

Smarter Crowdsourcing: Countering Election Subversion

Session 1: Misuse of the Legal System

Problem Brief

April 19th, 11am-1pm EDT

I. Purpose

This memo (the “Problem Brief”) outlines the agenda for a discussion on **April 19th, 11am-1pm EDT** on practical solutions to the problem of misuse of administrative and legal systems, including willingness to misuse the courts, freedom of information act requests, and other administrative processes to the end of subverting or sowing doubt about elections.

This conversation, which will be the first of several tackling a variety of election subversion topics, addresses whether there are preemptive strategies (legal, policy, psychology, technology, financial) that philanthropy could fund that might reduce the willingness to file frivolous actions.

[Democracy Fund Voice](#), a nonpartisan organization dedicated to helping America build a stronger, healthier democracy, has requested expert input to inform its Resilient Elections grantmaking. The purpose of this conversation is to source concrete and specific recommendations for those solutions that philanthropy could support in order to counter efforts to misuse the legal system to undermine the integrity of elections.

To inform the April 19th discussion, this Problem Brief includes background on the root causes of the problem, some examples of solutions, and an initial agenda for the conversation. To be clear, the ability to file lawsuits and FOI requests is an important and fundamental right. In this conversation, we are interested in solutions that address malicious actors and abuse while ensuring that individuals have the ability to meaningfully exercise their due process and rights under the law.

II. Problem Statement

In recent elections, saboteurs have misused the administrative and legal systems in a coordinated effort to obstruct election administration and sow doubt in the outcomes of fair elections in the minds of the public.

In some cases, election deniers have **knowingly filed multiple malicious lawsuits with the goal of overturning electoral outcomes and canceling votes.**

In other cases, election deniers have filed **frivolous public records requests seeking information about elections** that are duplicative, repetitive, and have unreasonable and unrealistic asks, with no real purpose but **to burden and strain the offices responsible for administering elections**.

Saboteurs aim to: 1) "gum up the works" of the election system by diverting human resources away from election administration, and 2) build ersatz evidence for the election denial narrative, which falsely claims that widespread voter fraud and irregularities influenced the outcome of the 2020 presidential election.¹

These abuses are not new nor are they unique to election subversion. However, the legal challenges since the 2020 election are uniquely troubling in their scope and scale. New generative AI tools that make it easier to write content may only exacerbate the problem of burdensome filings.

Anti-democratic litigation around elections has been carried out by complex networks that involve grassroots organizations, state, local, and national political party offices, and media figures. In many cases, these efforts are funded by large and powerful corporations and wealthy individual donors who have spread lies about elections for their own ideological and political gain.²

III. The Problem and Why It Matters

Abuse of Public Records Requests

The Freedom of Information Act (along with equivalent freedom of information laws in place at the state level) gives citizens the right (with exceptions) to access information and records from any federal agency. The goal of FOIA is to keep citizens in the know about their government.³

However, during recent elections, election deniers have abused the right to request government information in a coordinated effort to overwhelm state and local offices that administer elections.

¹ Please note that there are many important topics related to election integrity and accountability that this conversation will not cover. Some of these topics may be the subject of future convenings. Topics which are out of scope for the April 19 discussion include:

- Voting rights, voting laws, and access to voting
- Campaign finance
- Political violence in the context of elections
- Misinformation and the responsibilities of the media and social media platforms
- Voting technology

² "The Big Money Behind the Big Lie," *The New Yorker*, by Jane Mayer, August 9, 2021 <https://www.newyorker.com/magazine/2021/08/09/the-big-money-behind-the-big-lie>

³ See "What is FOIA?" <https://www.foia.gov/about.html>

In the run-up to the 2022 elections, election deniers targeted offices in states such as North Carolina, Arizona, and Nevada with an influx of requests, with many searching for evidence of fraud in the 2020 election without merit.⁴ Officials in Maricopa County, Arizona, received more than 830 requests from the beginning of the 2021 through the end of August (compared to 369 requests total in 2020), including roughly 300 identical requests in a single week.⁵ For example, a Pennsylvania-based company filed a request asking county officials to turn over chain-of-custody records for all of the ballots cast in the 2020 election (some 2.1 million ballots), which required four staff members to spend four days scanning 20,000 paper documents.⁶

These malicious requests differ from legitimate queries in that they are often identical in language, duplicate requests made by others, ask for bogus information or for information that does not exist, and may even contain threats. In some cases, these requests ask for detailed information about voters, voting machines, and election workers themselves that could put election security and election workers at risk if released.

The goal in filing these requests is to overload election offices with unnecessary work that distracts from crucial election planning tasks. According to the *Washington Post* these types of malicious information requests are “not out for information but rather are trying to cause chaos and are making it more difficult to run smooth elections and giving critics new openings to attack the integrity of election administration in the United States.”⁷

Malicious Lawsuits

Election deniers are also filing bad-faith lawsuits in an attempt to obstruct state and local governments’ ability to effectively manage elections with a goal of overturning electoral outcomes and undermining or canceling votes.⁸ These lawsuits claim, often without evidence, that irregularities related to voting machines, absentee ballots, or election official misconduct impacted the outcome of the 2020 election. Following the 2020 election, former President

⁴ “Pro-Trump activists swamp election officials with sprawling records requests,” Reuters, by Nathan Layne, August 3, 2022

<https://www.reuters.com/world/us/pro-trump-activists-swamp-election-officials-with-sprawling-records-requests-2022-08-03/>

⁵ “Election officials confront waves of public records requests from Trump supporters,” CNN, by Fredreka Schouten, September 21, 2022

<https://www.cnn.com/2022/09/21/politics/public-records-requests-trump-supporters/index.html>

⁶ “Pro-Trump activists swamp election officials with sprawling records requests,” Reuters, by Nathan Layne, August 3, 2022

<https://www.reuters.com/world/us/pro-trump-activists-swamp-election-officials-with-sprawling-records-requests-2022-08-03/>

⁷ “Trump backers flood election offices with requests as 2022 vote nears,” *The Washington Post*, by Amy Gardner and Patrick Marley, September 11, 2022

<https://www.washingtonpost.com/nation/2022/09/11/trump-election-deniers-voting/>

⁸ “Trump’s judicial campaign to upend the 2020 election: A failure, but not a wipe-out,” Brookings Institution, by Russell Wheeler, November 30, 2021

<https://www.brookings.edu/blog/fixgov/2021/11/30/trumps-judicial-campaign-to-upend-the-2020-election-a-failure-but-not-a-wipe-out/>

Trump's allies filed 62 such lawsuits, 61 of which were struck down by the courts (both by Democratic-appointed and Republican-appointed judges).⁹

As one legal analysis of these lawsuits observes, "Although the cases themselves were dismissed as lacking merit and as failing to state actionable claims, their impact upon public confidence in free and fair elections was palpable and the resources of the courts and defending parties were severely taxed."¹⁰ *The Washington Post* estimates that legal challenges and security for election officials have cost states more than \$2 million since the 2020 election.¹¹

Many legal scholars and election watchdogs have emphasized that these lawsuits differ from typical, good-faith election litigation, in terms of the volume of allegations made and in their flaunting of ethics rules and judicial norms. Licensed lawyers brought lawsuits they knew could not and would not succeed without standing or evidentiary basis. Abnormalities in the arguments advanced by lawyers through this litigation include:

- **Making "elementary errors"** in high-profile cases, including misspelling words, filing suit in the wrong court or wrong state entirely, or forgetting the name of the presiding judge during oral arguments.¹²
- Filing cases that are **immediately thrown out because of the plaintiff's lack of standing**. For example, Rep. Louie Gohmert filed suit against Vice President Mike Pence arguing that the Vice President has the authority to decide which states' electoral votes should be counted. An appeals court threw out the suit on the basis that Gohmert's claims "allege an injury that is not fairly traceable to the Defendant, the Vice President of the United States, and is unlikely to be redressed by the requested relief."¹³ A Politico article about the lawsuit notes "While many federal court appeals take months or even years to litigate, the

⁹ "By the numbers: President Donald Trump's failed efforts to overturn the election," *USA Today*, by William Cummings, Joey Garrison, Jim Sergent
<https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>

¹⁰ "In Defense of the Foundation Stone: Deterring Post-Election Abuse of the Legal Process," *Georgia Law Review*, Vol. 55, Issue 4, by Joyce Gist Lewis and Adam M. Sparks, August 30, 2021
<https://georgialawreview.org/article/27938-in-defense-of-the-foundation-stone-deterring-post-election-abuse-of-the-legal-process>

¹¹ "Here are the GOP and Trump campaign's allegations of election irregularities. So far, none has been proved," *The Washington Post*, By David A. Fahrenthold, Elise Viebeck, Emma Brown and Rosalind S. Helderman, November 10, 2020
https://www.washingtonpost.com/politics/trump-election-irregularities-claims/2020/11/08/8f704e6c-2141-11eb-ba21-f2f001f0554b_story.html

¹² "Trump's election lawsuits plagued by elementary errors," AP News, by Nomaan Merchant, November 19, 2020
<https://apnews.com/article/joe-biden-donald-trump-politics-lawsuits-elections-a508ebaafae82286c69eb091b75abdfc>

¹³ "'Lack standing': Rep. Gohmert's lawsuit against Pence to overturn election results thrown out," *USA Today*, by Savannah Behrmann, January 1, 2021
<https://www.usatoday.com/story/news/politics/2021/01/01/louie-gohmert-lawsuit-mike-pence-overturn-election-dismissed/4110658001/>

5th Circuit disposed of this one in less than a day without even taking legal briefs from the parties.”¹⁴

- **Bringing moot cases**, or in other words, conflicts that are outside the ability of the courts to resolve. For example, in [Wood v. Raffensperger](#), the plaintiff sought an injunction against certifying the general election results in Georgia, despite the fact that Georgia’s Secretary of State had already certified the election results, rendering the plaintiff’s argument moot.¹⁵
- Filing lawsuits where there is a **lack of specificity and evidence** for the claims being made. For example, plaintiffs brought multiple suits in Michigan claiming that election officials improperly counted and tabulated voting results. Courts rejected these claims on the basis that the plaintiffs’ allegations were based on hearsay and speculation and failed to present supporting evidence.¹⁶
- **Refusal to acknowledge wrongdoing** - By and large, the legal professionals who advanced malicious litigation following the 2020 election have doubled down on their false claims and refused to acknowledge their indiscretions, in some cases, even after being formally sanctioned by courts and the bar. “We are not aware of any lawyers, from the top to the bottom of the hierarchy of Trump lawyers, who have acknowledged their wrongdoing, the lack of evidence of voter fraud, or the lack of legal merit of the Trump lawsuits. Nor have any, to our knowledge, accepted responsibility for engineering and carrying out the bogus barrage. Rather, they have been silent or defiant,” write legal ethics scholars Peter A. Joy and Kevin C. McMunigal.¹⁷

While unsuccessful, there is a risk that this litigation campaign could be used as a model for similar efforts to cast doubt on the results of future elections. For example, candidate Kari Lake refused to concede the 2022 Arizona gubernatorial election after it was called for her opponent, and instead filed suit in Maricopa County alleging that voters were given illegible ballots at

¹⁴ “Federal appeals court tosses Gohmert suit aimed at overturning 2020 election results,” *Politico*, by Josh Gerstein and Kyle Cheney, January 1, 2021,

<https://www.politico.com/news/2021/01/01/louie-gohmert-lawsuit-pence-453387>

¹⁵ “Lin Wood Loses Again as Federal Appeals Court Savages Georgia Election Lawsuit.” *Law and Crime*, by Colin Kalmbacher, December 5, 2020

<https://lawandcrime.com/2020-election/lin-wood-loses-again-as-federal-appeals-court-savages-georgia-election-lawsuit/>

¹⁶ “Here are the GOP and Trump campaign’s allegations of election irregularities. So far, none has been proved.” *The Washington Post*, By David A. Fahrenthold, Elise Viebeck, Emma Brown and Rosalind S. Helderman, November 10, 2020

https://www.washingtonpost.com/politics/trump-election-irregularities-claims/2020/11/08/8f704e6c-2141-11eb-ba21-f2f001f0554b_story.html

¹⁷ “The Ethics of Trump’s Shadow Lawyers?” *Washington University Journal of Law and Policy*, Vol. 69 by Peter A. Joy and Kevin C. McMunigal, August 17, 2022

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4190480

polling places. Lake alleged that these ballots effectively disenfranchised voters, swinging the outcomes of the election. The courts have rejected Lake's claims, citing a lack of evidence.¹⁸

There is also a risk that litigation alleging widespread fraud may also be used as justification for legislation that restricts access to voting.¹⁹

Although the Federal Rules of Civil Procedure provide redress for spurious lawsuits, the FRCP alone may not do enough to address a situation where well-funded parties are intentionally filing one lawsuit after another to the end of overburdening the system and/or attracting attention.

IV. Root Causes of the Problem

There are many reasons why election deniers have targeted the legal and administrative system in their attempts to overturn election results. The April 19 conversation will focus on solutions to the root causes of this problem.

Some of those root causes to targeting the public records system include:

- **Lack of electronic systems to make responding to requests more efficient** - While there are a wide range of platforms available that could assist agencies and offices by automating tasks such as de-duplicating requests, searching for and collating data, the use of these tools is not ubiquitous across government. In a survey of records management staff in federal agencies conducted in 2020, 60 percent of respondents reported that agencies manually de-duplicate records responsive to FOIA requests, and only 30 percent said that their agencies use deduplication software.²⁰
- **Election workforce and staffing issues** - Meritless public records requests seek to take election office staff's time away from other crucial tasks. Election offices are chronically underfunded and understaffed, making them particularly vulnerable to election deniers' coordinated efforts to overwhelm offices with duplicative and frivolous requests.²¹

¹⁸ "Kari Lake's election loss lawsuit lacks merit, according to Arizona state lawyers," *PBS Newshour*, by Jacques Billeaud, December 23, 2022, <https://www.pbs.org/newshour/politics/kari-lakes-election-loss-lawsuit-lacks-merit-according-to-arizona-state-lawyers>

¹⁹ "Finding the Same Misinformation in Anti-Voter Lawsuits and Anti-Voter Legislation," Brennan Center, by Katie Friel and Will Wilder, April 13, 2022 <https://www.brennancenter.org/our-work/research-reports/finding-same-misinformation-anti-voter-lawsuits-and-anti-voter>

²⁰ See "Assessing Freedom of Information Act Compliance through the 2019 National Archives and Records Administration's Records Management Self-Assessment" <https://www.archives.gov/oig/foia-compliance-program/agency-self-assessments/2019-rmsa>

²¹ "Pro-Trump activists swamp election officials with sprawling records requests," Reuters, by Nathan Layne, August 3, 2022

- Deficiencies in public information management** - Election deniers are exploiting a bureaucratic system that is already overburdened with public records requests. Over the last several decades, electronic record keeping and email have greatly increased the number of public records that agencies produce. However, FOI laws have largely not been updated since the late 1990s and early 2000s to deal with this shift.²² Many government offices continue to rely on outdated database technology to store their data, which limits their ability to use electronic data processing tools to query and return information more efficiently. In many agencies, public records requests require staff to manually search for, compile and, if necessary, redact the request information.²³ As a result, complex or large requests can and can take months or years to process. There is a risk that an influx of frivolous requests - such as targeted campaigns to overload government offices preceding elections - can backlog the whole system and prevent legitimate FOI requests from being processed.
- Vulnerabilities in freedom of information law** - While access to government information is a crucial right, and it is important that requesters have redress when government fails to comply with its obligations under FOI law, stipulations in FOI laws designed to privilege requesters may be weaponized against election workers and offices. In some states, such as Washington State, offices can be fined for not responding to requests in an expeditious manner.²⁴ In many states, individuals have the right to sue if they feel their FOI request is not being honored, for example, if the government office takes too long to respond to the request, or if the plaintiff feels that information was redacted without justification.²⁵ States may have to pay attorney fees if the plaintiff wins and plaintiffs may even win compensation through civil litigation around FOIA disputes.²⁶ There is a risk that these laws and policies, which are designed to ensure that individuals can exercise their right to access information in the public interest, may be misused by election deniers to target election officials and offices for political purposes.

<https://www.reuters.com/world/us/pro-trump-activists-swamp-election-officials-with-sprawling-records-requests-2022-08-03/>

²² ““TOO BIG TO FOIA”: HOW AGENCIES AVOID

COMPLIANCE WITH THE FREEDOM OF

INFORMATION ACT,” *Cardozo Law Review* Volume 39, by Stephanie Alvarez-Jones, 2018

<http://cardozolawreview.com/wp-content/uploads/2018/08/ALVAREZ-JONES.39.3.pdf>

²³ “FOIA Searches: Key Challenges and Findings,” National Archives, Technology Committee of the Chief FOIA Officers Council, FOIA Searches Working Group, September 29, 2021

<https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council/tech-comm-foia-searches-challenges-09-29-2021>

²⁴ “Reckless Requests,” *ABA Journal* Vol. 104, No. 3, by Lorelei Laird,

March 2018, <https://www.jstor.org/stable/26516264>

²⁵ “Giving Teeth to the Watchdog: Optimizing Open Records Appeals Processes to Facilitate the Media's Use of FOIA Laws,” *Michigan State Law Review*, by Laura Danielson 2012

<https://hcommons.org/deposits/item/hc:35837/>

²⁶ “Fixing FOI: Big ideas for a new era of transparency,” *Quill Magazine*, by David Cuillier, November 2, 2017 <https://www.quillmag.com/2017/11/02/fixing-foi-big-ideas-for-a-new-era-of-transparency/>

Some of those root causes of frequent and malicious lawsuits include:

- **Strategic litigation to undermine elections** - Similar to Strategic Lawsuits Against Public Participation (SLAPP), election deniers may file lawsuits that they have no chance of winning in order to attract media and attention in an effort to discourage, vilify, or cast doubt upon election administration decisions that they believe will disadvantage them politically, such as expanding access to absentee or early voting. These deliberate efforts are backed by millions of dollars of financing from political groups and donors.²⁷
- **Partisan activists are driving a vicious cycle of misinformation regarding the electoral process.** One of the driving forces leading to abuses in the legal system is misinformation coming from partisan activists who are encouraging the filing of frivolous lawsuits and requests for information through misinformation and conspiracy theories. Authoritarian figures are using their platforms on social media to spread false information about the 2020 election.²⁸ Traditional media outlets also provided airtime and credibility for election misinformation even when figures within these organizations believed the claims they were platforming to be false.²⁹
- **Disciplinary agencies may not want to appear partisan** - While many legal experts have argued that malicious lawsuits challenging the 2020 election broke ethical rules and norms, there is a risk that courts and professional associations may choose not to impose sanctions on attorneys that advanced this litigation if they fear such action may be viewed as “political.”³⁰ Judges “don’t want to be perceived as openly political,” Charles Gardner Geyh, a law professor at Indiana University, told *ABC News*, “If they come down on lawyers who represent the president like a ton of bricks, they are aware of how that will be perceived.”³¹
- **“Shadow attorneys” are difficult to identify and hold accountable** - While some high-profile legal professionals who advanced frivolous litigation have been sanctioned by courts for their misconduct - including attorneys Rudolph Giuliani and Sidney Powell -, there are dozens, if not hundreds, of additional attorneys who assisted in drafting and filing malicious suits challenging the 2020 election. Little attention has been paid to the army of private law firms who assisted Giuliani, Powell, and their legal team in its attempt

²⁷ “Donors spending millions on Trump’s legal battles,” *BBC News*, by Bernd Debusmann Jr, September 22, 2023, <https://www.bbc.com/news/world-us-canada-62998508>

²⁸ “Trump’s vote fraud claims go viral on social media despite curbs,” *The Guardian*, by Alex Hern, November 10, 2020 <https://www.theguardian.com/us-news/2020/nov/10/trumps-vote-claims-go-viral-on-social-media-despite-curbs>

²⁹ “Fox Stars Privately Expressed Disbelief About Election Fraud Claims. ‘Crazy Stuff.’” *New York Times*, by Jeremy W. Peters and Katie Robertson, February 16, 2023 <https://www.nytimes.com/2023/02/16/business/media/fox-dominion-lawsuit.html>

³⁰ “This is Not Normal”: The Role of Bar Organizations in Protecting Constitutional Norms and Values,” <https://journals.library.wustl.edu/lawpolicy/article/id/8646/> <https://www.bu.edu/pilj/files/2021/06/Williams.pdf>

³¹ “As lawyers keep pushing Trump election challenges, calls for sanctions mount.” <https://abcnews.go.com/Politics/lawyers-pushing-trump-election-challenges-calls-sanctionsmount/story?id=74544823>.

to overturn the 2020 election, and thus most have evaded accountability. Some have called on state bar authorities to focus more resources on investigating these individuals: “Failing to do so would permit Trump’s shadow lawyers to escape liability for their contributory roles in these frivolous lawsuits and enable and encourage them to assist other lawyers in bringing similarly meritless lawsuits in the future whenever a candidate they support loses an election,” argue legal ethics scholars Peter A. Joy and Kevin C. McMunigal.³²

- **Lack of speedy action to censure wrongdoing** - The process by which disciplinary organizations investigate, charge, and sanction legal professionals who have been accused of wrongdoing varies greatly across jurisdictions. To ensure due process, disciplinary agencies often favor secretive, deliberative processes that can take months or years to deliver justice. Depending on the state, the accused may be able to continue practicing and representing clients during this time. “It mocks the professed goal of protecting the public and the administration of justice if a lawyer who will be (and should be) suspended or disbarred is left to practice for years until the day of sanction,” writes NYU Law professor Stephen Gillers in a 2014 study of the disciplinary system of New York state. “Imagine misconduct in year one, charges in year two, and suspension from practice or disbarment in year four. A lawyer who deserves suspension will have been able to practice for three years after the misconduct that supports the suspension or disbarment.”³³ If disciplinary agencies take years to censure the attorneys who brought malicious lawsuits following the 2020 election, these sanctions may prove to be less effective tools to discourage future malicious litigation around elections.
- **Limited and outdated training and examination** - Some have argued that the process by which legal professionals are trained, evaluated and licensed is failing to keep up with the demands of the profession today.³⁴ Criticisms of the bar exam include claims that the test overemphasizes [rote memorization of legal rules](#) and [privileges test-takers](#) with greater access to resources. Others have argued that law schools have failed to incorporate a practical, experiential learning component into legal professional’s training as is the norm in fields such as engineering.³⁵ There is significant debate about how well existing training

³² “The Ethics of Trump’s Shadow Lawyers?” Washington University Journal of Law and Policy, Vol. 69 by Peter A. Joy and Kevin C. McMunigal, August 17, 2022

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4190480

³³ “LOWERING THE BAR: HOW LAWYER DISCIPLINE IN NEW YORK FAILS TO PROTECT THE PUBLIC.” *New York University Journal of Legislation and Public Policy*, Vol. 17, No. 2, by Stephen Gillers, 2014.

<https://www.nyujlpp.org/wp-content/uploads/2014/07/Gillers-Lowering-the-Bar-17NYUJLPP2.pdf>

³⁴ “The practice of American law is old, brittle and going to break,” *San Francisco Chronicle*, by Kevin Frazier, August 8, 2022

<https://www.sfchronicle.com/opinion/openforum/article/law-practice-attorney-17355923.php>

³⁵ “The ‘think like a lawyer’ approach to law school is outdated,” *ABA Journal*, by Mary Juetten, June 14, 2018,

https://www.abajournal.com/news/article/the_think_like_a_lawyer_approach_to_law_school_is_outdated

and examination protocols serve their purported goal of protecting the public from unethical or unprofessional legal practitioners.³⁶

V. Example Solutions

Below are some examples (not endorsements) of innovative approaches to address the root causes of misuse of the legal system to subvert elections. These are provided for purposes of illustration to demonstrate that during this conversation we are looking for similarly innovative and concrete proposals that a funder can act upon. **These examples are not meant to be comprehensive nor exhaustive.**

FOIA and Public Records Requests

- Invest in **technology to streamline FOIA systems** to make processes less burdensome. Agencies can use artificial intelligence and machine learning to automate certain tasks such as searching for records, removing sensitive information, or identifying records that are exempt from release, to help offices respond to public records requests more efficiently. For example, researchers at the University of Maryland developed a model for how machine learning could be used by federal agencies to automatically detect sensitive language in documents that would be subject to FOIA exemption.³⁷
- Use **de-deduplication software** to address duplicative public records requests. For example dedupe.io, was a software service which helped researchers and data scientists to identify and delete similar records in their databases.³⁸ Texifter, created by the company [DiscoverText](https://discovertext.com), was software used by federal agencies to deduplicate comments filed in connection with a notice and comment rulemaking. Government offices could adopt or develop similar tools to identify and aggregate similar or identical public records requests to make responding more efficient.
- Create **administrative appeals processes** that can resolve disputes over release of information (e.g. through mediation) without resorting to litigation. Approximately half of states have established processes to resolve FOIA disputes before litigation. For example, Connecticut's Freedom of Information Commission is empowered to hold hearings and subpoena witnesses in order to resolve FOIA disputes to avoid litigation in state courts.³⁹

³⁶ "Stop Buying the Bar Exam Snake Oil," *Jurist*, by Catherine Perrone and Nicholas Ripley, August 20, 2020, <https://www.jurist.org/commentary/2020/08/perrone-ripley-bar-exam-snake-oil/>

³⁷ "Providing More Efficient Access to Government Records: A Use Case Involving Application of Machine Learning to Improve FOIA Review for the Deliberative Process Privilege," by Jason R. Baron, Mahmoud F. Sayed, Douglas W. Oard, Volume 15 Issue 1, <https://dl.acm.org/doi/fullHtml/10.1145/3481045>

³⁸ See <https://dedupe.io/example/government/crowdlaw.html>

³⁹ "Giving Teeth to the Watchdog: Optimizing Open Records Appeals Processes to Facilitate the Media's Use of FOIA Laws," *Michigan State Law Review*, by Laura Danielson 2012 <https://hcommons.org/deposits/item/hc:35837/>

- Boost **proactive disclosure** by publishing election information as open data (with necessary redactions) as soon as the data is available. Making more information available online could make it easier for staff to respond to requests for information and avoid duplicative requests as they could simply point to the information where it is available for download online. For example, in El Paso County, Colorado, the county clerk's office created an [online repository of election documents](#) including ballot images and results data from the 2020 election that anyone can view and download.
- Provide **training and professional development opportunities** for staff tasked with responding to public records requests. For example, the [National Freedom of Information Coalition](#) convenes meetings and training seminars for state office staff on open government laws. FOI advocacy organizations could create programs in data skills training to help staff more efficiently use data tools to process and respond to the influx of FOI requests around Election Day.
- Support **civic education** that would train residents (such as students in K-12 schools) about their rights and obligations under FOI laws as well as which types of records are available for access through their state's FOI laws and which are exempt.

Malicious Litigation

- Support **legal counter strategies** advocating for legal disciplinary agencies to enact meaningful penalties against attorneys that file bad-faith lawsuits contesting election results. Legal advocacy groups could lobby the bar to sanction legal professionals whose behavior violates Rule 11 of the Federal Rules of Civil Procedure, which establishes that attorneys have an obligation to ensure that motions they bring are argued in good-faith, and are true and supported by evidence. In an article about litigation following the 2020 election, attorneys Joyce Gist Lewis and Adam M. Sparks argue that "Lawyers and judges should examine whether Rule 11 and other statutory sanctions are warranted for those who would abuse the courts' resources to advance an explicitly anti-voting and anti-democratic agenda."⁴⁰
- **Establish and enforce stricter legal ethics frameworks** - Bar associations and professional associations play a crucial role in establishing and enforcing rules of ethical conduct. These organizations could establish new ethics frameworks, and strengthen enforcement of existing rules (such as [Rule 3.1](#) of the American Bar Association's Model Rules of Professional Conduct, which establishes that attorneys have an obligation to bring claims in good faith) to sanction lawyers who advance cases that undermine democratic institutions. The 65 project is a legal advocacy initiative which files state bar ethics complaints against lawyers who brought bad-faith lawsuits challenging the 2020

⁴⁰ "In Defense of the Foundation Stone: Deterring Post-Election Abuse of the Legal Process," *Georgia Law Review*, Vol. 55, Issue 4, by Joyce Gist Lewis and Adam M. Sparks, August 30, 2021 <https://georgialawreview.org/article/27938-in-defense-of-the-foundation-stone-deterring-post-election-abuse-of-the-legal-process>

election. The group is also lobbying the American Bar Association to enact stricter ethical conduct rules around election litigation.⁴¹

- Support **data and research projects** that track court cases impacting election integrity and the outcomes of this litigation. Examples of existing initiatives which track litigation impacting elections include the Stanford/MIT Healthy [Elections Project's COVID-Related Litigation Tracker](#), [Democracy Docket's court case database](#) and the Brennan Center's annual [Voting Rights Litigation Tracker](#). These resources provided crucial information about litigation impacting voting rights; similar tools could prove useful for studying and tracking lawsuits challenging the outcomes of elections.

VI. Agenda for Discussion

This conversation is intended to surface innovative and fundable solutions to address the willingness to misuse such processes in the context of elections. We want to surface solutions that philanthropy can support. Looking toward future election cycles, we aim to address the following questions:

1. What can be done to prevent and dis-incentivize lawyers and other actors from advancing litigation that they know is meritless or malicious?
2. How can we equip election administrators, the courts, and other administrators tasked with processing litigation or public records requests to more efficiently deal with the influx of requests in the context of elections?
3. What can professional schools and associations, and other organizations shaping the legal, lobbying, marketing and related professions do to address the challenge of meritless and malicious filings?

While we may touch upon how the election denial narrative spreads on media and/or social media, this will be the topic of another conversation.

⁴¹ "Finally, an initiative to hold Trump's lawyers accountable," *The Washington Post*, by Jennifer Rubin, March 7, 2022, <https://www.washingtonpost.com/opinions/2022/03/07/trump-lawyers-election-misconduct-initiative-to-discipline/>