

Democracy and Trust in Elections: The Role of the Bar

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At NCBP's 2023 Midyear Meeting, we learned that the rule of law is deteriorating across the globe, including the United States. According to Harvard political scientists Steven Levitsky and Daniel Ziblatt, "democratic backsliding today begins at the ballot box." In their book, How Democracies Die, Levitsky and Ziblatt identify four main indicators of electoral backsliding: (1) rejection of (or weak commitment to) the democratic rules of the game, (2) denial of the legitimacy of political opponents, (3) toleration or encouragement of violence, and (4) readiness to curtail the civil liberties of opponents, including the media.

So, what can bars do? Our Saturday plenary, moderated by Judy Perry Martinez, past president of the ABA, focused on how can bars use their education and convening powers to enhance public trust and confidence in democracy and elections. Our panel discussion with Michelle Behnke (Chair, ABA Commission on Racial and Ethnic Diversity), Joe Crosthwait (Past President, NCBP and Oklahoma County and Oklahoma Bar Associations), Danielle Duplessis-Hammond (Chief Deputy Registrar and Community Outreach Coordinator, Orleans Parish Registrar of Voters), and Joel Watson (Louisiana Deputy Secretary of State for Outreach Services) generated several options for bars and lawyers, including:

- Reach out to state and local election officials and create effective partnerships for bar events and activities that elevate the transparency of election processes and procedures
- Create bar events for lawyers and the community on election processes and procedures, including voter registration
- Encourage lawyers to become poll workers and share their experiences with others
- Encourage lawyers to teach about election laws and procedures to civic organizations
- Create a bar task force on the accessibility of elections
- Write newspaper articles and letters to the editor regarding election laws, processes, and procedures
- Evaluate whether CLE credit may be awarded for serving as a poll worker or other election-related activities
- Consider whether election statutes can be understood by the public or need to be rewritten with plain language

Retired Associate Supreme Court Justice Breyer, in speaking about our constitution, pointed out that "[i]f you don't participate, this document won't work." NCBP encourages bar leaders to consider what they can do to promote trust and confidence in elections.

Resources:

World Justice Project: To learn more about how the rule of law is deteriorating in the U.S. and across the globe, visit the World Justice Project's website at: <https://worldjusticeproject.org/>.

WJP measures how the rule of law is perceived and experienced in 140 countries and jurisdictions based on factors familiar to all of us:

- (1) constraints on government powers
- (2) the absence of corruption
- (3) open government
- (4) fundamental rights
- (5) order and security
- (6) regulatory enforcement
- (7) civil justice
- (8) criminal justice

In its 2022 report, the WJP found that the rule of law performance declined globally for the 5th year in a row. Between 2015 and 2022, the rule of law deteriorated in 64% of countries and 4.4 billion people live in a country where the rule of law is declining. The rule of law has weakened in the United States since 2015 and the United States ranked 26th across 140 countries in 2022.

See also: Professor Barbara Walter, University of California, San Diego, How Civil Wars Start (2022), <https://www.barbarafwalter.com/>. Steven Levitsky and Daniel Ziblatt, How Democracies Die (2018), <https://scholar.harvard.edu/levitsky/home>, <https://scholar.harvard.edu/dziblatt/home>.

ABA resources: To learn more about defending democracy and the rule of law, see https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2022/october-2022/defending-democracy-in-our-electoral-process/.

The ABA Section of State and Local Government Law's Defending Democracy Initiative promotes the integrity of the electoral process by focusing on transparency of election administration and putting a human face on poll workers, the front-line workers in our democracy. The Section includes tours of local election offices during its meetings and has offered to assist state and local bars in having similar tours at their meetings or in their home jurisdictions. To learn more, see https://www.americanbar.org/groups/state_local_government/resource/defending-democracy/.

In addition, the ABA's Poll Worker, Esq. is a partnership with the National Association of Secretaries of State and the National Association of State Election Directors which encourages lawyers to serve as poll workers. See https://www.americanbar.org/groups/public_interest/election_law/poll-worker-esq/.