

Election Dissection episode 3

Sasha Hupka [00:00:05] Is the election system broken? Critics say it is pointing to the vulnerability of machines, lax voter registration requirements and long waits for election results. Others argue that the system is sound and distrust of the process is what's wrong. As we barreled toward a presidential election in November, one question remains how can we make elections better? David Becker believes research, technology and reliance on data can improve our voting systems. This led him to co-found the center for Election Innovation and Research in 2016. He's been involved in election matters for years, including work in the voting section of the U.S. Department of Justice's Civil Rights Division and later as director of Election Innovations with Pew Charitable Trusts.

Mary Jo Pitzl [00:01:00] Welcome to Election Dissection, a series by the gaggle explaining how elections work to prepare you for the big day in November. I'm your host, Mary Jo Pitzl. I cover state politics and policy for the Arizona Republic.

Sasha Hupka [00:01:13] And I'm your host, Sasha Hupka. I cover county government for the Republic.

Mary Jo Pitzl [00:01:19] This month, we are joined by David Becker for a sit down interview to talk about all things elections and what the voting landscape looks like in this pivotal presidential election year. David Becker, welcome to the gaggle.

David Becker [00:01:38] Thank you so much for having me.

Mary Jo Pitzl [00:01:40] Well, let's jump into this roiling pool of election skepticism that we have today. Here in Arizona, we still have litigation challenging the 2022 election, two years before the infamous audit from our state Senate was essentially a hand recount of millions of ballots. But with your work, you've learned a lot on technology as a tool to improve elections. However, these events here and in other states turn away from technology. So how do you explain this current interest in hand-count and in-person only voting and no early voting?

David Becker [00:02:14] It's interesting because you see a national movement, not just here in Arizona, where people who are disappointed with the outcome of elections to be 2020 or 2022 are being led to believe a set of lies. It's perfectly understandable to be disappointed about the outcome of elections. There's hardly an American that hasn't experienced disappointment at their candidate lost. And we live in a country that's divided 5050. Arizona is a state that's divided 5050. Maricopa is a county that's divided 5050. It should not surprise any of us when our candidates lose. And it's understandable that it's disappointing. But that doesn't mean that they didn't lose. And it doesn't mean that we don't know that they lost that this is a knowable thing, provable, verifiable, thanks to things like paper ballots and audits and transparency and the bipartisanship that encompasses Arizona's and others elections. And yet we see good Americans in many cases, who are disappointed about the outcome of the election, who have been preyed upon by lies, by, quite frankly, grifters who have monetized their disappointment, who are raising hundreds of millions, if not billions of dollars off their disappointment. They're highly incentivized to keep people who voted for the losing candidates angry and deluded about the loss of those candidates. And this is led to an effort to dismantle election integrity in the name of, quote, election integrity. You see things where the people who are getting rich off of the lies are trying to create more chaos post election, more doubt, post election, more time between the election and when we might know unofficial results because they know they

can exploit that time and that chaos to get people angry and raise money. That's why I think you see efforts to push hand counts, which are not only less accurate and cost a lot more money, but they take a lot more time. And that time can be filled with disinformation, with lies that seek to incite anger and even potentially, violence. You see efforts to concentrate all the voting on to a single day, which is about the least secure thing you could do. Why would you create a single point of failure where 160 million Americans have to do the same thing at the same time, when instead, you could spread voting out over a number of days and over a number of modes in person and by mail. If you have any problem, if you have a weather event, if you have traffic, if you have a power outage, if you have a technical malfunction of equipment, if you have long lines, even if you had a cyberattack, you can recover from that. If you've spread voting out over many, many days, if you have any of that on a single day, we're all voting has to occur in that time. You've created a huge vulnerability that I guarantee you our foreign adversaries will try to take advantage of. You also see it in the efforts to get states to leave the electronic registration information Center. Eric, where states like Arizona, along with 23 other states in D.C., are sharing information on their voter records to identify when someone's moved out of their state or when someone's died, keeping their voter lists more accurate, preventing fraud, and creating more perception of security as well at the same time. And so states, when you're trying to create doubt about elections, you want dirtier voter lists. You want states to leave, Eric. You want states to try to hand count ballots. You want states to concentrate all of their voting activity in a single, 12 or 14 hour period on a single day. And that's why we see these tactics come up again and again, not just in Arizona, but nationwide.

Mary Jo Pitzl [00:06:05] So your organization, the center for Election Innovation and Research, recently released a report on the rise of early voting. This method has been around for decades in Arizona, and it's really popular. But as the Covid pandemic took hold during the 2020 election, more people will turn to mail in ballots than ever before. So what role did Covid play in the future of early voting nationwide, and what are some of the cons to the process? Do those objections have any merit in your eyes?

David Becker [00:06:34] Well, one of. The things we found when we looked at the availability of early voting. Be it in-person or by mail. In other words, having options other than voting on a single day on Election Day. What we found was there is widespread bipartisan consensus. It is not even geographically focused that states want to offer this option to voters. There are variety of good reasons, for it creates much more secure elections, because you don't have that single point of failure on a single day. Also, we shouldn't lose track of the fact that it's very popular. Voters like having choices. Voters like everybody else are busy. They have families. They have jobs. They have things they want to do. And voting during a single, you know, 14 hour period of time on a Tuesday in November might not be the most convenient thing for them. And so what we've seen between 2000 and 2024 is that states across the country, states as blue as California, states as red as Florida and Georgia and Kansas have moved in a bipartisan way to offer voters choices to allow them to decide whether they're going to vote on Election Day or on a day before, whether they like to fill out their ballot at home and return it, or they'd like to go to a polling place. In 2000, 60% of all voters in the United States had no choice but to vote on Election day. 60%. Three out of every 5 in 2024. That number is 3%. 3% in only four states Alabama, Mississippi, New Hampshire and Delaware have to vote on Election Day. In every other state, there is some option available in 36 states. That option is to vote either in-person, early, or by mail, and in another ten states, that option is to vote early in person, and you need an excuse to vote by mail. But there's still an option. And that's really remarkable that there has been such a bipartisan consensus around this. It doesn't really change election outcomes. I don't think it changes turnout just by existing. If the only

thing that affected turnout was how easy it was to vote, and we should have seen the lowest turnout we ever saw in 2020, in the middle of a global pandemic where everyone was getting sick and we had no vaccines. But we saw the highest turnout in American history in 2020 by a large margin. By 20 million more ballots than it ever been cast before in any election. So that's where we are today in 2024, with nearly everybody in all states having some option available to them to vote early in 2020, the options to vote earlier by mail were accelerated due to the pandemic, and voters understandably did not want to put their lives at risk, even though they clearly wanted to vote to cast a ballot. And so states across the political spectrum. I cannot stress this enough. This was not just in blue states. This is across the political spectrum, made it easier for people to have a choice about when and how they voted. States with an excuse requirement for mail voting made Covid a blanket excuse, so that no one had to create a greater excuse than that. There were early voting options at places like sports arenas, so people could be more socially distant. That was a wonderful innovation to deal with the crisis. And sure enough, we saw well over 100 million ballots cast in 2020 earlier by mail, the most ever. The largest percentage ever. But what we've seen in subsequent elections is we're starting to settle back down to types of voting we would see before in 2020, for instance. I know in Georgia, which has ample options for early voting and mail voting, about a third of all voters voted by mail, about a third voted early in person, and about a third voted on election day in 2022. The percentage of mail voters fell to below 10%, even though it's very easy and widely available. So I think we're starting to see a normalization back to a standard here in Arizona, though, it's very different. Arizonans are very comfortable and understand mail voting. It's very common in counties for 85% or so of people to receive mail ballots. They know how to return them, whether it's by mail or returning them to an election office. They know about the options for early voting and Election Day voting. And yet still most Arizonans, by a large, large margin, choose to return their mail ballot.

Sasha Hupka [00:11:01] Moving away from early voting for a moment, I want to chat with you a little bit about the election official Legal Defense Network, which is something that you helped launch in 2021. It's an effort to connect election officials with free legal advice and free communications advice. How is that working so far?

David Becker [00:11:19] We launched the Election Official Legal Defense Network in September of 2021 with co-chairs Bob Bauer, former Obama White House counsel, and Ben Ginsberg, former campaign counsel to Republicans including President George W Bush and presidential candidate Mitt Romney, in an effort to assist election officials with something we are becoming increasingly concerned about. They were experiencing challenges they had never experienced before. I get asked a lot. Is this the worst we've ever seen it with regard to election officials being threatened or abused? And my answer is we've never seen this before. Before 2020, election officials were doing a vital function in our democracy. They give us all our voice, but they're largely anonymous. You'd never see an election official look for praise. There's never a headline on the Wednesday after an election that everything went great. You just forget about them. And that's the best case scenario for election officials anonymity. Unfortunately, since 2020, the worst case scenario has not been a mistake. It has been mental and physical abuse, threats, harassment, sometimes even coming from government entities that are supposed to be there to support your work. And we've seen that here in Arizona, in places like, for instance, Cochise County. So what we started in 2021 was we recruited an ever growing network of attorneys who were willing to be matched with an election official and served pro-bono to advise them with whatever might be coming up. It could be about abuse and harassment. It could be something imminent, like a sheriff is banging on their door saying they're going to seize the voting machines. That has happened. It could be that they're

worried about their personal safety, or the safety of their families, or the safety of their staff or their facilities. And that lawyer will work for them for free, even if their own lawyers at the county level are actually some of the people engaging in the harassment. We have paired lawyers with election officials here in Arizona, and I can tell you right now, we're seeing as many requests for assistance the last few months as we did in the first few months.

Sasha Hupka [00:13:31] For a lot of these election officials, these are threats of violence, and there are some that are leaving office because of that or choosing not to run again. And I've done some reporting around the fact that this is also trickling down into poll workers, the front line people who greet you when you come into the voting center, who are usually paid around minimum wage, and those positions are increasingly becoming harder to fill. Is there anything that local or federal election officials, or maybe even law enforcement can do to address this problem? Is there a way to ensure physical safety at the polls?

David Becker [00:14:05] Yeah, I think there's several things that need to be done. And I actually want to call out Maricopa for, I think, having a successful model for that. One of the things that Maricopa does exceptionally well is the partnership between the Board of Supervisors, the recorder's office and the sheriff's office is absolutely crucial. And that partnership, there's constant communication going on between those entities. They're ensuring that facilities and staff are protected. I've talked to multiple election officials in Maricopa about this, as well as representatives of the sheriff's office. And it's very clear the sheriff's office is incredibly responsive when there's even a hint of a problem in some way. The facilities are very secure, even when they are very clearly being targeted with bullying and threatening activity, if not actual violence. I think Maricopa is a model for the nation in that regard, but I think more has to be done beyond that. I think everyone should try to build that cooperation between law enforcement and elections, so that law enforcement understands what elections do, so that, to the degree they might be consuming, lies about the election, that they can understand how transparent and protected the process is. But I think another very crucial aspect of providing a safe environment for election officials and voters is the deterrence that comes from accountability. We need to hold those who have broken the law, who have created an environment of fear and potentially violence accountable under the law. That's why the January 6th prosecutions are so important. That's why where there's evidence prosecutions against those who might have been at the top of this pyramid, at the top of the scheme, the investigations of fake electors, for instance, those things are absolutely crucial. People need to be where they've committed a crime, where there's probable cause to charge them. They need to be brought to court. They need to be forced to show evidence to prove their innocence if they have it and if they are found. Beyond a reasonable doubt. They have to be punished under the law. I think we are in the early stages of that process. There's still a lot of work to be done, but it's absolutely crucial that it continue. That's why I think the investigations of fake electors, not just in Arizona, but in other places like Michigan and Wisconsin and elsewhere, are really important. And one of the questions I, I often get is, does this become Partisan in some way? And the answer I always have, and I know this is true to the core of my belief, is I ask people to ask themselves, what would you say if the party identification on everybody that was being charged was different? If the result of the election had been different, would you want the other party to be investigated and prosecuted that way? I know the answer. The answer is yes for me. And in fact, in the book that I wrote with Major Garrett, *The Big Truth*, we discuss a hypothetical in the post 2016 environment where what if Secretary Clinton had engaged in efforts to overturn the will of the people in an election that she lost. She won the popular vote, but she lost under the rules that we had. And I said it at the time, but what if she had started to do even a fraction of the things that

we saw the losing candidate in 2020 do? What if she had tried to weaponize the federal government and the Obama administration to do the same thing? What if she had organized a rally and incited anger, and urged those people to march violently to the Capitol to stop a crucial constitutional task? We, of course, would expect some of the same people claiming that the January 6th defendants are hostages to be sang. Lock her up. And that's where we cannot clearly identify that. It's not those of us who are demanding accountability that are being Partizan, it's actually those that have spread some of the lies and rumors who seek absolution for their acts in delegitimizing democracy.

Mary Jo Pitzl [00:17:54] When the Supreme Court recently ruled that Trump can remain on the ballot in Colorado. You noted that the court didn't address the question of, you know, could Trump have been ineligible because of inciting an insurrection? But you said that argument might still come up, maybe when the Congress meets as the Electoral College. What do you foresee coming when you made that comment?

David Becker [00:18:16] Well, it's not that I foresee it. It's a possibility. I try to stay away from predictions as much as possible. But should Donald Trump win the election, should the results be certified in such a way? And should he have 270 or more electoral votes after the electors meet on December 17th? There is a significant possibility, maybe even probability, that members of Congress who oppose Donald Trump will raise his ineligibility under the 14th amendment as he engaged in insurrection. And one thing left open by the Colorado case is that it appears that all of the justices believe the Congress does have the power to create a framework whereby someone could be held ineligible under the 14th amendment. And certainly, the January 6th joint session of Congress is a potential opportunity for them to exercise that power. So I think that I would expect that if Donald Trump wins, that there will be some members of Congress will raise that as an objection. I should note also, there has been some strengthening of the Electoral Count Act. The Electoral Count Reform Act was passed in 2022 during the lame duck session, and it requires greater thresholds to bring an objection 20% of each house in order for it to be debated in those houses. So whether it will meet that threshold or not, I think it's highly possible that it will be raised. And so there were many, and I consider myself among them, who were hoping that the Supreme Court might find a way to get at the core, factual and legal issues about whether or not Donald Trump engaged in insurrection and was an officer who had sworn an oath to the Constitution sufficient to be disqualified from office, but they didn't go there. I can understand why they didn't go there. The decision to overrule the case was nine zero. There were vastly different grounds there, and some concern from at least three justices, and possibly four, that the majority had gone too far in kind of restricting Congress's power. But all that said, if Congress seeks to act in that way, if Donald Trump wins, we could find ourselves in somewhat of a constitutional crisis again.

Sasha Hupka [00:20:25] You've recently said on social media that you're very confident that the 2024 election will be safe and secure. What is your basis for that comment? If I'm a voter, what kinds of things should I be looking for to evaluate whether an election is well run or not?

David Becker [00:20:41] I'm so glad you asked me that question. Our elections today are the most secure, transparent, and verified elections we've ever held in American history. And that's not just the opinion of Trump's own DHS. It's not just the opinion of conservative legal scholars who wrote a report called lost, Not Stolen Dawg, about the 2020 election. It's not just the opinion of 60 plus courts. It's just objective fact. When you look at what we have in our elections right now, 95% of all Americans vote on verifiable, auditable paper

like Arizonans have for decades. That percentage is only about 75 to 80% in 2016. Between 2016 and 2020, the entire states of Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia moved to paper. All paper all re countable. Georgia's presidential ballots on paper were all all counted three times three different ways, once entirely by hand. That's incredible. The only states that still have some number of non paper ballots are not swing states. States like Mississippi and Louisiana and Tennessee. Every swing state, every battleground state has paper. And we have more audits than ever before. All of those states that have paper audit those ballots. That means they take a sampling of those ballots. They count them by hand, and they confirm those counts against the machine totals to make sure the machines work right. If there's a problem, they count more ballots to see if they can identify what the problem is. And if there's ever litigation, the losing candidate could always go back to those paper ballots and have a judge review them and confirm what happened. We've had some very close elections in American history, not just forward in 2000, but for instance, the Minnesota Senate race in 2008, which was decided by 100 all paper ballots in that race. That was finally decided by a court in the summer of 2009, and Al Franken was seated, having been declared the winner over Norm Coleman. That's why we should feel secure. Our voter lists are more accurate than ever before. More states are keeping their voter lists more accurate because they are sharing data between states. They're sharing data within their state with motor vehicles, where people go when they have a move, for instance. So those voter lists are much more accurate with better tools to prevent fraud than ever before. We have more pre-election litigation than ever before, for good or bad. That means we're clarifying the rules. And we apparently are going to have more post-election litigation than ever before for the foreseeable future, perhaps mostly in Arizona for those law students in Arizona right now. It's a bull market for you to join the election law field if you want to. So we should be absolutely confident that our elections are secure, that we can document show our work to confirm, even in a case like the state AG's race in 2022, where the margin was very narrow. We know who won. It was really close, but we know there was a winner and by how much? But ultimately, no matter what happens, and even perhaps no matter what the margin is, there are going to be losing candidates and their supporters who are highly incentivized to spread lies and incite anger and violence, and importantly, to raise money. So the election officials in Arizona, nationwide can do the best possible job. I have every confidence they will. Even with all the stress they've suffered since 2020. Think about the 2022 election and how well it went. There was a problem here in Maricopa, but ultimately that was Handleable and that was nationwide, though hardly any problems. 2021 and 2023 were there were off year elections went very, very well. The primaries are going very, very well nationwide. They are doing their jobs even with the stress and the abuse and the turnover. And the question is, will it matter if the losing candidate won't accept a loss, no matter what the margin is?

Mary Jo Pitzl [00:24:16] Well, David, thanks for taking the time to talk to us about the 2024 election landscape. We're going to have a lot to talk about over the next couple of months. If people want to follow your work on social media, where can they find you?

David Becker [00:24:28] So first of all, the center for Election Innovation and Research is at ElectionInnovation.org. And the Election Official Legal Defense Network is at eoldn.org. And of course people can follow me on Twitter at [BeckerDavidJ](https://twitter.com/BeckerDavidJ). I'm also on threads at [David J. Dot. Becker](https://www.threads.net/@DavidJ.Dot.Becker).

Mary Jo Pitzl [00:24:47] Thanks so much for all your time. That is it for this week, listeners, and thank you for listening to election Dissection and Election Series by The Gaggle. Sasha and I will be back next month to answer a new question about how all this

works. Is there something about the process that you're curious about, or did you learn something new about elections today? Well, let us know. Send us a voice memo to the gaggle at [Arizona Republic.com](http://ArizonaRepublic.com). That's all. One word, all spelled out. Or give us a call at (602) 444-0804.

Sasha Hupka [00:25:33] This episode was edited and produced by Amanda Luberto. Our news direction is by Kathy Tulumello. Episode oversight is by Kara Edgerson. Music comes from Universal Production music. Never miss an episode of The Gaggle by subscribing to us wherever you listen. Also, be sure to share this episode with a friend. You can also leave us a review and write us five stars. You can follow The Gaggle on social media at A-Z-c-podcasts. I'm at Sasha Hupka. That's h u p k a.

Mary Jo Pitzl [00:26:08] And I'm at Mary J. Pitzl. That's p i t z l. The gaggle is an Arizona Republic and azcentral.com production. Ron and I will be back next week diving into a new political issue. Thanks again for listening. We'll see you then.