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The Policy Views of Partisan Election Officials*

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In the debate about partisan election administration, little attention has been focused on the views of local election officials. Election officials can be purveyors of partisanship as well as observers of the election administration environment. We use a series of national surveys of local election officials to examine the degree to which local officials of opposing parties have different policy preferences about election administration. We find that partisan differences are largely confined to officials serving heavily populated local jurisdictions. We also examine whether partisanship is related to the views of local officials toward state election administration. We find evaluations of state administrators have less to do with party affiliation and more to do with outside forces largely beyond their control.

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Three presidential election cycles beyond the fateful 2000 elections, and a decade beyond the passage of the Help America Vote Act of 2002 (HAVA),¹

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1. Help America Vote Act of 2002, 42 U.S.C. §§ 15301–15545 (2006).

scholars, journalists, and advocates still debate election procedures.² One major reform that has not received serious attention from policymakers is to change the way in which most local election officials are chosen.³ Some advocate switching to more independent and nonpartisan election officials at the state and local level.⁴ In part, this is a reaction to instances of partisan election officials behaving incompetently or in ways that seem designed to further the interests of their political party rather than those of the broader voting public.⁵

Furthermore, many observers lament the decentralized nature of election administration in the United States.⁶ In this country, there are thousands of local officials managing elections in counties or towns, and local officials vary in terms of their party affiliation and the manner in which they are chosen. Almost two-thirds of local election officials (LEOs) are elected to their positions (the remainder are appointed).⁷ For approximately half of local election officials, their affiliation with one of the two major political parties is a critical feature of the selection process.⁸ This local variation provides scholars with some leverage to examine the impact of different methods for selecting LEOs. For example, some evidence indicates that election officials who are elected behave differently than appointed officials.⁹ In some instances, it appears that Democratic election officials behave differently than Republican officials.¹⁰ Interestingly, the attitudes

2. See, e.g., *Nonpartisan Election Officials*, FAIRVOTE, <http://archive.fairvote.org/?page=70> (last visited Aug. 29, 2012).

3. MARTHA KROPF & DAVID C. KIMBALL, *HELPING AMERICA VOTE: THE LIMITS OF ELECTION REFORM* 96–100 (2012); see also RICHARD L. HASEN, *THE VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN* 105–10 (2012) (describing an Ohio secretary of state's controversial election decisions in 2008 involving instructions given to local election officials).

4. See, e.g., Daniel P. Tokaji, *The Future of Election Reform: From Rules to Institutions*, 28 *YALE L. & POLY REV.* 125, 131–37 (2009); *Nonpartisan Election Officials*, *supra* note 2; Robert A. Pastor, *Nonpartisan Election Administration: Model Legislation for the States*, AM. UNIV. CTR. FOR DEMOCRACY & ELECTION MGMT. (July 15, 2009), <http://www.american.edu/spa/cdem/upload/nonpartisanmodellegislation08-2009.pdf>.

5. HEATHER K. GERKEN, *THE DEMOCRACY INDEX: WHY OUR ELECTION SYSTEM IS FAILING AND HOW TO FIX IT* 16–23 (2009); Daniel P. Tokaji, *Lowenstein Contra Lowenstein: Conflicts of Interest in Election Administration*, 9 *ELECTION L.J.* 421, 422 (2010); see also HASEN, *supra* note 3, at 21–23.

6. GERKEN, *supra* note 5, at 20–23; HASEN, *supra* note 3, at 2–5; Tokaji, *supra* note 4, at 141 (“[Decentralization] does not eliminate the problems that exist when a state chief election official employs considerable discretion to administer state election law in a manner that benefits his or her party.”).

7. David C. Kimball & Martha Kropf, *The Street-Level Bureaucrats of Elections: Selection Methods for Local Election Officials*, 23 *REV. POL'Y RES.* 1257, 1261 (2006).

8. See *id.* at 1259–61.

9. See Barry C. Burden et al., *The Effect of Administrative Burden on Bureaucratic Perception of Policies: Evidence from Election Administration*, 72 *PUB. ADMIN. REV.* 741, 748 (2012). But see Martha Kropf et al., *Representative Bureaucracy and Partisanship: The Implementation of Election Law*, 73 *PUB. ADMIN. REV.* 242, 248 (2013) (finding no difference between elected and appointed officials in terms of attitudes toward provisional voting).

10. See, e.g., David C. Kimball et al., *Helping America Vote? Election Administration, Partisanship,*

expressed by local election officials have received relatively little study, in spite of a rather longstanding assumption by many scholars that the attitudes of government officials influence their behavior.¹¹ Given the decentralized nature of election administration, local election officials may be less vigorous in enforcing election laws that they do not support.¹² In addition, the relationship between a local official and the state officer running elections has received even less attention—how does partisanship affect the perceptions of local officials toward the state officials?

The purpose of this Article is to examine the attitudes of local election officials toward election policies and about the perceived level of contentiousness in their local jurisdiction and in their state. Election officials can be both purveyors and observers of partisan conflict in election administration. Do Democratic and Republican officials have different election policy preferences? Do local officials perceive that partisan conflict permeates election administration in their state or locality? How does the partisanship of the top state election official affect that perception? In the last few years, a series of national surveys of local election officials have been conducted. We merged data from three such surveys with data on the selection method and partisanship of local election officials.¹³ Two of the surveys were conducted under the auspices of the Congressional Research Service (2005 and 2007)¹⁴ and the other under the Pew Center on the States.¹⁵ These data allowed us to examine the degree to which partisanship correlates with the observations and policy preferences of local election officials.

These surveys also allowed us to examine whether partisanship affects what is a key relationship in most, if not all, states: the relationship between state and local election officials. In particular, we could examine whether having a partisan state official affects the perception of conflict in local jurisdictions and satisfaction with the state election office. If the party affiliations of state and local officials have little bearing on these perceptions, then one may wonder whether a move to nonpartisan administrators would substantially change the relationship between state and local election officials.

and *Provisional Voting in the 2004 Presidential Election*, 5 ELECTION L.J. 447, 448–50 (2006); Kropf et al., *supra* note 9, at 247–50; Guy Stuart, *Databases, Felons, and Voting: Bias and Partisanship of the Florida Felons List in the 2000 Elections*, 119 POL. SCI. Q. 453, 461–63 (2004).

11. Kenneth J. Meier, *Representative Bureaucracy: A Theoretical and Empirical Exposition*, 2 RES. PUB. ADMIN. 1, 4–5 (1993); Sally Coleman Selden et al., *Bureaucracy as a Representative Institution: Toward a Reconciliation of Bureaucratic Government and Democratic Theory*, 42 AM. J. POL. SCI. 717, 718–19 (1998).

12. E.g., Kropf et al., *supra* note 9, at 247–48.

13. Kimball & Kropf, *supra* note 7, at 1261–62.

14. Donald P. Moynihan & Carol L. Silva, *The Administrators of Democracy: A Research Note on Local Election Officials*, 68 PUB. ADMIN. REV. 816, 816 (2008).

15. David C. Kimball & Brady Baybeck, *Are all Jurisdictions Equal? Size Disparity in Election Administration*, 12 ELECTION L.J. 130, 131–32 (2013); *Back to Paper*, ELECTIONONLINE.ORG (Feb. 17, 2008), http://www.pewstates.org/uploadedfiles/pes_assets/2008/eb21brief.pdf.

In general, we found considerable variation in the policy preferences of local election officials. However, in these different surveys of local election officials, we observed partisan differences in their policy views only in those jurisdictions that are heavily populated. In addition, LEO evaluations of the environment in which they work were more strongly influenced by outside forces, such as the presidential campaign and difficulties implementing HAVA, than by their own party affiliation.

I. PARTISANSHIP IN ELECTION ADMINISTRATION

A political environment characterized by increasing partisan polarization¹⁶ and a series of competitive national elections, particularly the presidential election of 2000, have fueled a growing number of clashes over election procedures in the United States.¹⁷ In this climate, there is an increased perception that candidates and political parties may try to manipulate election laws and procedures for political gain.¹⁸

In recent years, partisan conflicts are evident in legislative debates in Congress and in many state legislatures about photo ID requirements for voters, restoring voting rights for felons, purging inactive and ineligible voters from registration lists, Election Day (and Same Day) registration, curbs on registration efforts by outside groups, limits on early voting, and other election laws.¹⁹ In general, Democratic policy makers tend to prefer policies that reduce barriers to voting, while Republican lawmakers tend to prefer policies that reduce election fraud.²⁰ In legislative debates, the two policy goals are often set in opposition and against one another in a zero-sum framework. For example, policies to combat fraud are often described by opponents as increasing barriers to voting.²¹ Similarly, policies to reduce voting barriers are often perceived by opponents as increasing opportunities for fraud.²² In addition, there is some evidence of partisan divisions in public opinion on election administration issues. For example, Republicans tend

16. NOLAN McCARTY ET AL., POLARIZED AMERICA: THE DANCE OF IDEOLOGY AND UNEQUAL RICHES 1–3 (2006); RICHARD G. NIEMI ET AL., *Is the American Electorate Polarized?*, in *CONTROVERSIES IN VOTING BEHAVIOR* 221, 223–27 (Richard G. Niemi et al. eds., 5th ed. 2011).

17. HASEN, *supra* note 3, at 5; Richard L. Hasen, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown*, 62 WASH. & LEE L. REV. 937, 946–59 (2005).

18. Daniel P. Tokaji, *Early Returns on Election Reform: Discretion, Disenfranchisement, and the Help America Vote Act*, 74 GEO. WASH. L. REV. 1206, 1248 (2005).

19. ROBERT PASTOR, AM. UNIV. CTR. FOR DEMOCRACY & ELECTION MGMT., *VOTER IDS ARE NOT THE PROBLEM: A SURVEY OF THREE STATES* 3–4 (2008); Stuart, *supra* note 10, at 454–56, 458–61.

20. HASEN, *supra* note 3, at 6–8; KROPF & KIMBALL, *supra* note 3, at 100–01.

21. See PASTOR, *supra* note 19, at 3.

22. See HASEN, *supra* note 3, at 109–10 (discussing a dispute in Ohio over a five-day period during the 2008 election during which a person could simultaneously register to vote and cast an early ballot).

to believe that voter fraud and impersonation occur more frequently than Democrats do.²³

In terms of the administration of elections, there is some evidence of partisan differences in the implementation of election law across local jurisdictions. For example, Stuart found differences between Democratic and Republican local officials in Florida in their enthusiasm for purging voter registration lists.²⁴ Other studies have found partisan differences in the administration and implementation of provisional voting.²⁵ Recent research further indicates that partisan attitudes have a direct impact on program administration—at least in the administration of provisional voting.²⁶ However, we do not yet know much about partisan differences in policy attitudes among local election officials.²⁷

This is not to say that we do not have some excellent information about LEO attitudes. In fact, Moynihan and Silva found a variety of attitudes toward recent federal election law changes due to local resource constraints, goal congruence, and willingness to accept federal involvement in elections.²⁸ However, we do not know whether such attitudes are rooted in partisanship.

It would not be surprising to find partisan differences among LEOs. Political scientists argue that an individual's attachment to a political party develops early in life and may even grow stronger with time.²⁹ Officials may try to leave these attitudes at the courthouse steps, given the job, but there appears to be a conflict of interest between serving one's political party and serving the public interest.³⁰ For example, in the case of provisional voting, there is some evidence that partisanship does affect LEO attitudes and program administration.³¹

Furthermore, LEOs operate in a partisan context where external forces are likely to affect the attitudes of officials and the implementation of election programs. State legislatures sometimes pass partisan legislation designed to tilt the electoral playing field in favor of the majority party.³² Partisan governors occasionally make demands on the way election officials do their jobs.³³ Political parties and interest groups file lawsuits challenging election laws and

23. Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARV. L. REV. 1737, 1761 (2008).

24. Stuart, *supra* note 10, at 461–62.

25. HASEN, *supra* note 3, at 112, 148–49; KROPF & KIMBALL, *supra* note 3, at 103–06; Kimball & Kropf, *supra* note 7, at 1258–59.

26. Kropf et al., *supra* note 9, at 247–48.

27. See Kimball & Baybeck, *supra* note 15, at 135–36.

28. Moynihan & Silva, *supra* note 14, at 821–22.

29. E.g., DONALD GREEN ET AL., PARTISAN HEARTS & MINDS: POLITICAL PARTIES AND THE SOCIAL IDENTITIES OF VOTERS 2–5 (2002).

30. Tokaji, *supra* note 5, at 422, 431–35.

31. Kropf et al., *supra* note 9, at 247.

32. See, e.g., Tokaji, *supra* note 18, at 1207, 1220–24, 1228–29, 1242–43.

33. See, e.g., Tokaji, *supra* note 4, at 134.

administrative practices.³⁴ As Hasen notes, the annual number of election lawsuits in the United States has doubled since 2000.³⁵ Activists and opinion leaders make provocative, and often unsubstantiated, claims about voter fraud or voter suppression.³⁶ In an increasingly polarized body politic, all of these activities bring partisan conflict to state and local election officials whether they want it or not. And we cannot discount the idea that these external forces may also affect who is selected to be the person administering elections in a particular jurisdiction—a person who may or may not share attitudes with the “powers that be” or the majority of the electorate.

We also expect that the effects of partisanship on LEO policy preferences and attitudes regarding the contentiousness of the election environment will be conditioned by the size of the jurisdiction. Research indicates that partisan political activity is more prevalent in heavily populated local jurisdictions.³⁷ This factor may have a direct effect on behavior—and the reported attitudes and perceptions of LEOs. Another reason to expect that partisan LEOs in larger jurisdictions think differently than those in smaller jurisdictions rests on the assumptions one makes about the nature of politics in a large jurisdiction. If one thinks that there is partisan manipulation on the part of “external forces” such as political parties, one can assume that manipulation is strategic; the parties will focus their efforts where they can influence the most voters in the most “important” elections and using the fewest resources. Therefore, since manipulating elections in heavily populated local jurisdictions could affect the outcome of relatively close statewide elections, then affecting the decisions of LEOs in large jurisdictions may be seen as more efficient. We expect that the same will hold for lawsuits and potential rule changes. In contrast, officials in smaller jurisdictions, because they serve so few voters, would have much less of an impact on the outcome of state elections. As a result, we expect that partisan disputes over election administration are most likely to be fought either at the state level or in large local jurisdictions.

To summarize, we expect that jurisdiction size strengthens the impact of partisanship on the policy attitudes and perceptions of local election officials. If partisan disputes over election administration are more likely to occur in large jurisdictions, then it also seems logical to hypothesize that local officials in large jurisdictions are more likely to take a position in those disputes. As a result, party positions on election policies are more likely to be internalized by local officials in large jurisdictions. And, ultimately, political parties likely make more of an effort

34. HASEN, *supra* note 3, at 134.

35. *Id.*

36. See, e.g., Ryan Joyce, Note, *ACORN and the 2008 Presidential Election Campaign: Perspectives on Alleged Third-Party Voter-Registration Fraud*, 71 U. PITT. L. REV. 313, 318–19 (2009).

37. Kimball & Baybeck, *supra* note 15, at 132–33, 135.

to influence the selection of election officials in large jurisdictions than in small ones.

However, it is not just jurisdiction size that affects perceptions of contentiousness and policy attitudes. We also expect that parties and their allies will make an extra effort to influence election administration in battleground states, the most competitive states in a presidential campaign. The presidency is by far the most influential elected position in American politics, and the presidential campaign dominates other contests in terms of the resources and personnel deployed. As a result, political parties pay special attention to manipulating election laws in states most likely to swing the outcome of a presidential election. It is no coincidence that Ohio and Florida, two perennial battleground states, are frequent targets of election legislation and litigation where the two major parties are on opposing sides.³⁸ Thus, we expect that local officials working in battleground states will report more political conflict in election administration. In the rest of the Article, we examine data from surveys of local election officials to analyze the role of partisanship in their attitudes toward election administration.

II. DATA

We examined data from three national surveys of local election officials, conducted in 2005, 2007, and 2009. The 2005 and 2007 surveys were conducted in a similar fashion, shortly after the fall national elections and continuing into the spring of the following year. The sampling frame for these two surveys was based on a national database of local election officials created by the Election Reform Information Project, and samples were drawn using a stratified method based on the number of local jurisdictions in a state. The data were collected primarily by an electronic survey, with paper surveys mailed to nonrespondents. Each of the two surveys produced over 1500 respondents, a roughly forty percent response rate in each case. For more details on the 2005 and 2007 surveys of local election officials, see Moynihan and Silva (2008).³⁹

The 2009 survey of local election officials was conducted from December of 2008 to March of 2009 based on a sampling frame of 10,370 local jurisdictions in the United States with responsibility for hiring and training poll workers. A stratified sample was drawn from that list based on the number of voters in each local jurisdiction. An electronic survey was sent to local officials with an e-mail address and a paper survey was mailed to the other local officials. The data collection produced 900 respondents, a response rate of thirty-one percent. The 2009 survey is described in more detail by Kimball and Baybeck.⁴⁰ For all three surveys, we matched the survey responses to data on the party affiliation and

38. See Tokaji, *supra* note 18, at 1209–10, 1220–39.

39. Moynihan & Silva, *supra* note 14, at 817–24.

40. Kimball & Baybeck, *supra* note 15, at 131–32.

method of selection of the local election official. For the 2005 and 2007 surveys, the matched data on the partisanship and method of selection of local officials come from Kimball and Kropf.⁴¹ For the 2009 survey, the matched data were compiled separately for the jurisdictions in the survey sample.⁴² The appendix provides some evidence that each of the surveys provided a representative sample of local election officials in the United States.

III. ELECTION POLICY PREFERENCES OF LOCAL OFFICIALS

We first attempt to answer a fundamental question about election administrators. That is, do Democratic and Republican local election officials have different views about election law? We start by examining the ideological positions of local election officials. The 2007 national survey asked local officials to place themselves on an ideological scale from one (“strongly liberal”) to seven (“strongly conservative”). Figure 1 indicates that the ideological gulf between Democratic and Republican local officials is much more pronounced in large jurisdictions than in small jurisdictions. We defined a large local jurisdiction as one that serves more than 40,000 voters in a presidential election. Like the American public,⁴³ local election officials, on average, identify somewhat more toward the conservative side of the ideological spectrum. In the more numerous small local jurisdictions, Republican officials are slightly more conservative than Democratic and nonpartisan local officials (a difference of just less than half a point on the seven-point ideology scale). However, in large jurisdictions the difference between the average Republican and average Democratic local official is more than one and a half points. As the figure shows, the partisan divide in ideology among local election officials is much more evident in large jurisdictions.

The more important question is whether Republican and Democratic election officials have different preferences when it comes to particular election laws. One election policy that has been the subject of growing partisan disagreement is whether to require voters to show photo ID when they vote.⁴⁴ In state legislative debates, photo ID laws have been strongly supported by Republicans and usually opposed by Democrats.⁴⁵ Thus, one might expect Republican local election officials to be the strongest supporters of a photo ID requirement. The 2007 national survey included three questions about a photo ID requirement and its likely impact on elections. Support for a photo ID requirement was measured on a scale from zero to ten, with higher numbers

41. Kimball & Kropf, *supra* note 7, at 1260–62.

42. Kimball & Baybeck, *supra* note 15, at 135.

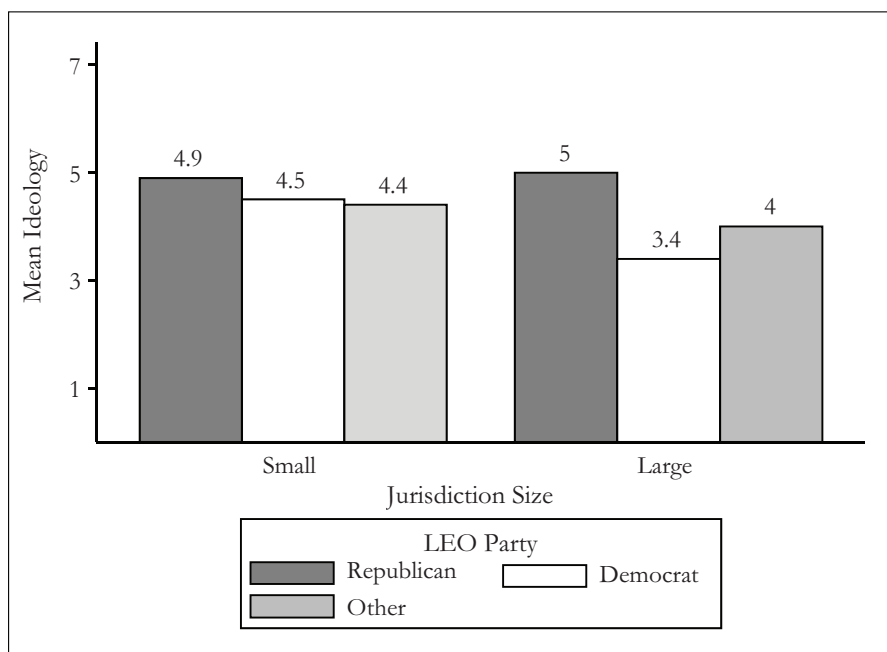
43. ROSALEE A. CLAWSON & ZOE M. OXLEY, PUBLIC OPINION: DEMOCRATIC IDEALS, DEMOCRATIC PRACTICE (2d ed., 2013).

44. PASTOR, *supra* note 19, at 3–8.

45. *Id.* at 4.

indicating stronger support.⁴⁶ We found considerable variation among the local election officials, although, on average, they leaned toward supporting a photo ID requirement. Approximately twenty-five percent of local officials gave a response less than four, and more than forty-five percent gave a response higher than seven.

Figure 1: Mean LEO Political Ideology by Party Affiliation and Size of Jurisdiction⁴⁷



The results in Table 1 show that partisan differences in LEO attitudes toward photo ID requirements exist only in large jurisdictions. On average, Republican, Democratic, and nonpartisan local officials in small jurisdictions (those serving less than 40,000 voters) share the same views about photo ID: mild support for the requirement, a belief that it will modestly improve election security, and a belief that it will slightly reduce voter turnout. In contrast, we observed more polarized opinions among officials serving large jurisdictions. In large jurisdictions, Republican officials are substantially more supportive of the

46. We do find stronger support for a photo ID requirement among officials from states that have already imposed that requirement. Support for a photo ID requirement is only weakly associated with perceptions of voter fraud. When asked to respond to a statement that deliberate voter fraud is a serious problem in their jurisdiction, over ninety percent of local officials strongly disagreed.

47. Source: 2007 Survey of Local Election Officials.

photo ID requirement and more optimistic about its impact on election security and turnout than Democratic and nonpartisan local officials.

Table 1: Mean Photo ID Attitudes by LEO Partisanship and Size of Jurisdiction⁴⁸

| Jurisdiction Size | Support Photo ID Requirement | | Photo ID Impact on Security | | Photo ID Impact on Voter Turnout | |
|-------------------|------------------------------|-------|-----------------------------|-------|----------------------------------|-------|
| | Small | Large | Small | Large | Small | Large |
| LEO Party | | | | | | |
| Republican | 6.3 | 7.9* | 2.4 | 3.4* | -1.1 | -0.2* |
| Democrat | 6.3 | 4.9 | 2.4 | 1.5 | -1.1 | -1.4 |
| Other/Nonpartisan | 6.2 | 4.5 | 2.5 | 1.6 | -1.1 | -1.8 |
| N | 1030 | 199 | 1028 | 199 | 1025 | 199 |

Note: Cell entries are group means for responses to each question. Large jurisdictions served at least 40,000 voters in the 2004 presidential election. Small jurisdictions served fewer than 40,000 voters. The support for photo ID scale ranges from zero (“[n]ot support at all”) to ten (“[e]xtremely supportive”). The impact on security scale ranges from negative five (“[l]ess secure”) to positive five (“[m]ore secure”). The impact on turnout scale ranges from negative five (“[d]ecreased turnout”) to positive five (“[i]ncreased turnout”).

* Differences between Republican and other local election officials are statistically significant at $p < 0.01$.

We found a very similar pattern in the 2009 national survey of local election officials. The survey included two questions about antifraud policies: (1) a photo ID requirement for all voters and (2) deleting names from registration lists if they do not match other state records.⁴⁹ The survey also included two questions about proposals to make voter registration easier: (1) Election Day registration and (2) automatically registering all citizens over eighteen years of age.⁵⁰ Officials rated their preference for each policy on a scale from one (“[s]trongly oppose”) to five (“[s]trongly favor”).⁵¹ We expected to find that Republican local officials are more supportive of the antifraud policies while Democratic officials offer more support for the policies to ease voter registration. Among these four items, the antifraud measures are more popular among local officials than policies to ease voter registration. We again found substantial variation in support for these election

48. Source: 2007 Survey of Local Election Officials.

49. Kimball & Baybeck, *supra* note 15, at 135.

50. *Id.*

51. *Id.*

policies. Each item has a standard deviation greater than 1.2. Given that each item has a range of four, the standard deviation figures indicate considerable variation in the election reform policy attitudes of local election officials.

Table 2: Mean Support for Election Policies by LEO Partisanship and Size of Jurisdiction⁵²

| Jurisdiction Size | Require Photo ID to Vote | | Delete Names if No Match to Other Lists | | Election Day Registration | | Automatic Registration | |
|-------------------|--------------------------|-------|---|-------|---------------------------|-------|------------------------|-------|
| | Small | Large | Small | Large | Small | Large | Small | Large |
| LEO Party | | | | | | | | |
| Republican | 3.9 | 4.1* | 3.0 | 3.0* | 1.5 | 1.4* | 2.2 | 2.0* |
| Democrat | 3.9 | 3.2 | 2.9 | 2.4 | 1.6 | 1.9 | 2.3 | 2.5 |
| Other/Nonpartisan | 3.7 | 3.6 | 3.1 | 2.8 | 3.2 | 2.3 | 2.6 | 2.6 |
| <i>N</i> | 486 | 237 | 486 | 232 | 486 | 237 | 486 | 232 |

Note: Cell entries are group means for responses to each question. The policy scales range from one (“[s]trongly oppose”) to five (“[s]trongly favor”). * Differences between Republican and Democratic local election officials are statistically significant at $p < 0.01$.

We compared mean support for each of the four policies by partisanship and jurisdiction size in Table 2. Once again, we only observed significant differences between Democratic and Republican local officials in large jurisdictions. On the antifraud measures, local officials of each party in small jurisdictions tend to offer moderate support for a photo ID requirement and take a neutral position on “no match, no vote” policies. In large jurisdictions, Republican officials indicated stronger support for both antifraud policies than Democratic or nonpartisan officials. We tended to observe opposition among local officials, on average, to the two policies to make voter registration easier. In addition, the positions of Democrats and Republicans in small jurisdictions are very similar. In large jurisdictions, however, Republican officials are more opposed to Election Day registration and automatic registration than Democrats. We also observed stronger support for Election Day registration among nonpartisan officials than among either major party. This is likely due to the fact that nonpartisan local election officials are heavily concentrated in states that already allow Election Day registration, where the policy is more popular than in the rest of the nation.

Overall, the survey data support a consistent conclusion. There are significant differences between the policy preferences of Democratic and Republican local officials serving heavily populated local jurisdictions but little to

52. Source: 2009 Survey of Local Election Officials.

no partisan differences among election officials in small jurisdictions.⁵³ On the one hand, local election officials serving in large jurisdictions are a relatively small fraction of the universe of local officials. That is, they comprise less than ten percent of local administrators in the United States. On the other hand, local administrators in large jurisdictions serve roughly seventy percent of the voters in national elections.⁵⁴ Thus, a large number of voters may be affected if partisanship influences the way those officials administer elections.

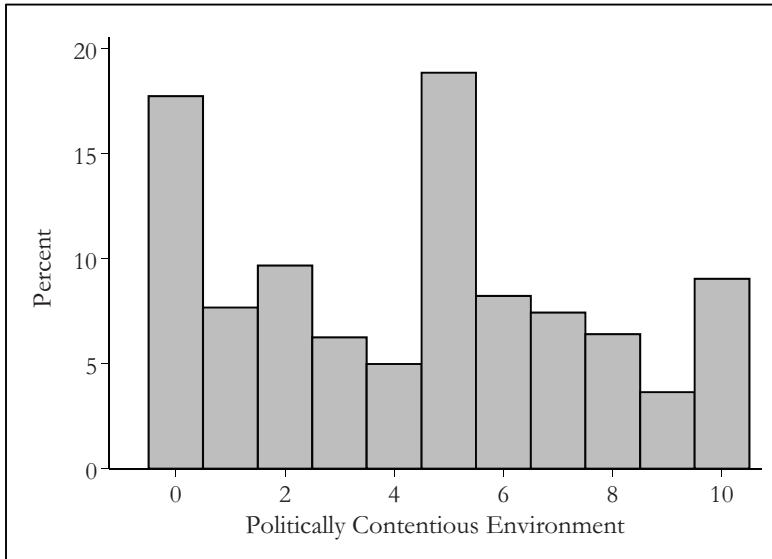
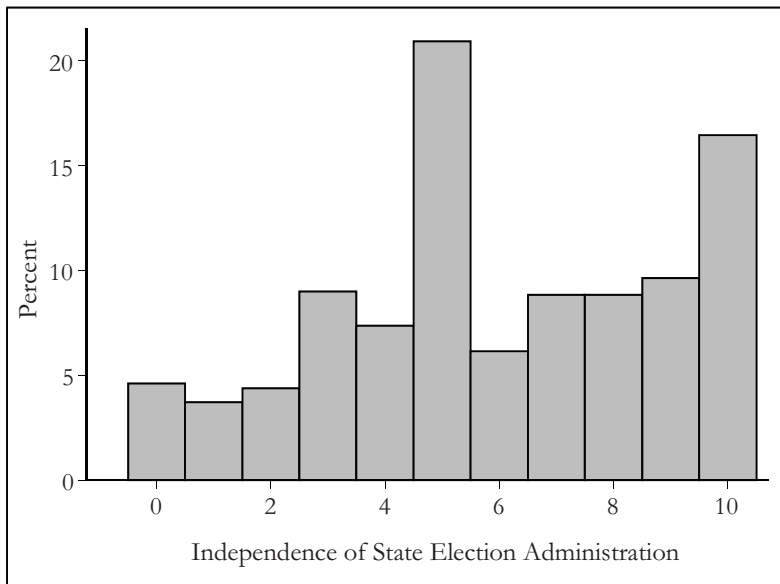
IV. EVALUATIONS OF STATE AND LOCAL CONDITIONS

We also examined the attitudes of local election officials about the environment in which they work. We have some data to test whether local officials report partisan conflict as a problem in their work. The 2007 national survey asked local election officials to indicate the level of political conflict in the environment in which they operate. Local officials answered on a scale from zero (“not contentious at all”) to ten (“extremely contentious”). Figure 2 provides the distribution of responses to this question and it shows substantial variation. While the average official tended toward the perception of “less contentious,” thirty-five percent of officials reported more than a moderately contentious election environment.

Two additional questions on the 2007 survey asked about state election administrators. One question asked local officials whether state election administration is independent of partisan politics. Respondents rated state administrators on a scale from zero (“not independent at all”) to ten (“very independent”). Figure 3 provides the distribution of responses. While local officials tended to report that state administration is independent of partisan politics, more than twenty-five percent of local officials placed their state administrators on the lower half of the scale. When we take the first two questions together, a significant minority of local officials reported a fair amount of political and partisan conflict in election administration.

53. *Id.*

54. *Id.* at 13.

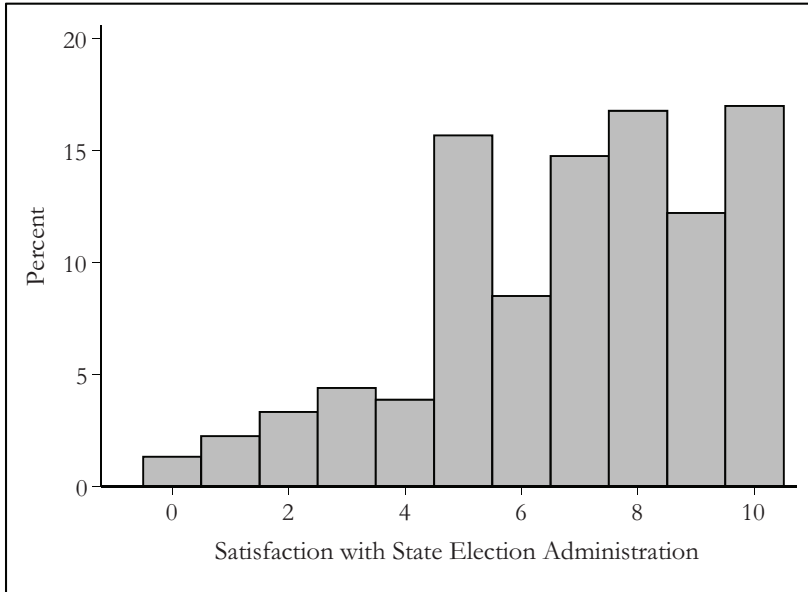
Figure 2: How Politically Contentious Is Election Administration?⁵⁵**Figure 3:** Is State Election Administration Independent of Partisan Politics?⁵⁶

55. Source: 2007 Survey of Local Election Officials. Note: The scale ranges from zero ("not contentious at all") to ten ("extremely contentious").

56. Source: 2007 Survey of Local Election Officials. Note: The scale ranges from zero ("not independent at all") to ten ("very independent").

A final question asked local officials how satisfied they are with election administration in their state. Local officials responded on a scale from zero (“not satisfied at all”) to ten (“extremely satisfied”). The distribution of responses is pictured in Figure 4. The graph shows generally positive evaluations of state election administration—only fifteen percent of local officials chose responses in the bottom half of the scale.

Figure 4: Satisfaction with State Election Administration⁵⁷



We conducted further analyses of responses to these three questions to assess whether evaluations of the state and local environment are shaped more by LEO party affiliation or by outside forces. One of the most important outside forces may be the party affiliation of the state official. But other forces may also influence how the official evaluates the election administration environment. Each of the items evaluating the election administration environment pictured above serves as a dependent variable in a regression function. We included several independent variables, described below, as predictors of the perceptions of local election officials. We did not find significant differences between Democratic, Republican, and nonpartisan local officials in their evaluations of state administrators and the local environment. Instead, the party affiliation of the top state election official may be more important for these evaluations.

57. Source: 2007 Survey of Local Election Officials. Note: The scale ranges from zero (“not satisfied at all”) to ten (“extremely satisfied”).

We hypothesize that partisan conflict between the local official and the state administrator may influence assessments of state election administration. Specifically, evaluations of state administrators may be more favorable when both officials share the same party affiliation and more unfavorable when state and local officials come from opposing parties. Agency theory generally holds that conflict is likely to occur in governance when principals and agents hold different preferences.⁵⁸ To test these hypotheses, we coded the party affiliation and method of selection for the top election official in each state. In most states, the top official is an elected and partisan secretary of state.⁵⁹ For the time period covered by this study, fifteen states have an appointed state election official or board, although in most of those cases the appointment comes from the governor's political party.⁶⁰ In all but five states the top election office is affiliated with a major political party. Adding these variables to our data revealed that one-third of the local election officials shared the same party affiliation as the top state official, while roughly seventeen percent of local officials came from the opposite party as the state official. The remaining fifty percent were local officials who served in a nonpartisan or bipartisan capacity,⁶¹ and they serve as the baseline for comparison in our model. Our equation also includes independent variables indicating whether the top state official was elected (or not) and whether the top state election office was partisan. This allowed us to test whether local officials perceive more partisan politics when the state official is elected or partisan.

We examined three variables that captured the influence of outside forces on evaluations of the election administration environment. One was a measure of the size of the local jurisdiction, calculated as the natural log of the number of voters in the 2004 presidential election. Because of the heightened level of partisan activity occurring in large jurisdictions, as discussed above, we expect local officials in larger jurisdictions to report higher levels of political conflict. In addition, large jurisdictions tend to present more challenges for election officials,⁶² another reason to expect officials in large jurisdictions to offer a dimmer assessment of election administration. A second measure of outside forces is a dummy variable denoting the battleground states in the 2004 presidential election, as reported by Shaw.⁶³ Because of the extra efforts of political parties in presidential campaigns, we expect local officials in battleground states to express more partisan conflict and less satisfaction with state election administration.

The final outside force reflects the administrative burden imposed by

58. R. Michael Alvarez & Thad E. Hall, *Controlling Democracy: The Principal-Agent Problems in Election Administration*, 34 POLY STUD. J. 491, 492 (2006).

59. Kimball et al., *supra* note 10, at 452.

60. *Id.*; Hasen, *supra* note 17, at 974–76.

61. Kimball et al., *supra* note 10, at 452–53.

62. Kimball & Baybeck, *supra* note 15, at 131–35.

63. DARON R. SHAW, *THE RACE TO 270: THE ELECTORAL COLLEGE AND THE CAMPAIGN STRATEGIES OF 2000 AND 2004*, at 57–59 (2006).

HAVA.⁶⁴ HAVA is the most significant federal election legislation in a generation. While the law provided funds for new voting equipment, HAVA also imposed several mandates on state and local election administrators.⁶⁵ New policies can impose additional costs on administrators (in terms of budget, staff resources, and time taken away from other tasks). While HAVA is a federal law, it is administered by state actors,⁶⁶ and so local officials may associate the burden of HAVA with their perception of state officials. Burden and colleagues found that the perceived administrative burden of election policies shape the attitudes of local election officials toward those policies and election administration more generally.⁶⁷ We hypothesize that the local officials who reported more difficulty implementing HAVA would offer more negative assessments of election administration in their state and local jurisdiction. The 2007 survey also included eight questions about the difficulty of implementing various HAVA requirements. Local officials rated each item on a scale from zero (“not difficult at all”) to ten (“extremely difficult”). We created a scale by averaging the eight items.⁶⁸ There is considerable variation in this measure—for the ten-point scale the standard deviation is two. In addition, local officials reported a fair amount of difficulty implementing HAVA, particularly the requirements for accessible voting for people with disabilities, provisional voting, and a central voter registration database.⁶⁹ By estimating these models, we can examine whether evaluations of the election administration environment are influenced more by party affiliation or by outside forces. Since each dependent variable is measured on an ordinal scale, we modeled each equation as an ordinal logit function. The parameter estimates for each model are reported in Table 3.

The results in Table 3 show that assessments of the election administration environment are shaped more by outside forces than by the party affiliation of election officials. Local officials see more partisan politics and have more negative evaluations of state officials when they face difficulty implementing HAVA’s requirements. In addition, officials in large jurisdictions report a more contentious environment and lower satisfaction with state administration than officials in smaller jurisdictions. The effects of the HAVA experience and jurisdiction size are substantially larger than the effects of other variables in the equation. We also found that local officials in battleground states reported more partisan politics and less satisfaction with respect to state administrators. Finally, local officials tend to view partisan politics in state administration in a negative light. Perceiving state

64. Help America Vote Act of 2002 § 302, 42 U.S.C. § 15482 (2006).

65. *Id.* § 15482(a).

66. *Id.*

67. Burden et al., *supra* note 9, at 741.

68. The scale is sufficiently reliable (Cronbach’s $\alpha = 0.85$).

69. Moynihan & Silva, *supra* note 14, at 818–19.

administrators as independent of party politics is positively correlated with local satisfaction with state administrators ($r = 0.41, p < 0.001$).

The impact of administrative burden is consistent with accounts of local election officials as a group that perceive themselves as beleaguered by an ongoing set of unfamiliar requirements that have made their life more difficult.⁷⁰ As a result, the administrative burdens associated with their job have become a dominant frame by which they understand and interpret their policy environment.⁷¹ While partisan preferences might make local election officials more or less sympathetic to one policy change or another, it is likely that the desire to avoid new burdens will trump these preferences.

Table 3: Predictors of LEO Assessments of Election Administration in 2007⁷²

| Explanatory Variable | Environment Is Politically Contentious | State Administrator Is Independent | Satisfied with State Administrator |
|----------------------------------|--|------------------------------------|------------------------------------|
| | Coefficient (SE) | Coefficient (SE) | Coefficient (SE) |
| Ballots Cast in 2004 (log) | 0.22*** (.04) | -0.01 (.04) | -0.14*** (.04) |
| Battleground State | -0.18 (.13) | -0.27* (.13) | -0.58*** (.13) |
| Difficulties with HAVA | 0.13*** (.03) | -0.11** (.03) | -0.15*** (.03) |
| State Official Is Elected | -0.14 (.14) | 0.01 (.14) | 0.08 (.14) |
| State Official Is Partisan | 0.40* (.24) | 0.54* (.25) | 1.05*** (.25) |
| Same Party as State Official | 0.23* (.12) | -0.22* (.12) | 0.21* (.12) |
| Opposite Party of State Official | 0.24 (.15) | -0.37* (.16) | 0.03 (.15) |
| N | 1116 | 1097 | 1150 |
| Model χ^2 (7 df) | 70.9*** | 29.8*** | 93.6*** |

Note: Each dependent variable is an ordinal scale that ranges from zero to ten. Cell entries are ordinal logit coefficients and standard errors. Estimates of the cut-points between ordinal categories are omitted. *** $p < 0.001$, ** $p < 0.01$, * $p < 0.1$, two-tailed.

By comparison, party affiliation has little impact on assessments of state election administrators. Local officials who share the same party affiliation as the top state official and local officials whose party is the opposite of the state administrator have basically the same average evaluations of state election

70. *Id.* at 819; Robert S. Montjoy, *The Changing Nature . . . and Costs . . . of Election Administration*, 70 PUB. ADMIN. REV. 867, 868–70 (2010).

71. Burden et al., *supra* note 9, at 741.

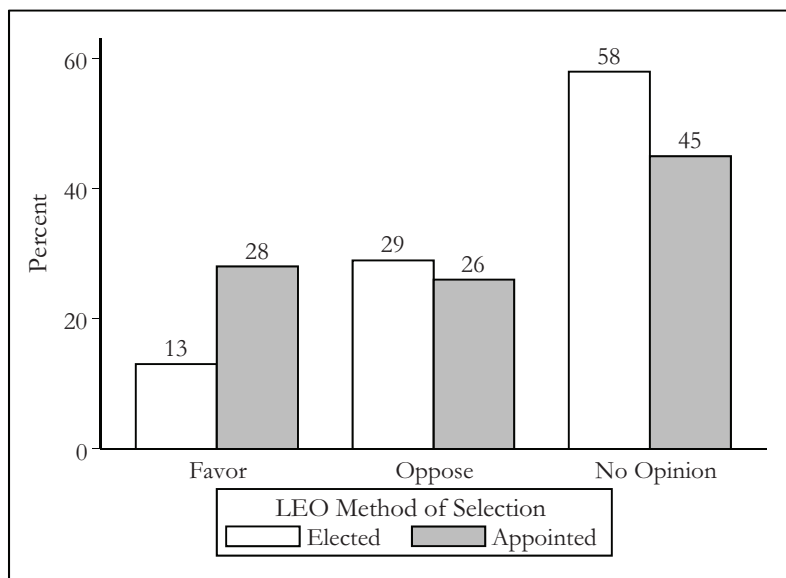
72. Source: 2007 Survey of Local Election Officials.

administration. We found that nonpartisan local officials reported less partisan politics in state election administration and a less contentious administrative environment than partisan local officials, but the differences are substantively modest. The method of choosing the state election official (election versus appointment) has no bearing on local evaluations of the state administrators. Finally, local officials reported less satisfaction with state administrators in the three states with a balanced bipartisan state election board (Hawai'i, Illinois, and New York). A bipartisan consensus is required to make decisions in these states, which can be difficult, and the election boards in Illinois and New York have a history of inaction.⁷³ It may be the case that inaction at the state level is not appreciated by local election officials. Overall, local perceptions of partisanship and political conflict in election administration seem to be driven more by outside forces than by the party affiliation of election officials.

V. WEAK SUPPORT FOR CIVIL SERVICE REFORM AMONG LOCAL OFFICIALS

Finally, we found some evidence that local officials might not react favorably to proposals to reform the method of selecting election officials. The 2007 survey included a question asking whether local officials would favor a proposal to make election administration part of the civil service system in their state. Overall, 18% favored the proposal, 28% opposed it, and 54% offered no opinion. With the high rate of no opinion responses, there may be some room to persuade local officials of the merits of such a proposal. We did not observe partisan differences in responses to the question. However, not surprisingly, elected local officials reported less support than appointed officials for the civil service proposal (see Figure 5). Since most local officials are elected, and since state legislators tend to rely on local election officials as a cue on election reform proposals, this may pose a significant barrier to proposals for nonpartisan election administration.

73. David C. Kimball, *Illinois: Ending the Gridlock*, in ELECTION REFORM: POLITICS AND POLICY 190, 194 (Daniel J. Palazzolo & James W. Ceaser eds., 2005); Sarah F. Liebschutz, *The Implementation of HAVA in New York: From Antiques to High Tech*, 35 PUBLIUS 597, 612–14 (2005).

Figure 5: Local Election Official Responses to Civil Service Proposal⁷⁴

CONCLUSION

In a political system marked by partisan polarization, there is growing concern about partisan efforts to manipulate election laws and there are some misgivings about leaving election administration in the hands of partisan officials.⁷⁵ Furthermore, some have proposed replacing partisan election officials with nonpartisan or bipartisan administrative bodies.⁷⁶ Before considering proposed reforms, it is important to assess the current institutions for election administration. In particular, it is important to examine the attitudes of local election officials. Local officials represent the bureaucratic layer closest to the voting public, and, in our decentralized system, they enjoy considerable autonomy in implementing election laws.

Overall, our findings suggest that partisan differences in the policy preferences of local election officials are primarily confined to those serving heavily populated jurisdictions. In addition, party differences among local officials are most evident on the photo ID issue, a policy that has been the subject of intense partisan debate in many states.⁷⁷ Thus, those who are concerned about

74. Source: 2007 Survey of Local Election Officials.

75. Kimball & Kropf, *supra* note 7, at 1258–60.

76. *E.g., id.* at 1259.

77. PASTOR, *supra* note 19, at 3. We acknowledge that some time has passed since these surveys of local officials were conducted. It is possible that the partisan attitudes of local election officials have polarized further in the last few years as political parties have offered clearer positions about their election law preferences.

partisanship in election administration may want to focus their efforts on officials at the state level and in large local jurisdictions. The good news is that there are a relatively small number of election officials who work in heavily populated local jurisdictions. The bad news is that these officials serve the vast majority of voters in national elections, so they could be very influential. Furthermore, we did not find much support among local officials for civil service reform of election administration, though at the time of the survey many expressed “no opinion.”

Surveys of local election officials help address reform issues by providing assessments of the environment in which local officials work. A substantial number of local officials reported that political conflict and partisan politics are common features of election administration. However, we found that LEO evaluations of state and local election administration are influenced more by outside forces than by the party affiliation of election officials. Reports of partisan conflict and dissatisfaction were more common in heavily populated local jurisdictions, battleground states, and places where HAVA implementation has created more administrative difficulties.

Unfortunately, there is little reason to believe that the outside sources of political conflict will subside. Those who enforce election laws are forced to deal with the combatants in what Hasen calls “the voting wars.”⁷⁸ Concerns about outside forces injecting partisanship into election administration are expressed clearly by Judge Paul Anderson’s dissent in the recent case of *League of Women Voters Minnesota v. Ritchie*:

It is unfortunate that our court has been drawn into the current national and state conflict between political forces over how citizens can exercise their right to vote. Nevertheless, we are at the epicenter of this conflict’s highly polarized and partisan atmosphere as it plays out in Minnesota; thus we have no choice but to render a decision. That said, the parties should have been more cognizant of the distaste that courts generally, and our court, in particular, have for bringing a polarized, partisan atmosphere with them when they come to our courtrooms. It would have been more helpful had the parties demonstrated more objectivity in their arguments, and been more willing to acknowledge the law, both pro and con, when presenting their arguments to our court.⁷⁹

Many election administrators likely share Judge Anderson’s lament. However, we are not optimistic about political parties or other combatants in the voting wars becoming more objective or open minded when pressing their cause. It is not in their nature to curb their efforts. For those who are contemplating election administration reform, it is worth considering that outside forces may be a more

78. HASEN, *supra* note 3, at ix–xii.

79. *League of Women Voters v. Ritchie*, 819 N.W.2d 636, 694 (Minn. 2012) (Anderson, J., dissenting). Many thanks to Doug Chapin for bringing this opinion to our attention.

potent source of partisanship in election administration than the administrators themselves.

Appendix:
Are the Survey Samples Representative?

To assess whether the survey samples of local officials are representative of the universe of LEOs in the United States, we compared the survey samples to known information about the population of LEOs. Fortunately we have data on the universe of LEOs for two key variables in this study: the method of selection and the party affiliation of the local official. The first three columns in Table A1 show the method of selection and party affiliation for the local officials in our survey samples. For comparative purposes, the final column shows similar figures for all local officials coded by Kimball and Kropf.⁸⁰ The results suggest that our survey sample is representative of the national population of local election officials.⁸¹ Between fifty-four percent and sixty-four percent of the local officials in our sample surveys were elected, while the rest were appointed. Roughly half of the officials in our samples are nonpartisan officials, with the other half split fairly evenly between Republicans and Democrats. Other efforts comparing the survey samples to other information about local election officials yielded similar positive results.⁸²

80. Kimball & Kropf, *supra* note 7, at 1261–62.

81. One important difference between the census and sample surveys involves coding local officials in Michigan, Minnesota, and Wisconsin, where election administration is shared between county and municipal officials. The census coded county election officials in those three states. *Id.* Meanwhile, the 2009 sample surveys interviewed municipal clerks in those three states and the 2005 and 2007 surveys sampled primarily municipal clerks in Michigan and Wisconsin, but county officials in Minnesota. A large majority of county election officials in Michigan, Minnesota, and Wisconsin are elected. In contrast, roughly half of the municipal clerks in those three states are elected while the other half are appointed. This may account for the differences in the top portion of Table A1.

82. *E.g.*, Barry C. Burden et al., *Early Voting and Election Day Registration in the Trenches: Local Officials' Perceptions of Election Reform*, 10 ELECTION L.J. 89, 102 (2011); Moynihan & Silva, *supra* note 14, at 817–18.

Table A1: Comparing Survey Samples to the Population of Local Election Authorities⁸³

| Selection Method | 2005 Survey Sample | 2007 Survey Sample | 2009 Survey Sample | 2005 Census of LEOs |
|--------------------------|--------------------|--------------------|--------------------|---------------------|
| Elected | 64% | 62% | 54% | 63% |
| Appointed | 36% | 38% | 46% | 37% |
| Party Affiliation | | | | |
| Democrat | 30% | 28% | 25% | 26% |
| Republican | 22% | 23% | 25% | 20% |
| Other/Nonpartisan | 48% | 49% | 51% | 53% |
| <i>N</i> | 1357 | 1407 | 900 | 4612 |

We also compared each of the survey samples in terms of demographic characteristics. As Table A2 shows, the demographic profiles of local officials in the survey samples (in terms of age, education, sex, and experience) are very similar. If the survey samples are biased, it is unlikely that three different randomly drawn samples of local officials would produce such close demographic characteristics. These comparisons and the relatively high response rates make us confident that the survey samples accurately represent the universe of local election officials in the United States.

83. Note: Source for 2005 data on all local jurisdictions is Kimball and Kropf (2006).

Table A2: Demographic Characteristics of Local Election Authorities

| Sex | 2005 Survey Sample | 2007 Survey Sample | 2009 Survey Sample |
|---|-------------------------------|-------------------------------|-------------------------------|
| Male | 25% | 23% | 19% |
| Female | 75% | 77% | 81% |
| Education | | | |
| Some High School | 2% | 2% | 2% |
| High School Graduate | 20% | 19% | 16% |
| Some College, No Degree | 39% | 38% | 37% |
| College Graduate | 26% | 27% | 32% |
| Some Graduate School | 6% | 6% | 5% |
| Graduate Degree | 8% | 8% | 8% |
| Organization Membership | | | |
| NACRC | 14% | 12% | 9% |
| Election Center | 12% | 11% | 11% |
| IACREOT | 14% | 13% | 12% |
| State Organization | 53% | 53% | 49% |
| Median Age (Years) | | | |
| | 53 | 53 | 54 |
| Median Years in Current Position | | | |
| | 10 | 9 | 8 |