by-mail ballots were already returned and counted for the same voter, and because of missing signatures, incomplete information, or receipt after deadline.
- [2] Connecticut and Utah reported that data on items related to FWABs were not available.
- [3] Georgia, Iowa, Oregon, and South Carolina reported that data on items related to FWABs were not available because FWABs cannot be distinguished from regular UOCAVA absentee ballots.
- [4] Kentucky reported that data on items related to counted and rejected FWABs were not available. This state also noted in a survey comment that "[R]eject reason not tracked."
- [5] Michigan noted in a survey comment that "[A]II FWABs received were either counted, received a regular ballot that was counted, or arrived late."
- [6] In New Mexico, the reason for rejection is not tracked by counties at this time.
- [7] The Northern Mariana Islands reported that data on items related to FWABs were not available, with a survey comment that "[T]he election statute does not allow for Federal Write-in Absentee Ballot."
- [8] Ohio noted for multiple counties that the "[T]otal in B23a does include B26a. Source information [for military/overseas voters] for B26a is not tracked. Because of this, B23b + B23c will not always equal B23a."
- [9] Rhode Island noted in a survey comment that "[A]ccording to RI general law all UOCAVA mail ballots are consolidated into one mail ballot category."
- [10] The U.S. Virgin Islands reported that data on items related to FWABs were not available.
- [11] Vermont reported that data on FWABs were not available.
- [12] Local election officials in Virginia do not enter information relating to rejected FWABs into the state's central system and only enter information on FWABs that are accepted and counted.
- [13] In Wisconsin, many jurisdictions track the return of ballots received after Election Day but are not required to do so. The counts reported in "Total number of FWABs rejected because it was received after the ballot receipt deadline" [B25a] are limited to ballots in jurisdictions that recorded these in the statewide database.



Chapter 5. Survey Methodology and Procedures

Since 2004, the U.S. Election Assistance Commission (EAC) has conducted the Election Administration and Voting Survey (EAVS) following each federal general election. The project collects data on election policies, voter registration, voting by individuals covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), mail voting, in-person voting, poll workers and polling places, provisional voting, election technology, and turnout. All U.S. states, U.S. territories, and the District of Columbia are included in the EAVS.¹ The EAVS helps the EAC meet its mandate under the Help America Vote Act (HAVA) to serve as a national clearinghouse and resource for the compilation of information and the review of procedures with respect to the administration of federal elections.

The EAVS collectively consists of two surveys administered separately: The Election Administration Policy Survey (Policy Survey), which collects data on state election policies and procedures, was administered from August to December 2020. The information collected through the Policy Survey helps provide context to the data reported through the EAVS. The EAVS, which collects data about registrations, voters, and ballots in the 2020 general election, was administered from December 2020 to July 2021. The data collected through the EAVS allow states to satisfy their data reporting requirements established by the National Voter Registration Act (NVRA) and UOCAVA and provide a detailed snapshot of how general elections are administered in the United States every two years.

This report relies on EAVS data submitted and certified by 50 states, the District of Columbia, and five U.S. territories. Data for each state were collected at the jurisdiction level, with 6,460 of the 6,460 jurisdictions nationwide (100%) submitting at least partial data in 2020.² Appendix A of this chapter shows the number of jurisdictions and the response rate by state (overall and for each section of the EAVS).

¹ Throughout this report, unless otherwise specified, the term "state" can be understood to apply to the 50 U.S. states, the District of Columbia and five U.S. territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that submit Election Administration Policy Survey and EAVS data. Puerto Rico provides EAVS data only in presidential election years, as it does not hold elections for federal candidates in midterm election years. American Samoa did not participate in the 2016 EAVS. The Northern Mariana Islands participated in the EAVS for the first time in 2020.

² What constitutes a jurisdiction for EAVS reporting is defined by how each state chose to provide data. For the 2020 EAVS, most states reported data on the county level (or county equivalent, such as parishes for Louisiana). Illinois, Maryland, Missouri, and Virginia reported data for independent cities in addition to counties. The territories, the District of Columbia, and Alaska each reported as a single jurisdiction. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Wisconsin reported data on the township level. Maine also reported its UOCAVA data in Section B as a separate jurisdiction, because this information was only collected at the state level. Michigan reported data for the county level, but most election administration activities take place in the 1,520 local election jurisdictions in the state. See Appendix A in this chapter for a breakdown of the number of jurisdictions reported in each state. Elections for Kalawao County in Hawaii are administered by Maui County; although Kalawao is included as a jurisdiction in the EAVS data, Kalawao's data are included with Maui's data.

Survey Questions

The 2020 Policy Survey consisted of 80 questions (41 required questions, 23 follow-up questions based on a state's responses to the required questions, and 16 optional comments boxes). Of these, 58 were single-select or multiselect questions, 20 were open-ended with a text response, and two were hybrid single-select and text questions.

The 2020 EAVS consisted of 407 questions (217 required, 79 follow-up questions based on a jurisdiction's responses to the required questions, 77 optional questions based on whether a jurisdiction had additional data to provide, and 34 optional comments boxes). Of these questions, 253 were fill in the blank with a numerical response, 37 were item descriptions, 65 were single-select questions, and 52 were open-ended with a text response.

The content of the questions in the EAVS has largely been unchanged since the 2008 survey, although questions are periodically removed, updated, or reordered. The Policy Survey was significantly reorganized in 2018 and was converted to a set of closed-ended questions. The 2020 Policy Survey was significantly revised and expanded from the 2018 survey. The full set of EAVS and Policy Survey questions can be found at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys.

The following sections detail the data collected by these surveys and the changes that were made to the questions from the 2018 versions. In 2020, the primary changes to the survey questions involved:

- Adding Policy Survey questions that could be used to validate EAVS items.
- Removing a redundant EAVS question, adding one new EAVS question, and adding two subquestions to an existing EAVS question.
- Clarifying instructions to make completion easier for election officials and to improve data quality.

Policy Survey

Since 2008, the EAVS has been accompanied by a survey that collects information on states' election policies and practices to provide greater context for the jurisdiction-level data collected through the EAVS. This originally took the form of the Statutory Overview, which consisted of openended questions on statutory requirements for various parts of the election process, asking states to report information on their election laws and policies. However, the open-ended format made it difficult to interpret states' statutory language, identify patterns in election practices, and draw meaningful comparisons between states.

Beginning with the 2018 EAVS, the Statutory Overview was significantly redesigned and renamed the Policy Survey. The survey now uses closed-ended questions and is intended to capture states' broad policies rather than to represent a comprehensive overview of state statutory language. This allows for greater ease in interpreting the results, creating comparisons across states, and providing

context in understanding the EAVS data. The Policy Survey questions are designed to map onto the EAVS data questions so that the two surveys can be used in concert.

The 2020 Policy Survey collected information on election infrastructure; how the state answers the EAVS; voter registration and list maintenance; election technology; mail voting; in-person voting before Election Day; vote centers; UOCAVA voting; provisional voting; election certification, recounts, and audits; voter identification; and how criminal convictions affect voting. The 2020 Policy Survey was significantly revised and expanded compared to the 2018 survey. New additions to the Policy Survey included:

| New Question for 2020 | Description |
|-----------------------------------|---|
| Q1, Q1a, Q2, Q2a,
Q2b, and Q2c | Information on a state's election infrastructure, including the name, title, and duties of the chief state election official; the names and EAVS responsibilities of state election offices; the names and EAVS responsibilities of local election offices; whether any jurisdictions had been added or consolidated since the 2018 EAVS; and contact information (including the office name, physical address, mailing address, phone number, website, and email address) for all state and local election offices within the state. |
| Q6a and Q6b | Information on how a state implements its automatic or automated voter registration process, including how individuals could decline to be registered. |
| Q7b | Features incorporated into a state's online registration system. |
| Q8 | Online voting information search tools available on the state's election website. |
| Q10 | Preregistration of voters before they turn 18 years of age. |
| Q11, Q11a, Q11b | Whether the state designates certain voters as inactive, and if so, what actions would result in an active voter being designated as inactive and what actions would result in an inactive voter being designated as active. |
| Q12 | Whether state officials, local officials, or both are responsible for modifying or removing voter registration records. |
| Q13, Q13a | Whether the state sends confirmation notices, whether the confirmation notices are sent pursuant to the NVRA, pursuant to state statute, or formal administrative rule or guidance, and which types of voters are sent confirmation notices. |
| Q14 | What data sources a state uses to identify potentially ineligible voters on their voter registration rolls. |
| Q15, Q15a | Policy on voting system testing and certification and what type of testing and certification is required. |
| Q16, Q16a | Whether electronic poll books are used in the state and whether testing and certification for those electronic poll books is required. |
| Q21 | How long a state tracks mailed ballots for inclusion in its EAVS Section C data. |
| Q22 | What types of markings satisfy the state's postmark requirement for mailed ballots. |
| Q23 | Which voters may receive ballots electronically. |
| Q30 | The deadline for overseas UOCAVA voters to return their ballots. This question was designed to match a question on domestic military UOCAVA voters that had been in the 2018 Policy Survey but was renumbered and redesigned for 2020 (Q29). |

| New Question for 2020 | Description |
|-----------------------|--|
| Q31 | Whether UOCAVA ballots have different postmark requirements for mailed ballots. |
| Q32, Q32a, Q32b | Whether the state uses provisional ballots, and if so, what circumstances warrant a voter being provided a provisional ballot and the deadline for adjudicating provisional ballots. |
| Q33 | State's election certification deadline. |
| Q35a | What type(s) of audits a state conducts. |
| Q36a | Deadline for a voter to present valid identification if they do not have identification at the polls and must take further action to prove their identity. |

Questions that were significantly revised from the 2018 Policy Survey included:

| Significantly
Revised from
2018 | Description |
|---------------------------------------|---|
| Q5 | Government entities that transmit data to the centralized state database. This question had been Q3 and Q4 in 2018. For 2020, this question was collapsed from three to two subcategories, including a binary yes/no question on whether the government entity transfers data and a single-select, follow-up question with how frequently the data transmission occurs. |
| Q6 | Whether the state registers individuals to vote automatically or via an automated process. This question had previously been Q5 in 2018. The 2020 question clarified the definition of "automatically" and "automated process," provided examples of automated processes, and included a space for comments. |
| Q6a | Which state agencies participate in automatic or automated voter registration. This question had previously been Q5a in 2018. In 2020, this was changed to a multiselect question with additional answer options that better align with state practices. |
| Q7 | Whether the state has online registration. This question had previously been Q6 in 2018. The 2020 question clarified the definition of online registration and added an answer option for states that could only process registration updates through online registration. |
| Q7a | Whether a registrant needed a state-issued form of identification in order to register online. This question had previously been Q6a in 2018. The 2020 question clarified that any state-issued identification, not just driver's licenses, would apply to this question. |
| Q9 | Whether a state has same-day voter registration (SDR). This question had previously been Q7 in 2018. The 2020 question included a clarification that an overlap between the availability between the mail balloting period and the close of voter registration should not be considered SDR. |
| Q9a | The type of SDR offered by the state. This question had previously been Q7 in 2018. The 2020 question was changed from a single-select question to a multiselect question. |



| Significantly
Revised from
2018 | Description |
|---------------------------------------|--|
| Q20 | Deadlines for mail voters to return their ballots. This question had previously been Q11 in 2018. The 2020 question restructured the answer options to provide greater clarity, eliminated the answer option for mailed ballots postmarked after Election Day, and included a comments section. |
| Q24 | Types of in-person early voting permitted in a state. This question had previously been Q12 in 2018. The 2020 question asked for what terminology a state used to describe in-person early voting and clarified that hand delivery of mailed ballots by voters should not be considered early voting. |
| Q24a | Whether an excuse was required for early voting. This question had previously been Q12a in 2018. The 2020 question was updated to match the wording of Q24. |
| Q25 | Whether a state used vote centers. This question had previously been Q13 in 2018. The 2020 question clarified that polling locations that function as a vote center, even if the terminology is not the same, should be included in this question. |
| Q26 | Which Federal Post Card Application (FPCA) submission methods are permitted in the state. This question had previously been Q14 in 2018. The 2020 question clarified that postal mail does not need to be specified, as this mode of submission is required in all states. |
| Q27 | Whether FPCA registration is permanent or temporary. This question had previously been Q15 in 2018. The 2020 question included updated wording to clarify that it applies to how long an FPCA registers a person as a UOCAVA voter. |
| Q28 | How long a voter remains eligible to receive a UOCAVA ballot after registering with an FPCA. This question had previously been Q15 in 2018. The 2020 question provided more extensive answer options. |
| Q29 | Deadline for domestic military UOCAVA voters to return their ballots. This question had previously been Q17 in 2018. The 2020 question was revised to match the format of Q20, which collects data on the deadline for voters to return mailed ballots, and the instructions were updated to specify that the question applies to domestic military UOCAVA voters rather than all UOCAVA voters. |
| Q32c | How a state would handle a provisional ballot cast in the wrong precinct. This question had previously been Q18 in 2018. The 2020 question included an instruction about the definition of a partially counted provisional ballot. |
| Q34 | Reasons for conducting post-election recounts of ballots. This question had previously been Q19 in 2018. The 2020 question added a definition of "election recount" and included updated answer options. |
| Q35 | Statutory requirements for audits. This question had previously been Q20 in 2018. The 2020 question included revised terminology, a definition of "audit," and the addition of an answer option for other types of post-election tabulation audits. |
| Q36 | Voter identification requirements for non-first-time voters. This question had previously been Q21 in 2018. The 2020 question included additional answer options and clarified that non-government, non-photo identification options could include proof of residence. |
| Q37 | Which populations become ineligible to vote because of disqualifying criminal convictions. This question had previously been Q22 in 2018. The 2020 question included revised question wording and was changed to a multiselect question. |

| Significantly
Revised from
2018 | Description |
|---------------------------------------|---|
| Q37a | How long people with disqualifying felony convictions lose their ability to vote. This question had previously been Q23 in 2018. The 2020 question was changed to a multiselect question, added an answer option for payment of outstanding fines, and the answer options were reworded to be mutually exclusive. |
| Q37b | How people with disqualifying felony convictions can have their voting rights restored. This question had previously been Q24 in 2018. The 2020 question was changed to a multiselect question, the wording of the answer options was clarified, and a comment section was added. |

The following questions had no change except for renumbering and, for some, the addition of a comment section:

| 2020
Numbering | 2018
Numbering | Description |
|-------------------|-------------------|---|
| Q3 | Q1 | How the state answers the EAVS. |
| Q4 | Q2 | Whether the state has a top-down, bottom-up, or hybrid voter registration database. |
| Q4a | Q2a | How often bottom-up or hybrid databases transmit information to the state voter registration database. |
| Q17 | Q8 | Whether an excuse is required for mail voting. |
| Q18 | Q9 | Whether the state, or any jurisdiction within the state, conducted an all-vote-by-mail election for the November 2020 general election. |
| Q18a | Q9a | Whether the all-vote-by-mail system was used statewide or only in certain jurisdictions for the 2020 general election. |
| Q19 | Q10 | Whether permanent mail voting is permitted. |
| Q19a | Q10a | Which voters are permitted to register as permanent mail voters. |
| Q25a | Q13a | How vote centers operate within the state. |

The 2018 Policy Survey questions on audits of polling place procedures, audits of voting machines, and types of ballots audited were removed for 2020.

Section A: Voter Registration

Section A of the EAVS collects data on voter registration. This includes the number of persons registered and eligible to vote in the November 2020 general election, active and inactive voters, voters who used SDR, registration forms processed between the close of registration for the 2018 general election and the close of registration for the 2020 general election, confirmation notices sent pursuant to the NVRA, and voters removed from the voter registration rolls.

In 2020, changes to this section included the addition of sub-questions on the number of SDRs received on Election Day (A2b) and before Election Day (A2c), in addition to the total provided in A2a. The instructions in this question were also revised to clarify that all SDRs received for the 2020 general election should be reported. In addition, the instructions for A4–A7 were revised to clarify that online voter registrations reported in A4c, A5c, A6c, and A7c should only include registration forms that were completed and submitted through a web-based online registration form system and that SDRs should be categorized according to the mode used to submit the registration application. The instructions for A8 were revised to include a more accurate definition of the term "confirmation notice" and to clarify that notices sent between the close of registration for the November 2018 general election and the close of registration for the November 2020 general election should be reported in this question.

Section B: UOCAVA

Section B of the EAVS collects data on voters covered by UOCAVA. This includes the number of registered UOCAVA voters; FPCAs received and rejected; UOCAVA ballots transmitted, returned, counted, and rejected; and Federal Write-In Absentee Ballots (FWAB) received, counted, and rejected. Most questions in Section B were divided by type of voter (uniformed services members and overseas citizens) and by method of ballot transmission and return (postal mail, email, and other).

In 2014, the UOCAVA section of the EAVS was expanded to include questions from the Federal Voting Assistance Program's (FVAP) Post-Election Quantitative Survey. The goal of combining surveys was to reduce the burden on election officials by asking them to answer a single set of questions about UOCAVA voting rather than answering two surveys that captured many of the same data points. The current format of Section B is the result of a memorandum of understanding between the EAC and FVAP that allows both agencies to collect, share, and evaluate data on the voting experiences of citizens covered under UOCAVA and to fulfill their congressionally mandated requirements to study UOCAVA voters.

In 2020, changes to this section included the addition of question B27. Previously, the questions in the EAVS relating to FWABs only asked for data on FWABs rejected from being received after the ballot receipt deadline or because the voter's regular absentee ballot was received and counted. The addition of B27 allows states to report data on FWABs rejected for other reasons, in total (B27a), for uniformed services voters (B27b), and for overseas citizen voters (B27c). A space was also provided to collect a description of the reasons the FWABs reported in B27 were rejected. In addition, the instructions for question B8 were updated to clarify that ballots transmitted by "other mode" could include fax and online ballot delivery portals.

Section C: Mail Voting

Section C of the EAVS collects data on mail voting. This includes the number of mailed ballots transmitted, returned, counted, and rejected, as well as the number of ballots sent to permanent mail voters.

In 2020, changes to this section included a clarification to the instructions of C1 that all mailed ballots transmitted for the November 2020 general election should be included in this question, and a clarification to the instructions of C2 that ballots transmitted in an all-vote-by-mail state or jurisdiction should not be included in the count of mailed ballots transmitted to permanent absentee voters.

Section D: In-Person Voting and Polling Operations

Section D of the EAVS collects data on in-person voting. This includes the number of ballots cast through in-person voting before and on Election Day, the number of precincts and polling places, and the number of poll workers and the level of difficulty involved in recruiting poll workers. This section was previously called "Total Votes Cast and In-Person Voting" and was renamed in 2020 to reflect the removal of a redundant question about the total votes cast and to better align with the section's focus on in-person voting and the polling operations to support in-person voting.

The removal of the 2018 question on total votes cast caused the questions in Section D to be renumbered. The removed question on total votes cast was redundant with question F1a on the number of votes cast and counted. In addition, the instructions in questions D5–D7 were updated to clarify the definition of a poll worker and to specify how poll workers should be counted. The instructions for D6 were updated to specify that each early voting poll worker should be counted once regardless of how many early voting shifts they worked, and the instructions for D7 were updated to specify that each poll worker should be counted only once, regardless of how many shifts they worked.

Section E: Provisional Ballots

Section E of the EAVS collects data on provisional voting, including provisional ballots submitted, provisional ballot adjudication, and reasons for rejection.

In 2020, changes to this section included a clarification of the instructions in E1b-d that the number of provisional ballots submitted should be recorded. A definition of provisional ballots counted in part was added to the instructions of E1c.

Section F: Voter Participation and Election Technologies

Section F of the EAVS collects data on voter participation and election technologies. This includes total participation in the 2020 general election, how many ballots were cast and counted by mode of participation, the source of participation data, use of electronic and paper poll books, voting equipment used, and the location where votes are tallied. Respondents were also provided the opportunity to share general comments regarding their state's or jurisdiction's Election Day experiences, noteworthy successes, and challenges they overcame when administering the November 2020 general election.

In 2020, changes to this section included a clarification of how participation should be counted in question F1. The 2018 question collected data on the number of voters who participated; this instruction was updated for 2020 to clarify that voters who cast a ballot that was counted should be

reported in this question. In addition, question F1e removed the instruction that provisional voters who were given credit in their vote history should be included in this question. The instructions for question F8 were updated to include a more complete description of scanners.

Data Collection Procedures

In compliance with the Paperwork Reduction Act of 1995, the EAC submitted the questions for the 2020 Policy Survey and the EAVS for review by the Office of Management and Budget (OMB) and for public comment. Public comments were collected from October 8, 2019, to December 6, 2019, and from February 11, 2020, to March 12, 2020. The questions were approved under OMB Control No. 3265-0006, expiration date March 31, 2023. The survey questions were made available publicly on the EAC's website on July 8, 2020. Targeted communications with state points of contact (POC) responsible for completing the surveys began on July 7, 2020, and continued regularly throughout the data collection period. These targeted communications aimed to keep states aware of data collection deadlines and resources available to assist them with completing the survey.

The following sections describe each aspect of the EAVS data collection process in more detail.

Needs Assessment

To better understand how state-level officials respond to the EAVS and where they need support, the EAC undertook a systematic assessment of the needs of EAVS POCs in October and November 2019. The goal of these interviews was to better understand each state's EAVS reporting process (including how data is collected, which templates are used, the state's use of technical assistance resources, and data quality) and how improvements could be made to the 2020 EAVS. All state POCs that completed the 2018 EAVS were invited to participate and interviews with 34 states were completed. The EAC created semi-structured interview guides for each participant that also left room for the moderator to probe further.

The information collected through these needs assessment conversations helped the EAC's outreach plan design, shaped the training opportunities provided to each state, and identified states that needed specialized support to complete the EAVS. Based on these conversations, the EAC made improvements to the design and usability of the data collection templates, added supplementary instructions to clarify how respondents were to use the missing data codes in the survey, and released the EAVS data collection templates earlier than in previous years to afford POCs more time to compile their data submissions. During these needs assessment calls, the EAC also encouraged state POCs to review and provide comments on the draft 2020 survey questions, which at the time were available on the Federal Register.

Policy Survey

Invitations to complete the 2020 Policy Survey were sent to all 56 states, territories, and districts on August 3, 2020. The Policy Survey data are collected in advance of EAVS data collection to reduce respondent burden and to allow the EAC to create data validation rules for the EAVS data. The Policy Survey was completed through an online survey; this survey had undergone usability testing with POCs from nine states and territories in June and July 2020, and edits to the survey based on the

results of this testing were completed in advance of the survey's launch.³ Periodic reminders were issued to POCs during the data collection period. All 56 states, territories, and districts submitted their Policy Survey data by December 15, 2020. When the answer options within a question did not fully capture a state's policy, POCs were encouraged to provide comments with further explanation.

The 2020 Policy Survey had a series of questions about the contact information of state and local election offices. The EAC collected this contact information from state election websites and official registers in May and June 2020. This information was pre-populated into the online Policy Survey data collection tool and was provided to POCs to review and correct as they completed the Policy Survey. Because this data contains personally identifiable information (PII), it is not part of the public data release.

Once received, each Policy Survey submission was reviewed for completeness. Through these reviews and through further reviews conducted once each state's EAVS submission was received, the EAC made Policy Survey corrections for 37 states before the end of the EAVS data collection period.

For the first time, the EAC incorporated a state's Policy Survey submission directly into the EAVS data collection template validations in 2020. This means that a state's 2020 EAVS data collection templates could not be released until the state's Policy Survey submission was finalized.

EAVS

The EAVS data collection period was opened to 46 states on November 9, 2020. The data collection was opened to the 10 remaining states once their Policy Survey submissions were received and their templates were finalized; all data collection templates were released to states by December 18, 2020. The EAVS data collection period ended in July 2021. Data submissions from all 56 states were received by that date, with a response rate of 100% of states. After providing final data, states' chief election officials certified their Policy Survey and EAVS as complete and correct to the best of their knowledge.

To build on the needs assessment conversations that were completed in October and November 2019, the EAC completed pre-survey outreach calls with officials from states that had new designated POCs for the 2020 EAVS or that had requested further follow-up after the needs assessment calls. Fifteen states were invited to participate in the outreach calls, and 10 states completed calls in August of 2020. During these interviews, the EAC provided an overview of the project timeline and the types of data collected in the Policy Survey and the EAVS, notified the POCs of the help desk support and other resources that would be provided as part of the 2020 EAVS, probed POCs on data issues from the 2018 EAVS, and whether the ongoing COVID-19 pandemic was impacting the state's election policies or could affect its ability to submit EAVS data in a timely

³ Fifty-three states completed the Policy Survey via the online survey. Three states completed the survey via a paper instrument; for these states, the Policy Survey technical assistants entered the data from the paper instrument into the online survey and asked the state to review for accuracy and submit the data.

manner. These conversations helped ensure that the EAC was prepared to provide adequate support to states as they completed their EAVS data collection.

Data Collection Templates

Given the diversity in how states respond to the EAVS, creating data templates that accommodate the needs of all states and all local jurisdictions is especially challenging. The 2020 EAVS data were collected using two data collection templates:

- The Excel template was a flat data format that allowed POCs to copy and paste large amounts
 of data, such as from a report generated from the state's centralized election database. Each
 EAVS item was listed in a column in the Excel template and each EAVS jurisdiction within the
 state was listed in a row. States with multiple jurisdictions were required to submit their data
 through the Excel template.
- The online template was an item-by-item survey hosted online that guided respondents
 through entering their responses. This template was primarily intended to be used by
 jurisdictions that entered EAVS data, although some states entered data into the online
 template on behalf of some or all of their jurisdictions. The data from the online template was
 exported to an Excel file that matched the format of the Excel data collection template.

Usability testing of the draft online template was completed with nine local election officials between July and August 2020, and edits to the survey based on the results of this testing were completed in advance of the online template's launch.

The EAC pre-populated data into the online template for four states and into the Excel template for one state. Pre-fill data was provided by state POCs via the Excel template or via an email or phone request that provided detail on which items were to be populated.

Both data collection templates employed a variety of error-checking data validations to reduce response burden and to increase data quality.

Data Validation

One of the key issues associated with any data collection project is ensuring that the data collected are as accurate as possible. Given the number of survey questions, their complexity and granularity, and the variety of approaches in how state and local jurisdictions provide responses, it can be easy to make data entry mistakes or report data in an incorrect survey item. All 2020 EAVS data collection templates included built-in internal and external validation checks that flagged specific types of potential errors within a data submission.

The validation checks were designed to flag common data issues so that respondents were aware of them before submitting their data to the EAC. In response to these validations, states and jurisdictions were encouraged to review their data, correct it if needed, and use the comments fields to explain any peculiarities and give context to the data that were being reported.

In addition, once a state submitted data for review by the EAC, additional data reviews were conducted by trained data analysts. These reviews checked for missing data, internal math and logic issues, conflicts with Policy Survey responses, and significant changes compared to 2016 EAVS data.⁴ The results of this review were provided to state POCs in a written memo, along with a file that had sample rates and percentages calculated using their draft submission. These sample rates and percentages were provided to assist POCs with identifying results that did not align with their expectations, so they could be corrected in the final submission.

A complete list of all validation checks that were built into the data collection templates and additional data validations that were conducted for draft submissions can be found in Appendices B and C of this chapter. In general, there were five types of data validations.

Math Validations

Many items in the EAVS asked respondents to report a total and then divide that total into subcategories. The math validations within the templates checked that the sum of the subcategories equaled the reported total of the overall category. For example, if the total number of voters who cast a ballot that was counted in the 2020 general election did not match the sum of the number of voters who used different modes of voting, then the respondent was asked to review the numbers reported in these items.⁵

Logic Validations

Logic validations identified when a value in the survey was incompatible with a response provided in another related question in the survey. For example, if the number of mailed ballots counted by a jurisdiction exceeded the number of mailed ballots that had been returned by voters, then the respondent was asked to review these items.⁶

Policy Survey Validations

These validations identified instances in which an EAVS item conflicted with the Policy Survey data that had been submitted by the state. For example, if a state reported having an online voter registration system through which an individual could submit a voter registration application, but reported "does not apply" to EAVS items relating to the number of voter registration forms submitted through online sources, then the validations would highlight that a conflict existed between the respondent's EAVS and Policy Survey data and would ask the respondent to review the EAVS items and contact the EAC if the Policy Survey response needed to be updated.⁷

⁴ The 2016 EAVS was used as a point of comparison in the data reviews, because it was the most recent presidential election.

⁵ The total number of voters participating in the 2020 general election was reported in item F1a in the 2020 EAVS. The number of voters who participated using different modes of voting were items F1b through F1h.

⁶ The number of mailed ballots counted by a jurisdiction was reported in item C3a in the 2020 EAVS. The number of mailed ballots returned by voters was reported in item C1b.

⁷ Data on states' policies regarding online voter registration were reported in item Q7 in the Policy Survey. The number of total, new, duplicate, and rejected registrations received through online registration systems were reported in items A4c, A5c, A6c, and A7c, respectively, of EAVS.



Missing Items

With the exception of comment boxes and "other" subcategories for reporting data beyond what was specified in a question, all items in the EAVS required a response. An alert appeared if a response to a required item was not provided. For example, if a respondent reported the total number of registered voters in their jurisdiction but not the number of active and inactive registered voters, the latter items would be flagged with a request that the respondent should report "does not apply" (if their state does not have an applicable law or policy), "data not available" (if the data for an item is not tracked), or zero (if no instance of an item occurred) rather than leave the item blank.8

Valid Skips

For the first time, in 2020, the EAC introduced a valid skip code to the EAVS data. This code was automatically filled in by the template validations when an item did not require an answer because of a response to a previous item in the survey. The use of the valid skip code is distinct from the use of the "does not apply" code (for when a jurisdiction does not have a law or policy in place that allows for the type of election participation in the question) and the "data not available" code (for when the data for a type of election participation is not tracked). For instance, if a jurisdiction indicated in EAVS question F5a that it did not use direct-recording electronic (DRE) voting machines without a voter-verified paper audit trail (VVPAT), then items F5b through F5d, relating to the make and model of equipment, the number deployed, and the usage of the equipment, were filled as "valid skip" by the template validations.

Technical Assistance

Technical assistance was provided through the duration of the Policy Survey and the EAVS data collection periods. Help desk support was provided for 20 hours each week from August 3, 2020, to December 31, 2020, and for 50 hours each week from January 4, 2021, to March 30, 2021. State and local EAVS respondents could request assistance via email or phone. A team of trained technical assistants provided support on all aspects of the survey data collection processes. A total of 812 support tickets were received from all 56 states, territories, and districts. The most common inquiries were related to accessing the data collection templates, re-opening online templates that had been submitted prematurely, how data transferred between the online template and the Excel template, and questions about survey definitions (including SDR, how to classify registration forms in questions A3–A7, and what types of voting should be counted as in-person early voting for purposes of EAVS).

After the first round of EAVS data was collected in March 2021, a group of subject matter experts (SME) from the EAC conducted an extra quality control review via video conference. All states and territories were invited to participate and 51 out of 56 participated. The extra quality check was necessary due to the new voting options throughout the country for the 2020 general election and due to challenges caused by the COVID-19 pandemic. Thirty-eight of the states and territories that were interviewed requested data changes or added/amended footnotes to this report.

⁸ The total number of registered voters for the 2020 general election was reported in item A1a in the EAVS. The number of active registered voters was item A1b. The number of inactive registered voters was item A1c.

Resources for EAVS Respondents

In addition to providing direct, customized technical assistance, the EAC made a wide variety of written and video training resources available to survey respondents on demand. A website was established to house these resources and to provide a secure place for state EAVS POCs to upload data submissions and other documents for the EAC to review.

The resources on this website included PDF copies of the Policy Survey and EAVS questions; a link to the online template; six videos that outlined the questions and instructions in the six sections of the EAVS; three video webinars that provided guidance on the overall EAVS process, on collecting data from local jurisdictions, and for state POCs new to EAVS data collection; eleven newsletters that were released between August 2020 and March 2021; an extensive user guide that provided step-by-step instructions for both data collection templates; a policy guide approved by the EAC Commissioners that provided information to election officials responsible for completing EAVS; and an Excel crosswalk that documented survey changes from 2018 to 2020.

The website also contained a section that was restricted to state POCs. This section had copies of the state's 2016 and 2018 EAVS and the state's Statutory Overview or Policy Survey data available for download, a table that tracked the online template progress for each jurisdiction within the state, and the capacity for POCs to upload files for the EAC to review.

Data Reporting and Calculations

In 2020, most EAVS data were reported at the local jurisdiction level. For the purposes of this report, for states that have multiple jurisdictions, state totals were calculated by summing the data from all jurisdictions within a state. National totals were calculated by summing the state-level totals.

Whenever possible, this report uses percentages and rates rather than raw numbers to make comparisons across states and across election years. For these calculations, items were combined as necessary to create the numerator and denominator and to produce a percentage or rate. For example, the following formula was used to calculate the percentage of transmitted mailed ballots that were returned by voters for the 2020 general election:

$$\frac{\textit{Total number of mailed ballots returned by voters (C1b)}}{\textit{Total number of mailed ballots transmitted by election of fices (C1a)}} \times 100$$

Percentages at the national level were calculated using casewise missing data deletion at the state level. Only states that had data for both the numerator and denominator for a calculation were included when reporting percentages at the national level. Responses of "does not apply," "data not available," and "valid skip" were considered missing for purposes of creating these calculations. Casewise deletion was used in the analysis for this report to avoid overinflating the denominator of the calculations. This is especially applicable when states do not track data for a particular item, or when election policy differences mean that not all states can provide data for an item. For example, online registration is not available in every state, so the calculation of the nationwide percentage of registrations that were received online will only use data from states that reported at least one online

registration. Otherwise, the national percentage would include in the denominator (in this case, the total number of registrations received) data from states that do not have online registration, thus underestimating the percentage of online registrations that were received.⁹

This decision rule means that there were instances in which the percentages reported at the national level for a given calculation in this report did not use data from every state. Because each category was calculated independently of others and only states that reported data in both the numerator and the denominator were included in the analysis, casewise deletion also created instances in which percentages do not sum to 100%. Those cases in which data were not available for every state to calculate the percentage at the national level are noted in the footnotes throughout this report.

Recommendations for Analyzing and Interpreting the EAVS Data

The most up-to-date version of the 2020 EAVS and Policy Survey data can always be found on the EAC's website (https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys). If the EAC is notified by a state of an error or omission in the state's data, the agency will issue the updated EAVS and Policy Survey data sets on its website with an errata note of changes that have been made to the newly issued data sets. Updated data sets will be issued on a quarterly basis.

There are four types of data missingness codes used in the 2020 Policy Survey and EAVS data:

- Valid skip (-77): This code indicates that no response is expected based on a previous survey response. For instance, in the Policy Survey, if a state answered "no" to Q7 to indicate that it does not provide an option for voters to register to vote online, then items Q7a and Q7b, which collect further information on the specifics of a state's online registration system, would be marked as -77. In the EAVS, if a state indicates in item A4c, the total number of registration forms submitted online, that this question does not apply, then items A5c, A6c, and A7c, which collect data on new, duplicate, and rejected registrations submitted online, would be marked as -77.
- Does not apply (-88): This code indicates that a question does not apply to a state, because the state does not have an applicable policy in place. For instance, a response of -88 in item A4c of the EAVS indicates that the state does not have online registration.
- Data not available (-99): This code indicates that the data for an item cannot be tracked. For
 instance, a response of -99 in item A4c of the EAVS indicates that the state accepts online
 voter registrations but cannot track the number of these registrations that were submitted by
 voters.
- Refused (-100): This code indicates that a response was expected but was not provided. This
 code is only used in the Policy Survey data.

⁹ The total number of registration applications received between the close of registration for the 2018 general election and the close of registration for the 2020 general election was collected in item A3a. The total number of registration applications received online between the close of registration for the 2018 general election and the close of registration for the 2020 general election was collected in item A4c. The application of casewise deletion means that only states that reported at least one registration in both of these items on a statewide level were included in the calculation of the percentage of registration applications received through online sources.

When summing the EAVS data, either on a state or a national level, analysts should take care to treat these missingness codes as missing items and not as negative numbers.

Users of the EAVS data are also encouraged to refer to the comments that accompany all of the EAVS items and many of the Policy Survey items. During data collection, the EAC encouraged all respondents to use these comments to provide context to their responses. In many cases, these comments contain valuable information about how state and jurisdiction respondents formulated their responses, why some responses do not align with the data validations outlined in this chapter, or context about how the 2020 general election was conducted in a state or jurisdiction. If data users have further questions about the data that have been submitted, they are encouraged to contact states or jurisdictions directly with further questions.

The EAC also encourages data users to take care when calculating percentages to ensure that the correct EAVS items are used. Appendix D of this chapter contains recommendations for how to calculate EAVS rates using the 2020 data. These recommendations align with how rates were calculated throughout this report.

This report used the 1-year American Community Survey (ACS) state estimates for the 2019 citizen voting age population (CVAP) instead of the 5-year estimate to ensure that the CVAP was as current as possible. The CVAP estimates for 2020 were not available by the time this report was finalized. Once they are released by the U.S. Census Bureau, the 2020 CVAP estimates can be found at https://data.census.gov/. Data analysts should import both the state- and county-level geographies and merge them into the EAVS data using the Federal Information Processing Standards (FIPS) code. For states that have subcounty jurisdictions, these jurisdictions will need to be aggregated at the county level in order to merge in the CVAP data. To For this report, the state-level CVAP was used for Alaska and Puerto Rico, as both reported as a single EAVS jurisdiction. Finally, the Census Bureau does not provide CVAP estimates for the U.S. territories (with the exception of Puerto Rico), so no CVAP estimate was available for American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

¹⁰ These are the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Wisconsin. Additionally, the state of Illinois reported six cities independently of their corresponding counties (i.e., Bloomington, Chicago, Danville, East St. Louis, Galesburg, and Rockford), and Missouri reported Kansas City independently of its corresponding county.



Methodology Appendix A: Survey Response Rates

| State | EAVS
Response
Rate | Section A
Response
Rate | Section B
Response
Rate | Section C
Response
Rate | Section D
Response
Rate | Section E
Response
Rate | Section F
Response
Rate |
|----------------------|--------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Alabama | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Alaska | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| American
Samoa | 98.4 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 94.4 |
| Arizona | 100.0 | 100.0 | 99.9 | 100.0 | 100.0 | 100.0 | 100.0 |
| Arkansas | 90.2 | 99.5 | 77.4 | 83.5 | 88.1 | 82.5 | 97.3 |
| California | 99.2 | 100.0 | 98.2 | 99.9 | 99.8 | 99.9 | 98.9 |
| Colorado | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Connecticut | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Delaware | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| District of Columbia | 99.7 | 100.0 | 100.0 | 100.0 | 94.7 | 100.0 | 100.0 |
| Florida | 99.4 | 100.0 | 98.7 | 99.9 | 99.2 | 96.4 | 99.8 |
| Georgia | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Guam | 98.1 | 93.9 | 100.0 | 100.0 | 100.0 | 100.0 | 98.9 |
| Hawaii [1] | 99.1 | 100.0 | 99.5 | 100.0 | 100.0 | 100.0 | 97.1 |
| Idaho | 99.4 | 98.8 | 99.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Illinois | 99.1 | 99.6 | 99.7 | 99.8 | 99.7 | 98.6 | 97.9 |
| Indiana | 100.0 | 100.0 | 100.0 | 100.0 | 99.9 | 100.0 | 100.0 |
| Iowa | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 99.9 |
| Kansas | 69.0 | 67.4 | 86.8 | 77.3 | 62.3 | 95.9 | 48.0 |
| Kentucky | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Louisiana | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Maine [2] | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Maryland | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Massachusetts | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Michigan | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Minnesota | 100.0 | 100.0 | 100.0 | 100.0 | 99.9 | 100.0 | 100.0 |
| Mississippi | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 99.9 |
| Missouri | 99.8 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 99.4 |
| Montana | 99.6 | 100.0 | 98.5 | 100.0 | 100.0 | 100.0 | 100.0 |
| Nebraska | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Nevada | 99.8 | 100.0 | 99.2 | 100.0 | 100.0 | 100.0 | 100.0 |
| New Hampshire | 99.5 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 98.3 |
| New Jersey | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| New Mexico | 100.0 | 100.0 | 100.0 | 100.0 | 99.7 | 100.0 | 100.0 |
| New York | 97.5 | 100.0 | 100.0 | 99.9 | 99.7 | 100.0 | 91.1 |
| North Carolina | 99.9 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 99.7 |

| State | EAVS
Response
Rate | Section A
Response
Rate | Section B
Response
Rate | Section C
Response
Rate | Section D
Response
Rate | Section E
Response
Rate | Section F
Response
Rate |
|-----------------------------|--------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| North Dakota | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Northern
Mariana Islands | 96.2 | 100.0 | 90.0 | 100.0 | 94.7 | 100.0 | 96.7 |
| Ohio | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Oklahoma | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Oregon | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Pennsylvania | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 99.9 |
| Puerto Rico | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Rhode Island | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| South Carolina | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| South Dakota | 99.9 | 100.0 | 99.8 | 99.9 | 98.8 | 99.8 | 100.0 |
| Tennessee | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Texas | 99.4 | 100.0 | 99.6 | 100.0 | 100.0 | 100.0 | 98.2 |
| U.S. Virgin
Islands | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Utah | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 99.8 |
| Vermont | 98.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 93.0 |
| Virginia | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Washington | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| West Virginia | 99.7 | 100.0 | 98.8 | 100.0 | 99.9 | 100.0 | 100.0 |
| Wisconsin | 99.7 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 98.9 |
| Wyoming | 99.9 | 100.0 | 99.6 | 100.0 | 99.8 | 100.0 | 100.0 |
| U.S. Total | 99.1 | 99.4 | 99.4 | 99.4 | 99.2 | 99.7 | 98.2 |

Survey Response Rate Calculation Notes:

EAVS Response Rate uses responses to all items listed below.

Section A Response Rate uses responses to questions A1a, A1b, A1c, A2a, A2b, A2c, A3a, A3b, A3c, A3d, A3e, A3f, A3g, A3h, A3i, A3j, A4a, A4b, A4c, A4d, A4e, A4f, A4g, A4h, A4i, A4j, A4k, A4l, A5a, A5b, A5c, A5d, A5e, A5f, A5g, A5h, A5i, A5j, A5k, A5l, A6a, A6b, A6c, A6d, A6e, A6f, A6g, A6h, A6i, A6j, A6k, A6l, A7a, A7b, A7c, A7d, A7e, A7f, A7g, A7h, A7i, A7j, A7k, A7l, A8a, A8b, A8c, A8d, A8e, A8f, A8g, A8h, A9a, A9b, A9c, A9d, A9e, A9f, A9g, A9h, A9i, and A9j.

Section B Response Rate uses responses to questions B1a, B1b, B1c, B2a, B2b, B2c, B3a, B3b, B3c, B4a, B5a, B5b, B5c, B6a, B6b, B6c, B7a, B7b, B7c, B8a, B8b, B8c, B9a, B9b, B9c, B10a, B10b, B10c, B11a, B11b, B11c, B12a, B12b, B12c, B13a, B13b, B13c, B13d, B14a, B14b, B14c, B15a, B15b, B15c, B16a, B16b, B16c, B17a, B17b, B17c, B18a, B18b, B18c, B19a, B19b, B19c, B20a, B20b, B20c, B21a, B21b, B21c, B22a, B22b, B22c, B23a, B23b, B23c, B24a, B24b, B24c, B25a, B25b, B25c, B26a, B26b, B26c, B27a, B27b, and B27c..

Section C Response Rate uses responses to questions C1a, C1b, C1c, C1d, C1e, C1f, C1g, C1h, C1i, C2a, C3a, C4a, C4b, C4c, C4d, C4e, C4f, C4g, C4h, C4i, C4j, C4k, C4l, C4m, C4n, C4o, C4p, C4q, and C4r. Section D Response Rate uses responses to questions D1a, D1b, D2a, D3a, D3b, D3c, D4a, D4b, D4c, D5, D6, D7a, D7b, D7c, D7d, D7e, D7f, D7g, and D8.



Section E Response Rate uses responses to questions E1a, E1b, E1c, E1d, E1e, E2a, E2b, E2c, E2d, E2e, E2f, E2g, E2h, E2i, E2i, E2k, E2l, and E2m.

Section F Response Rate uses responses to questions F1a, F1b, F1c, F1d, F1e, F1f, F1g, F1h, F2, F3a, F3b, F3c, F3d, F4a, F4b, F4c, F4d, F5a, F5b_1, F5c_1, F5b_2, F5c_2, F5b_3, F5c_3, F5d_1, F5d_2, F5d_3, F5d_4, F6a, F6b_1, F6c_1, F6b_2, F6c_2, F6b_3, F6c_3, F6d_1, F6d_2, F6d_3, F6d_4, F7a, F7b_1, F7c_1, F7b_2, F7c_2, F7b_3, F7c_3, F7d_1, F7d_2, F7d_3, F7d_4, F7d_5, F8a, F8b_1, F8c_1, F8b_2, F8c_2, F8b_3, F8c_3, F8d_1, F8d_2, F8d_3, F8d_4, F8d_5, F9a, F9c_1, F9c_2, F9c_3, F9d_1, F9d_2, F9d_3, F9d_4, F9d_5, F10a, F10c_1, F10c_2, F10c_3, F10d_1, F10d_2, F10d_4, F11a, F11d_1, F11d_2, F11d_3, F11d_4, F11d_5, F12a, F12b, F12c, F12d, and F12e.

Survey Response Rate Data Notes:

General Notes:

- Response rates are calculated as the percentage of jurisdictional responses within a state that
 were not left blank (i.e., had a numerical response of zero or greater or a response of "data not
 available," "does not apply," or "valid skip").
- Item descriptions and optional survey comments were not included in the response rate calculation.
- [1] Information for Kalawao County, Hawaii was reported with Maui County.
- [2] Maine reported its UOCAVA data on a statewide level, not a jurisdiction level.

Methodology Appendix B: Data Collection Template Validation Rules

Table 1: Math Validation Rules

| Validation Rule | Error Text |
|--|--|
| The sum of A1b + A1c
should equal A1a | The sum of active (A1b) and inactive (A1c) registered voters should be equal to the total number of registered voters (A1a). |
| The sum of A2b + A2c should equal A2a | The sum of SDRs received on Election Day (A2b) and SDRs received prior to Election Day (A2c) should be equal to the total number of SDRs received (A2a). |
| The sum of A3b-j should equal A3a | The sum of the numbers you report in A3b-j should equal the total number of registration forms you report in A3a. |
| The sum of A4a-I should equal A3a | The sum of the numbers you report in A4a-I should equal the total number of registration forms you reported in A3a. |
| The sum of A5a-I should equal A3b | The sum of the numbers you report in A5a-I should equal the total number of registration forms you reported in A3b. |
| The sum of A6a-I should equal A3d | The sum of the numbers you report in A6a–I should equal the total number of registration forms you reported in A3d. |
| The sum of A7a-I should equal A3e | The sum of the numbers you report in A7a-I should equal the total number of registration forms you reported in A3e. |
| The sum of A5a + A6a + A7a should not exceed A4a | The amounts you report in A5a, A6a, and A7a should not exceed the total number of registration forms received by mail, fax, or email you reported in A4a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5b + A6b + A7b should not exceed A4b | The amounts you report in A5b, A6b, and A7b should not exceed the total number of registrations in person at the election/registrar's office you reported in A4b. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5c + A6c + A7c should not exceed A4c | The amounts you report in A5c, A6c, and A7c should not exceed the total number of registration forms submitted online you reported in A4c. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5d + A6d + A7d should not exceed A4d | The amounts you report in A5d, A6d, and A7d should not exceed the total number of registration forms received from motor vehicle offices you reported in A4d. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5e + A6e + A7e should not exceed A4e | The amounts you report in A5e, A6e, and A7e should not exceed the total number of registration forms received from public assistance offices you reported in A4e. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5f + A6f + A7f should not exceed A4f | The amounts you report in A5f, A6f, and A7f should not exceed the total number of registration forms received from state-funded agencies you reported in A4f. Please correct your responses or use the comments section to explain why these subitems do not add up. |



| Validation Rule | Error Text |
|---|--|
| The sum of A5g + A6g + A7g should not exceed A4g | The amounts you report in A5g, A6g, and A7g should not exceed the total number of registration forms received from armed forces recruitment offices you reported in A4g. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5h + A6h +
A7h should not exceed A4h | The amounts you report in A5h, A6h, and A7h should not exceed the total number of registration forms received from other agencies designated by the state but not mandated by the NVRA you reported in A4h. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5i + A6i + A7i should not exceed A4i | The amounts you report in A5i, A6i, and A7i should not exceed the total number of forms received from registration drives from advocacy groups or political parties you reported in A4i. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5j + A6j + A7j
should not exceed A4j | The amounts you report in A5j, A6j, and A7j should not exceed the total number of forms received from "Other" sources you reported in A4j. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5k + A6k + A7k should not exceed A4k | The amounts you report in A5k, A6k, and A7k should not exceed the total number of forms received from "Other" sources you reported in A4k. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A5I + A6I + A7I should not exceed A4I | The amounts you report in A5I, A6I, and A7I should not exceed the total number of forms received from "Other" sources you reported in A4I. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A8b-h should equal A8a | The amounts you report in A8b-h should equal the total number of confirmation notices sent to registered voters you reported in A8a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of A9b-j should equal A9a | The amounts you report in A9b-j should equal the total number of voters removed you reported in A9a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B1b-c should equal B1a | The amounts you report in B1b-c should equal the total number of registered and eligible UOCAVA voters you reported in B1a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B2b-c should equal B2a | The amounts you report in B2b-c should equal the total number of FCPAs received from UOCAVA voters you reported in B2a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B3b-c should equal B3a | The amounts you report in B3b-c should equal the total number of rejected FPCAs from UOCAVA voters you reported in B3a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B5b-c should equal B5a | The amounts you report in B5b-c should equal the total number of absentee ballots transmitted to UOCAVA voters you reported in B5a. Please correct your responses or use the comments section to explain why these subitems do not add up. |

| Validation Rule | Error Text |
|--|---|
| The sum of B6b-c should equal B6a | The amounts you report in B6b-c should equal the total number of absentee ballots transmitted to UOCAVA voters by postal mail you reported in B6a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B7b-c should equal B7a | The amounts you report in B7b-c should equal the total number of absentee ballots transmitted to UOCAVA voters by email you reported in B7a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B8b-c should equal B8a | The amounts you report in B8b-c should equal the total number of absentee ballots transmitted to UOCAVA voters by other methods you reported in B8a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B6a, B7a, and
B8a should equal B5a | The amounts you report in B6a, B7a, and B8a should equal the total number of ballots transmitted to all UOCAVA voters you reported in B5a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B6b, B7b, and B8b should equal B5b | The amounts you report in B6b, B7b, and B8b should equal the total number of ballots transmitted to all uniformed services voters you reported in in B5b. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B6c, B7c, and
B8c should equal B5c | The amounts you report in B6c, B7c, and B8c should equal the total number of ballots transmitted to all overseas citizen voters you reported in B5c. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B9b-c should equal B9a | The amounts you report in B9b-c should equal the total number of UOCAVA ballots returned to your office you reported in B9a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B10b-c should equal B10a | The amounts you report in B10b-c should equal the total number of UOCAVA ballots returned to your office by postal mail you reported in B10a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B11b-c should equal B11a | The amounts you report in B11b-c should equal the total number of UOCAVA ballots returned to your office by email you reported in B11a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B12b-c should equal B12a | The amounts you report in B12b-c should equal the total number of UOCAVA ballots returned to your office by other methods you reported in B12a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B10a, B11a,
and B12a should equal
B9a | The amounts you report in B10a, B11a, and B12a should equal the total number of UOCAVA ballots returned to your office you reported in B9a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B10b, B11b,
and B12b should equal
B9b | The amounts you report in B10b, B11b, and B12b should equal the total number of transmitted ballots returned by all uniformed services voters you reported in B9b. Please correct your responses or use the comments section to explain why these subitems do not add up. |



| Validation Rule | Error Text |
|---|--|
| The sum of B10c, B11c,
and B12c should equal
B9c | The amounts you report in B10, B11c, and B12c should equal the total number of transmitted ballots returned by all overseas citizen voters you reported in B9c. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B13b-d should equal B13a | The amounts you report in B13b-d should equal the total number of ballots returned undeliverable you reported in B13a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B14b-c should equal B14a | The amounts you report in B14b-c should equal the total number of UOCAVA ballots counted by your office you reported in B14a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B15b-c should equal B15a | The amounts you report in B15b-c should equal the total number of counted UOCAVA ballots returned by postal mail you reported in B15a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B16b-c should equal B16a | The amounts you report in B16b-c should equal the total number of counted UOCAVA ballots returned by email you reported in B16a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B17b-c should equal B17a | The amounts you report in B17b-c should equal the total number of counted UOCAVA ballots returned by other methods you reported in B17a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B15a, B16a,
and B17a should equal
B14a | The amounts you report in B15a, B16a, and B17a should equal the total number of UOCAVA ballots counted by your office you reported in B14a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B15b, B16b,
and B17b should equal
B14b | The amounts you report in B15b, B16b, and B17b should equal the total number of uniformed services voters' ballots counted by your office you reported in B14b. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B15c, B16c,
and B17c should equal
B14c | The amounts you report in B15c, B16c, and B17c should equal the total number of overseas citizen voters' ballots counted by your office you reported in B14c. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B18b-c should equal B18a | The amounts you report in B18b-c should equal the total number of rejected UOCAVA ballots you reported in B18a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B19b-c should equal B19a | The amounts you report in B19b-c should equal the total number of UOCAVA ballots rejected because they were received after the deadline you reported in B19a. Please correct your responses or use the comments section to explain why these subitems do not add up. |
| The sum of B20b-c should equal B20a | The amounts you report in B20b-c should equal the total number of UOCAVA ballots rejected because of a problem with the voter signature you reported in B20a. Please correct your responses or use the comments section to explain why these subitems do not add up. |

| Validation Rule | Error Text | | |
|---|--|--|--|
| The sum of B21b-c should equal B21a | The amounts you report in B21b-c should equal the total number of UOCAVA ballots rejected for lack of a postmark you reported in B21a. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |
| The sum of B22b-c should equal B22a | The amounts you report in B22b-c should equal the total number of UOCAVA ballots rejected for other reasons reported in B22a. Please correct your responses or use the comments section to explain why these items do not sum as expected. | | |
| The sum of B14a and B18a should equal B9a | The sum of B14a and B18a should equal the total number of UOCAVA ballots returned by voters that you reported in B9a. Please correct your responses or use the comments section to explain why these items do not sum as expected. | | |
| The sum of B14b and
B18b should equal B9b | The sum of B14b and B18b should equal the total number of UOCAVA ballots returned by uniformed services voters that you reported in B9b. Please correct your responses or use the comments section to explain why these items do not sum as expected. | | |
| The sum of B14c and B18c should equal B9c | The sum of B14c and B18c should equal the total number of UOCAVA ballots returned by overseas citizen voters that you reported in B9c. Please correct your responses or use the comments section to explain why these items do not sum as expected. | | |
| The sum of B19a, B20a,
B21a, and B22a should
equal B18a | The amounts you report in B19a, B20a, B21a, and B22a should equal the total number of rejected UOCAVA ballots you reported in B18a. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |
| The sum of B19b, B20b,
B21b, and B22b should
equal B18b | The amounts you report in B19b, B20b, B21b, and B22b should equal the total number of rejected ballots from uniformed services voters you reported in B18b. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |
| The sum of B19c, B20c,
B21c, and B22c should
equal B18c | The sum of the amounts you report in B19c, B20c, B21c, and B22c should equal the total number of rejected ballots from overseas citizen voters you reported in B18c. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |
| The sum of B23b-c should equal B23a | The amounts you report in B23b-c should equal the total number of FWABs returned by UOCAVA voters you reported in B23a. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |
| The sum of B24b-c should equal B24a | The amounts you report in B24b-c should equal the total number of FWABs counted you reported in B24a. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |
| The sum of B25b-c should equal B25a | The amounts you report in B25b-c should equal the total number of FWABs rejected because they were received after the deadline you reported in B25a. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |
| The sum of B26b-c should equal B26a | The amounts you report in B26b-c should equal the total number of FWABs rejected because the voter's regular absentee ballot was received and counted you reported in B26a. Please correct your responses or use the comments section to explain why these subitems do not add up. | | |



| Validation Rule | Error Text | |
|---|---|--|
| The sum of B27b-c should equal B27a | The amounts you report in B27b-c should equal the total number of FWABs rejected for other reasons you reported in B27a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of B24a, B25a,
B26a, and B27a should
equal B23a | The amounts you report in B24a, B25a, B26a, and B27a should equal the total number of FWABs returned by UOCAVA voters you reported in B23a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of B24b, B25b,
B26b, and B27b should
equal B23b | The sum of the amounts you report in B24b, B25b, B26b, and B27b should equal the total number of FWABs returned by uniformed services voters you reported in B23b. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of B24c, B25c,
B26c, and B27c should
equal B23c | The sum of the amounts you report in B24c, B25c, B26c, and B27c should equal the total number of FWABs returned by overseas citizen voters you reported in B23c. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of C1b-i should equal C1a | The amounts you report in C1b-i should equal the number of total mailed ballots transmitted you reported in C1a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of C4b-r should equal C4a | The amounts you report in C4b-r should equal the total number of mailed ballots rejected you reported in C4a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of D3b-c cannot exceed D3a | The sum of the amounts you report in D3b-c cannot exceed the total number of physical polling places for Election Day in your jurisdiction you reported in D3a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of D4b-c cannot exceed D4a | The sum of the amounts you report in D4b-c cannot exceed the total number of physical polling places for early voting in your jurisdiction you report in D4a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of D7b-g should equal D7a | The numbers you report in D7b-g should equal the total number of poll workers in your jurisdiction you reported in D7a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of E1b-e should equal E1a | The amounts you report in E1b-e should equal the total number of voters who submitted provisional ballots you reported in E1a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of E2b-m should equal E2a | The amounts you report in E2b-m should equal the total number of rejected provisional ballots you reported in E2a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| E1d should be equal to E2a | The amount you report in E1d should equal the total number of rejected provisional ballots you reported in E2a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |
| The sum of F1b-h should equal F1a | The sum of the amounts you report in F1b-h should equal the total number of voters who cast a ballot that was counted you reported in F1a. Please correct your responses or use the comments section to explain why these subitems do not add up. | |

Table 2: Logic Validation Rules

| Validation Rule | Error Text | |
|--|--|--|
| If A1c = Does Not Apply,
then A1a = A1b | Because your state does not differentiate between active (A1b) and inactive voters (A1c), then A1a should equal A1b. Please correct your responses or use the comments section to explain why those two items differ. | |
| A2a cannot exceed A1a | The amount of SDRs you report in A2a cannot exceed the total number of registered voters you report in A1a. Please review your responses or use the comments section to explain why the value in A2a exceeds the value in A1a. | |
| B3a cannot exceed B2a | The number of rejected FPCAs you report in B3a should not exceed the total number of FPCAs received you reported in B2a. Please review your responses or use the comments section to explain why the value in B3a exceeds the value in B2a. | |
| B4a cannot exceed B3a | The number of FPCAs rejected because they were late you report in B4a should not exceed the total number of FPCAs rejected you reported in B3a. Please review your responses or use the comments section to explain why the value in B4a exceeds the value in B3a. | |
| B9a cannot exceed B5a | The number of ballots returned you report in B9a should not exceed the number of ballots transmitted to UOCAVA voters you reported in B5a. Please review your responses or use the comments section to explain why the value in B9a exceeds the value in B5a. | |
| B9b cannot exceed B5b | The number of ballots returned from uniformed services members you report in B9b should not exceed the number of ballots transmitted to uniformed services members you reported in B5b. Please review your responses or use the comments section to explain why the value in B9b exceeds the value in B5b. | |
| B9c cannot exceed B5c | The number of ballots returned from overseas citizen voters you report in B9c should not exceed the number of ballots transmitted to overseas citizen voters you reported in B5c. Please review your responses or use the comments section to explain why the value in B9c exceeds the value in B5c. | |
| B13a cannot exceed B5a | The number of ballots returned as undeliverable you report in B13a should not exceed the number of ballots transmitted to UOCAVA voters you reported in B5a. Please review your responses or use the comments section to explain why the value in B13a exceeds the value in B5a. | |
| B14a cannot exceed B9a | The total number of ballots counted you report in B14a should not exceed the total number of ballots returned by UOCAVA voters you reported in B9a. Please review your responses or use the comments section to explain why the value in B14a exceeds the value in B9a. | |
| B14b cannot exceed B9b | The total number of ballots counted you report in B14b should not exceed the total number of ballots returned by uniformed services members you reported in B9b. Please review your responses or use the comments section to explain why the value in B14b exceeds the value in B9b. | |
| B14c cannot exceed B9c | The total number of ballots counted you report in B14c should not exceed the total number of ballots returned by overseas citizen voters you reported in B9c. Please review your responses or use the comments section to explain why the value in B14c exceeds the value in B9c. | |



| Validation Rule | Error Text | |
|--|---|--|
| B15a cannot exceed B10a | The number of ballots counted you report in B15a should not exceed the total number of ballots returned by postal mail by UOCAVA voters you reported in B10a. Please review your responses or use the comments section to explain why the value in B15a exceeds the value in B10a. | |
| B15b cannot exceed B10b | The number of ballots counted you report in B15b should not exceed the total number of ballots returned by postal mail by uniformed services members you reported in B10b. Please review your responses or use the comments section to explain why the value in B15b exceeds the value in B10b. | |
| B15c cannot exceed B10c | The number of ballots counted you report in B15c should not exceed the total number of ballots returned by postal mail by overseas citizen voters you reported in B10c. Please review your responses or use the comments section to explain why the value in B15c exceeds the value in B10c. | |
| B16a cannot exceed B11a | The number of ballots counted you report in B16a should not exceed the total number of ballots returned by email by UOCAVA voters you reported in B11a. Please review your responses or use the comments section to explain why the value in B16a exceeds the value in B11a. | |
| B16b cannot exceed B11b | The number of ballots counted you report in B16b should not exceed the total number of ballots returned by email by uniformed services members you reported in B11b. Please review your responses or use the comments section to explain why the value in B16b exceeds the value in B11b. | |
| B16c cannot exceed B11c | The number of ballots counted you report in B16c should not exceed the total number of ballots returned by email by overseas citizen voters you reported in B11c. Please review your responses or use the comments section to explain why the value in B16c exceeds the value in B11c. | |
| B17a cannot exceed B12a | The number of ballots counted you report in B17a should not exceed the total number of ballots returned by other modes by UOCAVA voters you reported in B12a. Please review your responses or use the comments section to explain why the value in B17a exceeds the value in B12a. | |
| B17b cannot exceed B12b | The number of ballots counted you report in B17b should not exceed the total number of ballots returned by other modes by uniformed services members you reported in B12b. Please review your responses or use the comments section to explain why the value in B17b exceeds the value in B12b. | |
| B17c cannot exceed B12c | The number of ballots counted you report in B17c should not exceed the total number of ballots returned by other modes by overseas citizen voters you reported in B12c. Please review your responses or use the comments section to explain why the value in B17c exceeds the value in B12c. | |
| C2a cannot exceed C1a | The number of mailed ballots transmitted to permanent absentee voters you report in C2a cannot exceed the total number of mailed ballots transmitted in C1a. Please review your responses or use the comments section to explain why the value in C2a exceeds the value in C1a. | |
| The sum of C3a and C4a should equal C1b | The sum of the amounts you report in C3a and C4a should equal the number of absentee returned by voters you report in C1b. Please review your responses or use the comments section to explain why the sum of C3a and C4a do not match the value in C1b. | |
| If D1a > 0, then D3a ≠
Does Not Apply | Because you reported in-person Election Day voting at a physical polling place in D1a, you should also report the number of Election Day polling places in D3a. Please review your responses and add comments as necessary. | |

| Validation Rule | Error Text | |
|--|---|--|
| If D1a > 0, then F1b > 0 | Because you reported in-person Election Day voting in D1a, you should also report the number of these ballots that were counted in F1b. Please review your responses and add comments as necessary. | |
| If D1b > 0, then D4a ≠
Does Not Apply | Because you reported in-person early voting at a physical polling place in D1b, you should also report the number of early voting polling places in D4a. Please review your responses and add comments as necessary. | |
| If D1b > 0, then F1f > 0 | Because you reported in-person early voting in D1b, you should also report the numbers of these ballots that were counted in F1f. Please review your responses and add comments as necessary. | |
| If D5a > 0 or D6a > 0, then
D7a > 0 | Because you reported using poll workers in D5a and/or D6a, you should provide the total number of poll workers used in the jurisdiction in D7a. Please review your responses and add comments as necessary. | |
| The sum of B14a and B24a should equal F1c | The sum of counted absentee UOCAVA ballots reported in B14a and counted FWABs reported in B24a should equal the total number of counted UOCAVA votes reported in F1c. Please review your responses or use the comments section to explain why the sum of B14a and B24a do not match the value in F1c. | |
| C3a should equal F1d | The number of counted absentee ballots reported in C3a should equal the total number of counted mail votes reported in F1d. Please review your responses or use the comments section to explain why the C3a does not match the value in F1d. | |
| If E1b > 0 or E1c > 0, then F1e > 0 | Because you reported a number of provisional ballots counted or partially counted in E1b and/or E1c, you should provide data on the number of voters who cast a provisional ballot that was counted in F1e. Please review your responses and add comments as necessary. | |
| F1a cannot exceed A1a | The total number of voters who cast a ballot that was counted, as reported in F1a, cannot exceed the total number of registered voters as reported in A1a. Please review your responses and add comments as necessary. | |
| F1b cannot exceed D1a | The number of voters who voted in-person on Election Day and whose votes were counted, as reported in F1b, cannot exceed the total number of in-person ballots cast in Election Day, as reported in D1a. Please review your responses and add comments as necessary. | |
| F1d cannot exceed C1a | The number of voters who cast a mailed ballot that was counted, as reported in F1d, cannot exceed the total number of mailed ballots transmitted, as reported in C1a. Please review your responses and add comments as necessary. | |
| F1e cannot exceed E1a | The number of voters who cast a provisional ballot that was counted, as reported in F1e, cannot exceed the total number of provisional ballots cast, as reported in E1a. Please review your responses and add comments as necessary. | |
| F1f cannot exceed D1b | The number of voters who cast a ballot during in-person early voting that was counted, as reported in F1f, cannot exceed the total number of ballots cast during in-person early voting, as reported in D1b. Please review your responses and add comments as necessary. | |
| If F5a = Yes, then F5b_1 ≠ 0 or Does Not Apply | Because you reported using DREs without VVPAT in F5a, you should report data on the make(s) and model(s) of this equipment in F5b. | |



| Validation Rule | Error Text | |
|--|--|--|
| If F5a = Yes, then F5c_1 ≠ O or Does Not Apply | Because you reported using DREs without VVPAT in F5a, you should report data on the number of machines deployed in F5c. | |
| If F6a = Yes, then F6b_1 ≠ 0 or Does Not Apply | Because you reported using DREs with VVPAT in F6a, you should report data on the make(s) and model(s) of this equipment in F6b. | |
| If F6a = Yes, then F6c_1 ≠ O or Does Not Apply | Because you reported using DREs with VVPAT in F6a, you should report data on the number of machines deployed in F6c. | |
| If F7a = Yes, then F7b_1≠
O or Does Not Apply | Because you reported using ballot marking devices in F7a, you should report data on the make(s) and model(s) of this equipment in F7b. | |
| If F7a = Yes, then F7c_1 ≠ O or Does Not Apply | Because you reported using ballot marking devices in F7a, you should report data on the number of machines deployed in F7c. | |
| If F8a = Yes, then F8b_1 ≠ O or Does Not Apply | Because you reported using scanners in F8a, you should report data on the make(s) and model(s) of this equipment in F8b. | |
| If F8a = Yes, then F8c_1 ≠ 0 or Does Not Apply | Because you reported using scanners in F8a, you should report data on the number of machines deployed in F8c. | |
| If F9a = Yes, then
F9b_1other ≠ 0 or Does
Not Apply | Because you reported using punch card machines in F9a, you should report data on the make(s) and model(s) of this equipment in F9b. | |
| If F9a = Yes, then F9c_1 ≠ 0 or Does Not Apply | Because you reported using punch card machines in F9a, you should report data on the number of machines deployed in F9c. | |
| If F10a = Yes, then
F10b_1other ≠ 0 or Does
Not Apply | Because you reported using lever machines in F10a, you should report data on the make(s) and model(s) of this equipment in F10b. | |
| If F10a = Yes, then F10c_1
≠ 0 or Does Not Apply | Because you reported using lever machines in F10a, you should report data on the number of machines deployed in F10c. | |
| If F11a = Yes, then
F11d_1, F11d_2, F11d_3,
F11d_4 and F11d_5
cannot be blank | Please respond to item [insert item number here]. If you do not have the information to respond, please enter "Data Not Available." If you collect the information but no response fits in this category, please enter "O." If this question does not apply to you, please enter "Does Not Apply" and explain in the comments section. | |

Table 3: Policy Survey Validation Rules

| Policy Survey Question | If Selected in Policy Survey | Expected Response in EAVS |
|--|--|---|
| O7: Dana ways atata haya | 07 - Vac (agus of the a true | A4c, A5c, A6c and A7c ≠ Does Not Apply |
| Q7: Does your state have online registration? | Q7 = Yes (any of the two
"yes" options) | *Items A4c, A5c, A6c, and A7c report data on online registration. |
| Q9: Does your state have same-day registration | 09 = Yes | A2a ≠ Does Not Apply |
| (SDR)? | | *Item A2a reports data on SDRs. |

| Policy Survey Question | If Selected in Policy Survey | Expected Response in EAVS | |
|--|--|--|--|
| Q9a: Under which | Q9a_1= Selected (On
Election Day) | A2b ≠ Does Not Apply *Item A2b reports data on SDRs received on Election Day. | |
| circumstances can a voter in your state register on the same day that they cast a ballot? | Q9a_2= Selected OR Q9a_3= Selected (During in-person early voting OR during an overlap between early voting and close of voter registration) | A2c ≠ Does Not Apply *Item A2c reports data on SDRs received before Election Day. | |
| Q10: Does your state allow persons to preregister to vote before they are 18 years of age? | Q10 = Yes | A3c ≠ Does Not Apply *Item A3c reports data on new preregistrations of persons under age 18. | |
| Q11: Does your state differentiate between active and inactive voters in your voter registration records? | Q11= Yes | A1c ≠ Does Not Apply *Item A1c reports data on inactive registrants. | |
| Q13: Does your state send confirmation notices? | Q13_1 = Selected OR Q13_2
= Selected OR Q13_3 =
Selected (any of the three
"yes" options) | A8a ≠ Does Not Apply *Item A8a reports data on confirmation notices. | |
| Q18a: Does your whole state use an all-by-mail system? | Q18a = Statewide | F1g ≠ Does Not Apply *Item F1g reports data on ballots cast in all- by-mail jurisdictions. | |
| Q19: Will your state allow some or all registered voters to request to be a permanent absentee voter? | Q19 = Yes (any of the two "yes" options) | C2a≠ Does Not Apply *Item C2a reports data on mailed ballots transmitted to voters on a permanent mail registration list. | |
| Q24: What terminology does your state use to describe the process of allowing individuals to cast their ballots in person prior to Election Day? | Q24_4 = Selected (No inperson voting is allowed prior to Election Day) | D1b, D4a, D4b, D4c, D6a, and F1f = Does Not Apply *Items D1b, D4a-c, D6a, and F1f report data on in-person early/absentee voting before Election Day. | |
| Q32: Does your state use provisional ballots? | Q32 = Yes | E1a, E1b, E1c, E1d, E1e, E2a, and F1e ≠ Does Not Apply *Items E1, E2, and F1e report data on provisional ballots. | |



| Policy Survey Question | If Selected in Policy Survey | Expected Response in EAVS |
|---|---|--|
| | | A9d ≠ Does Not Apply |
| Q37: Do convicted or incarcerated individuals lose eligibility to vote? | Q37_4 = Selected (No one; criminal convictions do not limit a person's right to vote) | *Item A9d reports data on voters removed from voter registration rolls due to a disqualifying felony conviction. |

Table 4: Special Conditions

| If | Expected EAVS Response | | |
|------------|---|--|--|
| F5a = No | Rest of items in F5 filled as Valid Skip (-77) | | |
| F5a = Yes | At least: F5b_1; F5c_1; F5d_1; F5d_2; F5d_3; F5d_4; F5d_5 should have a response | | |
| F6a = No | Rest of items in F6 filled as Valid Skip (-77) | | |
| F6a = Yes | At least: F6b_1; F6c_1; F6d_1; F6d_2; F6d_3; F6d_4; F6d_5 should have a response | | |
| F7a = No | Rest of items in F7 filled as Valid Skip (-77) | | |
| F7a = Yes | At least: F7b_1; F7c_1; F7d_1; F7d_2; F7d_3; F7d_4; F7d_5 should have a response | | |
| F8a = No | Rest of items in F8 filled as Valid Skip (-77) | | |
| F8a = Yes | At least: F8b_1; F8c_1; F8d_1; F8d_2; F8d_3; F8d_4; F8d_5 should have a response | | |
| F9a = No | Rest of items in F9 filled as Valid Skip (-77) | | |
| F9a = Yes | At least: F9b_1; F9c_1; F9d_1; F9d_2; F9d_3; F9d_4; F9d_5 should have a response | | |
| F10a = No | Rest of items in F10 filled as Valid Skip (-77) | | |
| F10a = Yes | At least: F10b_1; F10c_1; F10d_1; F10d_2; F10d_3; F10d_4; F10d_5 should have a response | | |
| F11a = No | Rest of items in F11 filled as Valid Skip (-77) | | |
| F11a = Yes | At least: F11d_1; F11d_2; F11d_3; F11d_4; F11d_5 should have a response | | |

Methodology Appendix C: Post-Submission Validations and Sample Rates

Table 1: Sample Rates and Outlier Thresholds

| EAVS Rate | Calculation | Threshold for Flagging
Result for Further Review |
|--|--|---|
| Percent of total registrants by CVAP | $\frac{A1a}{CVAP} \times 100$ | <50%
>130% |
| Percent of registrations that were new and valid | $\frac{A3b}{A3a} \times 100$ | <5%
>95% |
| Percent of registrations that were duplicates | $\frac{A3d}{A3a} \times 100$ | <1%
>99% |
| Percent of registrations that were rejected | $\frac{A3e}{A3a} \times 100$ | <1%
>99% |
| Percent of registrations that were within-jurisdiction changes | $\frac{A3f}{A3a} \times 100$ | <5%
>95% |
| Percent of registrations received by mail | $\frac{A4a}{A3a} \times 100$ | <1%
>99% |
| Percent of registrations received in-
person | $\frac{A4b}{A3a} \times 100$ | <1%
>99% |
| Percent of registrations received online | $\frac{A4c}{A3a} \times 100$ | <1%
>99% |
| Percent of registrations received at motor vehicle agencies | $\frac{A4d}{A3a} \times 100$ | <1%
>99% |
| Percent of registrations removed as percent of total registrants | $\frac{A9a}{A1a} \times 100$ | <1%
>99% |
| Percent of FPCAs that were rejected | $\frac{B3a}{B2a} \times 100$ | <0.5%
>99% |
| Percent of UOCAVA ballots returned | $\frac{B9a}{B5a} \times 100$ | <5%
>95% |
| Percent of UOCAVA ballots returned that were counted | $\frac{B14a}{B9a} \times 100$ | <10%
>100% |
| Percent of UOCAVA ballots returned that were rejected | $\frac{B18a}{B9a} \times 100$ | <0.5%
>90% |
| Percent of FWABs counted | $\frac{B24a}{B23a} \times 100$ | <10%
>100% |
| Percent of FWABs rejected | $\frac{(B25a + B26a + B27a)}{B23a} \times 100$ | <0.5%
>90% |
| Percent of mailed ballots returned | $\frac{C1b}{C1a} \times 100$ | <5%
>95% |



| EAVS Rate | Calculation | Threshold for Flagging
Result for Further Review |
|---|--|---|
| Percent of mailed ballots counted | $\frac{C3a}{C1b} \times 100$ | <10%
>100% |
| Percent of mailed ballots rejected | $\frac{C4a}{C1b} \times 100$ | <0.5%
>90% |
| Percent of provisional ballots rejected | $\frac{E1d}{(E1b + E1c + E1d + E1e)} \times 100$ | <0.5%
>95% |
| Percent of turnout by CVAP | $\frac{F1a}{CVAP} \times 100$ | <35%
>95% |
| Percent ballots cast in-person on
Election Day | $\frac{F1b}{F1a} \times 100$ | <10%
>90% |
| Percent ballots cast by mail | $\frac{(F1d + F1g)}{F1a} \times 100$ | <5%
>95% |
| Percent ballots cast in-person early | $\frac{F1f}{F1a} \times 100$ | <1%
>95% |
| Percent ballots cast by UOCAVA voters | $\frac{F1c}{F1a} \times 100$ | <0.1%
>50% |
| Percent ballots cast that were provisional | $\frac{F1e}{F1a} \times 100$ | <0.01%
>25% |

Table 2: Comparisons to the 2016 EAVS Data

| EAVS Rate | Calculation | Threshold for Flagging
Result for Further Review |
|--|---|---|
| 2020 total registrations as percentage of 2016's registrations | $\frac{A1a [2020]}{A1a [2016]} \times 100$ | <50%
>150% |
| 2020 registrations received as percentage of 2016's | $\frac{A3a [2020]}{A5a [2016]} \times 100$ | <25%
>200% |
| 2020 registrations removed as percentage of 2016's | $\frac{A9a [2020]}{A11a [2016]} \times 100$ | <10%
>200% |
| 2020 UOCAVA registrants as percentage of 2016's | $\frac{B1a [2020]}{B19a [2016]} \times 100$ | <10%
>200% |
| 2020 UOCAVA ballots transmitted as percentage of 2016's | $\frac{B5a [2020]}{B1a [2016]} \times 100$ | <10%
>200% |
| 2020 UOCAVA ballots returned as percentage of 2016's | $\frac{B9a [2020]}{B2a [2016]} \times 100$ | <10%
>200% |

| EAVS Rate | Calculation | Threshold for Flagging
Result for Further Review |
|---|--|---|
| 2020 UOCAVA ballots counted as percentage of 2016's | $\frac{B14a [2020]}{B8a [2016]} \times 100$ | <10%
>200% |
| 2020 mailed ballots transmitted as percentage of 2016's | $\frac{C1a [2020]}{C1a [2016]} \times 100$ | <10%
>500% |
| 2020 mailed ballots returned as percentage of 2016's | $\frac{C1b \ [2020]}{C1b \ [2016]} \times 100$ | <10%
>500% |
| 2020 mailed ballots counted as percentage of 2016's | $\frac{C3a [2020]}{C4a [2016]} \times 100$ | <10%
>500% |
| 2020 provisional ballots cast as percentage of 2016's | $\frac{E1a [2020]}{E1a [2016]} \times 100$ | <10%
>500% |
| 2020 total turnout as percentage of 2016's | $\frac{F1a \ [2020]}{F1a \ [2016]} \times 100$ | <50%
>150% |



Methodology Appendix D: How to Calculate Selected EAVS Rates

The EAVS item numbers in this table correspond to the question numbering for the 2020 EAVS. To determine item numbering for previous EAVS surveys, please refer to the survey instrument and data codebook for each year.

| EAVS Rate | Calculation |
|---|--------------------------------|
| Total CVAP registration rate | $\frac{A1a}{CVAP} \times 100$ |
| Active CVAP registration rate | $\frac{A1b}{CVAP} \times 100$ |
| Percentage of registrations that were new and valid | $\frac{A3b}{A3a} \times 100$ |
| Percentage of registrations that were duplicates | $\frac{A3d}{A3a} \times 100$ |
| Percentage of registrations that were rejected | $\frac{A3e}{A3a} \times 100$ |
| Percentage of registrations that were within-jurisdiction changes | $\frac{A3f}{A3a} \times 100$ |
| Percentage of total registration forms that were received by mail | $\frac{A4a}{A3a} \times 100$ |
| Percentage of total registration forms that were received in person at election or registrar offices | $\frac{A4b}{A3a} \times 100$ |
| Percentage of total registration forms that were submitted by individual voters through web-based online registration systems | $\frac{A4c}{A3a} \times 100$ |
| Percentage of total registration forms that were received through motor vehicle agencies | $\frac{A4d}{A3a} \times 100$ |
| Voter registration removal rate as a percentage of total registrants | $\frac{A9a}{A1a} \times 100$ |
| Percentage of FPCAs that were rejected | $\frac{B3a}{B2a} \times 100$ |
| Percentage of total transmitted UOCAVA ballots that were returned by voters | $\frac{B9a}{B5a} \times 100$ |
| Percentage of total transmitted UOCAVA ballots that were returned by voters and counted | $\frac{B14a}{B9a} \times 100$ |
| Percentage of total transmitted UOCAVA ballots that were returned by voters and rejected | $\frac{B18a}{B9a} \times 100$ |
| Percentage of FWABs returned by UOCAVA voters that were counted | $\frac{B24a}{B23a} \times 100$ |

| EAVS Rate | Calculation |
|--|--|
| Percentage of FWABs returned by UOCAVA voters that were rejected | $\frac{(B25a + B26a + B27a)}{B23a} \times 100$ |
| Percentage of transmitted mailed ballots that were returned by voters | $\frac{C1b}{C1a} \times 100$ |
| Percentage of transmitted mailed ballots that were returned and counted | $\frac{C3a}{C1b} \times 100$ |
| Percentage of transmitted mailed ballots that were returned and rejected | $\frac{C4a}{C1b} \times 100$ |
| Percentage of provisional ballots that were counted, either in full or in part | $\frac{(E1b + E1c)}{(E1b + E1c + E1d + E1e)} \times 100$ |
| Percentage of provisional ballots that were rejected | $\frac{E1d}{(E1b + E1c + E1d + E1e)} \times 100$ |
| Voter turnout rate by CVAP | $\frac{F1a}{CVAP} \times 100$ |
| Percentage of ballots that were cast at a physical polling place on Election Day | $\frac{F1b}{F1a} \times 100$ |
| Percentage of ballots that were cast as mailed ballots | $\frac{(F1d + F1g)}{F1a} \times 100$ |
| Percentage of ballots that were cast at an in-person early voting location | $\frac{F1f}{F1a} \times 100$ |
| Percentage of ballots that were cast by UOCAVA voters | $\frac{F1c}{F1a} \times 100$ |
| Percentage of ballots that were cast by provisional voters | $\frac{F1e}{F1a} \times 100$ |

