

Oversight Overview: Elections Oversight (Transcript)

Welcome to Oversight Overview, a video series by the Levin Center's State Oversight Academy at Wayne State University Law School. We will take a look at how states across the country are performing oversight of a particular issue, or in a particular way. Today, we will be examining legislative oversight of elections.

Before we talk about legislative oversight in the states, we need to do the briefest of overviews on the structure of our election system, because it's the states that run the show! The system is decentralized, so it varies from state-to-state, and while we won't be able to do it justice in just a couple of minutes, we will link to a great breakdown by the National Conference of State Legislatures in the accompanying document. To summarize:

The National Voter Registration Act of 1993 requires that "each state shall designate a state officer or employee as the chief state election official." Voters elect this official in 33 states – in 31 states, it's the Secretary of State, and in two, it's the lieutenant governor. In four states, the governor appoints a Secretary of State, and in two, the governor appoints a Commissioner of Elections. The chief election official is selected by the legislature in four states. In Oklahoma, only the Senate makes this appointment, but the other states involve both chambers. In seven states and Washington, D.C., the top election official is appointed by the state's election board or commission.

In 10 states and D.C., the chief election official is a member of the board or commission of elections, and in seven states, the Secretary of State and the board or commission of elections work together to oversee elections. Members of election boards and commissions are usually appointed by the governor and are bipartisan.

Then, there is election administration at the local level, which usually occurs at the county level. There are over 10,000 election jurisdictions in the country, and NCSL provides a very comprehensive table on their site. But we have to move on!

Now that we understand who runs the elections, we'll look at legislative oversight of elections in three states – New Hampshire, New York, and Wisconsin. Committees in these states have been addressing a host of elections topics. First, let's head to New Hampshire.

New Hampshire's House Committee on Election Law is bipartisan, split evenly between democrats and republicans. The 20 members are charged with considering "all matters relating to the election laws of the state, including campaign finance, the Ballot Law Commission, redistricting, and such other matters as may be referred to it" (House Rule 31). This year, the Democratic National Committee's presidential primary calendar made New Hampshire the second primary. The state has held the first presidential primary since 1920, and it became state law that they were to be first in the nation in 1975.

In response to the DNC calendar, the Senate unanimously passed Constitutional Amendment 9, which would mandate that the state hold the first presidential primary. However, when the bill was referred to the House Committee on Election Law, the members voted unanimously against the bill, deeming it “inexpedient to legislate.” They believe that state law already addresses this issue and amending the constitution would be superfluous. The House vote on the amendment was postponed in June 2023 and the issue has not, as of October 2023, been picked up again. A legislatively referred constitutional amendment requires 60% of the votes in both houses of the General Court to be added to the ballot for voters to decide.

The committee, as overseer of the Ballot Law Commission, is also considering how to fund new voting machines. The state’s current machines will stop being supported after 2024 and will need to be replaced. There is a bill currently in committee that would allow grants to be given to municipalities for the purchases of elections equipment, and a public hearing was held earlier this year. The Ballot Law Commission is holding demonstrations of three new voting machines for the public to learn about and test.

Now, let’s take a hike over to New York. New York’s Senate Committee on Elections has a bit of a different makeup, with two democrats, two conservative republicans, and three members of the Working Families Party who also identify as democrats. Not exactly bipartisan, but it is comparable to the makeup of the Senate as a whole. The committee “has legislative oversight responsibilities for issues concerning election security, voter registration, and State of Board Elections practices and procedures.” In 2021, in response to a tabulation error by the New York City Board of Elections, the Senate Committee on Elections held five hearings with testimony from over 100 people to determine what reforms were needed to address issues facing the state’s voters. Common themes of the testimony included voter registration and outreach, poll worker experiences, election day operations, absentee voting, communication and information sharing, and the structure of state and local boards of elections.

The Committee released a report on its investigation in November of 2021, which included recommendations including structural and operational reforms, changes to law to make voting easier, and passage of the John R. Lewis New York Voting Rights Act. This session, the legislature has passed several bills regarding elections. Some, like the New York Early Mail Voter Act, are intended to strengthen early voting methods. Others enhance voter education by requiring local jails to provide voter registration information to inmates who will be eligible to vote when they are released and mandating the State Board of Elections to provide a training program for poll workers. A final package related to the presidential primaries, setting the date of the 2024 primary and prohibiting “faithless electors” – or electors who cast their vote at the Electoral College for someone other than the candidate who won the popular vote in the state.

Finally, let’s head over to Wisconsin. The Wisconsin Assembly Committee on Campaigns and Elections, while not well-balanced with six republicans and three democrats, is actually working

in quite a bipartisan fashion. Though its purpose and jurisdiction are not stated on its website or in the assembly rules, the committee reported to the State Oversight Academy that it “is determined to improve public trust in” the state’s elections by “reviewing election procedures...identifying issues...and working to reduce or eliminate such issues.” The committee starts from the position that the state’s elections work well, but there is always room for improvement. They are responsible for oversight of the Wisconsin Elections Commission, which oversees elections and election law. The committee strives to work in a “bipartisan, fact-based manner” with all involved in improving Wisconsin’s elections – Levin Center approved!

Examining the committee’s work this year, it appears to be practicing what it is preaching. It has held public hearings on several bipartisan bills, including those that would:

- Require the Wisconsin Elections Commission to reimburse counties and municipalities for certain special elections.
- Require recordings of municipality canvassing proceedings that are broadcast live on election night to be retained for 22 months.
- Require public officials convicted of campaign finance law violations dissolve their candidate committees and return all remaining funds to donors.
- Simplify the process of collecting and counting signatures on nomination papers. And
- Prohibit municipalities from closing more than half of their polling places within 30 days of an election.

The committee recently invited county and municipal clerks to testify about how they believed the election system could be improved.

So, what have we learned about legislative oversight of elections? First, it’s best when it is bipartisan, but even if your committee isn’t balanced, you can choose bipartisanship. It is important to identify what works well in the system before looking for areas that need improvement and stick to verifiable facts. Finally, transparency and accountability are crucial for public trust in our elections.

We’ll be back soon for another Oversight Overview, but until then, we’re heading back to the Levin Center in Detroit. If there is a topic you’d like to see us cover or if you have any questions about oversight in your state, we’d love to hear from you. Please check out the State Oversight Academy website at stateoversight.org. Our contact information and links to the offices you’ve seen in this video are available in the accompanying document. Thanks for joining us!