

PROBLEMS OF COMPLIANCE IN ELECTION LAW

LISA MANHEIM*

Elections do not operate in perfect compliance with the law. Instead, irregularities are routine and, to some extent, inevitable. The law of elections responds to this tension by recognizing that only some legal irregularities, under only some circumstances, have even the potential to invalidate an electoral process. One manifestation of this response involves variable standards of compliance. Doctrines implicated by these standards recognize that some election rules require only substantial compliance, rather than strict compliance, to be considered fulfilled. These compliance standards serve a vital role in election law regimes across the country. The basic operation of these standards is, moreover, intuitively sensible. Nevertheless, the case law surrounding these distinctions tends to be analytically tortuous. The convoluted nature of these precedents is due in part to the complexity and diversity of election law regimes across the country, in part to imprecision in how courts and litigants discuss these concepts, and in part to tensions between these compliance standards and the rise of textualism, which in recent decades has become the governing methodology for statutory interpretation. This Essay describes the need for these compliance standards in elections, a reality reflected in their long pedigree in the case law. It then explores how and why the doctrine surrounding these standards poses so many challenges. Finally, this Essay concludes by reiterating the need for these standards and offering suggestions for improvement.

* Charles I. Stone Professor of Law at the University of Washington School of Law. I am grateful for the valuable feedback I received from participants at the State Democracy Research Initiative's fifth annual conference on Public Law in the States. This feedback includes the helpful insights provided by Rob Yablon as a commentator. I am also grateful for the excellent editorial work of DeMarcus L. Williams, Beeta I. Siwik, and others on the *Wisconsin Law Review*. Finally, I would like to acknowledge, with gratitude, the terrific research support provided by Jessica Sadiq, whose work contributed directly to this Essay, as well as the extensive efforts of the many other students whose contributions to prior works helped to inform this Essay.

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INTRODUCTION

An election is an exercise of choice by eligible voters. It achieves this result through an intricate combination of legal rules that rely on the input of many actors. An election is, accordingly, necessarily governed by law. Yet it is not realistic to expect any election to comply perfectly, in every respect, with all governing laws. An election is a complicated process that requires innumerable legal decisions: from what conditions to impose on candidates seeking inclusion on a ballot, to where to place a drop box, to whether and how to count a given ballot, to the conditions under which participants can challenge the results, and beyond. In jurisdictions with millions of voters, these legal decisions necessarily will number into the millions. Inevitably, errors occur. If the law's response to these imperfections were to reject the election in question—if the law were to insist, in other words, that each election be error-free—it would not be possible, as a practical matter, to hold a successful election.

Across jurisdictions, therefore, the law governing elections cannot ignore the reality of legal imperfection. Instead, it must find a way of accommodating some of these imperfections while rejecting others. A well-designed election accomplishes this task well—sensibly distinguishing between imperfections that matter and imperfections that do not.

Legal regimes across the country tackle this work through an interrelated set of doctrines and commitments. For example, the law across jurisdictions accords election officials, as well as the products of their work, a presumption of regularity.¹ It also embraces a presumption

1. See, e.g., *Boardman v. Esteve*, 323 So. 2d 259, 268 (Fla. 1975) (“As to the actual validity of the ballots whose return envelopes are missing, we first point out that as a general rule elected officials are presumed to perform their duties in a proper and lawful manner in the absence of a sufficient showing to the contrary and also that

against voiding an election, even when irregularities have occurred.² It further provides that only some errors—not all errors—may possibly justify the invalidation of a ballot or another affected instrument.³ And, importantly, the law of elections across the United States recognizes that substantial compliance with an election rule is, at times, sufficient for purposes of fulfilling the rule at issue.⁴ What this means is that sometimes an imperfect form of compliance—compliance that does not exactly and completely fulfill a rule’s terms—may nevertheless be enough, by law, to count as compliance.⁵

Imagine, for example, that a statute—governing voting by mail—requires that any mail-in ballot include the voter’s complete residential address on the return envelope. Some voters include only a partial address. These partial addresses provide enough information to easily determine the complete addresses, and there is no evidence of fraud or other intentional wrongdoing. If the statute at issue requires strict compliance, there is a good argument that these voters have failed to comply—they have not exactly and completely fulfilled the statute’s terms. If, by contrast, the statute requires only substantial compliance, there is a good argument that these voters have complied—they have fulfilled the statute’s objectives in a manner that did not facilitate intentional wrongdoing.⁶ This distinction may ultimately determine whether the ballots in question are counted.

These sorts of rules about compliance are far from new. To the contrary, courts across the country have, for generations, issued

there is a presumption that returns certified by election officials are presumed to be correct.” (citation omitted)).

2. See, e.g., *Cole v. Town of Atl. Beach Election Comm’n*, 712 S.E.2d 440, 444 (S.C. 2011) (“The Court will employ every reasonable presumption to sustain a contested election, and will not set aside an election due to mere irregularities or illegalities unless the result is changed or rendered doubtful.” (quoting *George v. Mun. Election Comm’n of the City of Charleston*, 516 S.E.2d 206, 208 (1999))).

3. See, e.g., *Hardin v. Montgomery*, 495 S.W.3d 686, 699 (Ky. 2016) (“Violations of directory requirements do not nullify the elections results, but violations of mandatory provisions may.”); *In re Nowak*, 2004-Ohio-6777, 820 N.E.2d 335, at ¶ 37 (“A directory provision, by definition, involves no invalidating consequence for its disregard. Indeed, the inability of a directory provision to effectuate an invalidating consequence is its sole defining characteristic.”).

4. See, e.g., *Boardman*, 323 So. 2d at 267 (concluding that “substantial compliance with the requirements of the absentee voting statute is all that is required to give legality to the absentee ballots”).

5. See, e.g., *id.*; *Eubanks v. Hale*, 752 So. 2d 1113, 1128 (Ala. 1999) (recognizing that “so long as any irregularities in the voting process do not ‘adversely affect the sanctity of the ballot and the integrity of the election,’ substantial compliance ‘with the essential requirements of the absentee voting law’ is sufficient.” (quoting *Williams v. Lide*, 628 So. 2d 531, 536 (Ala. 1993))).

6. See *infra* notes 35–39 and accompanying text (addressing requirements of strict and substantial compliance).

innumerable decisions on the topic.⁷ The result is a vast body of precedents addressing compliance standards in elections. Courts adjudicating these cases, moreover, frequently turn for guidance to precedents set in other jurisdictions.⁸ The case law therefore includes areas of convergence—areas where the law of essentially all jurisdictions operates in essentially the same manner. In the field of compliance standards, these areas of convergence remain at a high level of generality. The points of consensus are nevertheless important, as they provide insight into the basic operation of compliance standards and help to bolster these doctrines against criticism.

Criticism is, nevertheless, warranted. The case law of compliance standards is notoriously convoluted and, accordingly, hard to understand and apply.⁹ The complications reflect several challenges that courts face when trying to adjudicate lawsuits presenting questions of compliance. These challenges involve the diversity of election law regimes characterizing this area in the United States, imprecision in how courts analyze election law's compliance standards, and the rise of textualism as a dominant form of statutory interpretation in many jurisdictions across the country. When courts turn to the case law of other jurisdictions for guidance, that consultation may, at times, compound these challenges.

It may be tempting, in response to these concerns, to question whether compliance standards should be in the case law at all. At a minimum, it may seem appropriate for courts of each jurisdiction to silo their analysis—to resist consulting the case law of other jurisdictions. Yet neither of these interventions is appropriate. These rules governing compliance standards in elections serve a vital purpose; the long pedigree exists for good reason. Attempting to remove these standards from the doctrine would, accordingly, introduce more problems than it would solve. A similar dynamic affects courts' tendency to consult the case law of other jurisdictions with respect to these issues. While this form of analysis poses challenges, it ultimately provides courts with helpful insight as they navigate this challenging area. At least as importantly, courts' willingness to look to precedents set in other jurisdictions increases stability in the law and, accordingly, helps to strengthen foundational rules and concepts in the field. In short, solutions to the problems of compliance in elections do not involve trying to run from

7. See, e.g., *Irvin v. Gregory*, 13 S.E. 120, 121 (Ga. 1891) (discussing compliance rules in the nineteenth century).

8. See *infra* note 14 and accompanying text.

9. See, e.g., *In re Feb. 14, 2017, Special Election on Moses Lake Sch. Dist. #161 Proposition 1*, 413 P.3d 577, 582 (Wash. Ct. App. 2018) (“We are unable to synthesize the four tests of election invalidity so we address each test separately. We invite our Supreme Court to integrate the standards into a unifying principle.”).

the challenges presented by compliance standards. The appropriate approach is, instead, more nuanced. The most promising solutions involve some combination of lawmakers, courts, and commentators working toward the shared end of improving the law in this area.

This Essay begins this work by examining the challenges posed by election law's compliance standards. Part I explores the nature of compliance standards and the role they play in the field of election law in the United States. Part II identifies the challenges courts face when trying to understand and apply the rules governing these standards, with a particular focus on the challenges posed by the complexity and diversity of election law regimes across the country, imprecision in the language courts use when adjudicating issues of compliance in elections, and the rise of textualism as a dominant method of statutory analysis. Part III seeks to offer solutions. It resists any suggestion that compliance standards should be excised from the case law or that jurisdictions should stop turning to precedents set in other jurisdictions for guidance in this area. Instead, it discusses the value of lawmakers codifying the rules governing compliance standards; of courts using more precise language when adjudicating compliance issues; and of both courts and lawmakers finding ways of reconciling basic principles of compliance with those of textualism. Through this analysis, this Essay seeks to provide insight into election law's compliance standards as well as, more broadly, concerns that arise when courts in this field look to precedents set in other jurisdictions.

I. THE IMPORTANCE OF COMPLIANCE STANDARDS IN ELECTIONS

In the United States, the federal government does not take primary responsibility for designing or administering elections. Instead, as envisioned by the U.S. Constitution, the states take the lead on this work.¹⁰ The result is a multitude of jurisdictions each with its own collection of election laws, which reflect some combination of constitutional law, statutory law, administrative regulation, and other forms of positive law, as well as case law. The high level of diversity characterizing this set of regimes is due, in part, to the country's intentionally decentralized approach to election law and, in part, to the

10. See U.S. CONST. art. I, § 4, cl. 1 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . ."); *id.* amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."); see also, e.g., *Grove v. Emison*, 507 U.S. 25, 34 (1993) ("[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts.").

inherent complexity of any electoral process.¹¹ Still, at times, the election law of different jurisdictions can appear quite similar: Multiple jurisdictions, for example, might have adopted similar vote-counting rules, voter identification laws, or absentee ballot rules.¹² Jurisdictions across the country also tend to rely on similar terms and phrasing—for example, “strict compliance” and “substantial compliance”—when they discuss how to understand these rules.¹³

Case law reflecting these similarities therefore can feel, to some extent, like common law. To that end, much of the relevant discussion appears in court opinions where judges explicitly refer to the case law of other jurisdictions.¹⁴ And to some extent, the case law surrounding these similarities is, in fact, grounded in what might be thought of as common law.¹⁵ Yet with the law of elections so grounded in positive law—and particularly in statutory law—it ultimately is hard to understand this cross-jurisdictional case law as a form of common law, at least as traditionally defined. Instead, the similarities in the case law reflect a more nuanced and subtle form of cross-jurisdictional precedents: a convergence of law generated not only from judge-generated common law but also from judge-generated interpretations of each jurisdiction’s positive law.

However characterized, it makes sense that the election laws of various jurisdictions reflect these sorts of similarities. When adjudicating election-related lawsuits, courts of any jurisdiction tend to face similar issues. This is particularly true with respect to compliance standards, which address—and, ideally, help to resolve—a fundamental tension that

11. See generally Lisa Marshall Manheim, *Presidential Control of Elections*, 74 VAND. L. REV. 385, 395–405 (2021) (describing the overarching structure of election law in the United States).

12. See, e.g., ARI BERMAN, GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA 207–85 (Roger Williams Straus Jr., John Farrar & Robert Giroux eds., 2015) (describing coordinated efforts across jurisdictions to enact restrictive voting measures); see also Lisa Marshall Manheim & Elizabeth G. Porter, *The Elephant in the Room: Intentional Voter Suppression*, 8 SUP. CT. REV. 213, 231–32, 231–32 nn.99–105 (2018) (providing additional context).

13. See, e.g., *Roe v. Mobile Cnty. Appointment Bd.*, 676 So. 2d 1206, 1225 (Ala. 1995) (“Alabama is not alone in applying the substantial compliance standard to voting laws. A majority of jurisdictions follows the same or a similar standard.”).

14. See, e.g., *Boardman v. Esteva*, 323 So. 2d 259, 262, 265–66 (Fla. 1975) (examining the precedents of other jurisdictions in a case presenting the question whether, under Florida law, “the absentee voting law requires absolute strict compliance with all its provisions, or whether substantial compliance is sufficient to give validity to the ballot”); *Roe*, 676 So. 2d at 1226–31 (providing, on this issue, a “majority jurisdictional survey” and a “minority jurisdictional survey”).

15. See, e.g., *Wells v. Ellis*, 551 So. 2d 382, 383 (Ala. 1989) (acknowledging the role of the common law in this field by observing that “[a] number of jurisdictions subscribe to the view that absentee voting laws should be strictly construed because . . . these statutes are in derogation of the common law”).

exists in the field. On the one hand, an election, which can be thought of as a law-bound exercise of choice by eligible voters, relies on a complicated combination of legal rules and decisions.¹⁶ It is, accordingly, necessarily governed by law. On the other hand, errors in elections are routine and, to some extent, inevitable.¹⁷ Elections are complicated processes that rely on the inputs of many people making innumerable legal decisions. These processes cannot be expected to perfectly comply, in every respect, with all governing laws. Instead, insisting on perfect legal compliance in elections would, as a practical matter, force the electoral process to grind to a halt.

The law governing elections, therefore, must find a way to accommodate the reality of imperfection. This accommodation does not mean that the law no longer holds. Quite to the contrary, each election *depends* on law. If the law does not hold, there cannot be an election. This accommodation, accordingly, implies a sorting: between imperfections that can be ignored and imperfections that cannot. A well-designed election regime will rely on a system for sorting that is sensible, predictable, reliable, and itself based in law.

Jurisdictions across the country have responded to this dynamic with an interrelated set of doctrines and commitments. As previously discussed, implicated principles include those providing a presumption of regularity to election officials and the products of their work, a presumption against voiding an election once it has taken place, and an insistence that not all errors have even the potential to justify the invalidation of a ballot or other affected instrument.¹⁸ Importantly, in response to the tensions that arise from imperfection in elections, the law of elections across the United States also recognizes another fundamental principle: Substantial compliance with an election rule is, at times, sufficient for purposes of compliance.¹⁹ Sometimes, of course, it is not; sometimes, *strict* compliance is necessary for purposes of compliance. But the doctrines of compliance standards in elections recognize that this stricter standard does not always apply.²⁰ Instead, for a voter, election official, or other actor to be deemed in compliance with an election rule, substantial compliance at times is enough—and, accordingly, it is not

16. See *supra* note 11 and accompanying text.

17. See, e.g., *In re Sheehan v. Franken*, No. 62-CV-09-56, 2009 WL 981934 (Minn. D. Ct. Apr. 13, 2009) (“Although not ideal, errors occur in every election.”); *Taylor v. Taylor*, 10 Minn. 107, 112–13 (Minn. 1865) (“There is hardly an election held in any county at which in some town irregularities do not occur, and to declare every such election void would work a manifest hardship and injustice.”).

18. See *supra* notes 2–5 and accompanying text.

19. See, e.g., *supra* notes 2–5.

20. *Id.*

necessary under law for an actor to comply exactly and completely with the rule's terms.

The list of possible examples illustrating this distinction—between strict and substantial compliance—is as long as the list of possible rules governing an election. A candidate might fail to fill out a candidacy form, for example, exactly as required by statute, despite including all the essential information.²¹ Does this form comply with the relevant statute? The answer likely depends on which compliance standard, in this context, is required. If the statute in this context requires strict compliance, this candidate likely has not complied. By contrast, if the statute in this context requires merely substantial compliance, the candidate likely has complied.²² To consider another example, an election official might provide, with respect to an upcoming election, notice that is informative and extensive, but nevertheless not in perfect compliance with the statutory requirements.²³ Has the official sufficiently complied with these requirements? Again, the answer likely depends on whether the statute requires strict or substantial compliance. The list goes on.

This distinction between strict and substantial compliance is not only ubiquitous; it is central to how elections are designed and administered. Unsurprisingly, therefore, it has been of major significance for elections throughout American history, including in recent cycles.²⁴ And it will

21. See, e.g., *Moore v. Genesee Cnty.*, 976 N.W.2d 921, 925 (Mich. Ct. App. 2021) (addressing candidate's failure to include a zip code); *Wiggins v. Rogers*, 2019 IL App (1st) 190161, ¶¶ 22, 25–26, 126 N.E.3d 493, 501–02 (addressing candidate's failure to include the primary election date).

22. See, e.g., *Moore*, 976 N.W.2d at 925 (explaining that “[c]andidate applicants must ‘strictly comply with the preelection form and content requirements . . .’” (quoting *Stumbo v. Roe*, 957 N.W.2d 830, 832 (2020))); *id.* (concluding that this candidate did strictly comply, given that the statute itself only required a “residential address”); *Wiggins*, 2019 IL App (1st) 190161, ¶¶ 25–26 (holding that the candidate's failure to include the primary election date on the candidacy form did not invalidate it, even if the statute required that date, because the inclusion of the consolidated election date constituted substantial compliance).

23. *Irvin v. Gregory*, 13 S.E. 120, 121 (Ga. 1891) (finding “substantial compliance” where an election was advertised in the proper newspaper for four weeks except for a single omitted issue because “[t]he purpose of the notice was . . . fully accomplished”).

24. Recent illustrations have emerged, for example, from the 2024 decision by the Iowa Supreme Court to uphold the removal of three Libertarian Party congressional candidates from the general election ballot after the party failed to strictly comply with the state's procedures for holding nominating conventions. *Gluba v. State Objection Panel*, 11 N.W.3d 459, 466–67 (Iowa 2024). In that same election cycle, the Kentucky Supreme Court concluded that a candidate's failure to strictly comply with the signature requirement for ballot access was “fatal to her candidacy.” *Kulkarni v. Horlander*, 701 S.W.3d 181, 194 (Ky. 2024). And the Oklahoma Supreme Court overturned a special election approving a lodging tax increase after finding a failure to strictly comply with notice requirements without defining strict compliance. *Cathey v. Bd. of Cnty. Comm'rs for McCurtain Cnty.*, 550 P.3d 910, 920 (Okla. 2024). This list could go on.

continue to be so. The tension that underlies this split in compliance standards—the tension between the need for elections to be governed by law and the recognition that perfect compliance is, at all times, not a realistic standard—is not a tension that goes away.

The body of case law generated by this set of doctrines is therefore extensive.²⁵ In parsing these precedents, courts across the country look both to their own case law as well as to the case law of other states when considering how to resolve difficult questions presented by the problem of compliance standards.²⁶ The result is far from uniform; instead, as discussed in more detail below,²⁷ diversity of outcomes remains a defining characteristic of this area of law.

Nevertheless, there are important consistencies throughout these decisions. At the forefront is the recognition of what determines whether a rule requires either strict or substantial compliance. More specifically, decisions across the country reflect the understanding that a jurisdiction's governing principles of interpretation determine which standard of compliance will apply.²⁸ When the rule derives from statute, for example, the governing principles of statutory interpretation will determine the compliance standard.²⁹ Older cases frequently rely on the term

25. This body of case law—and the inherent tensions it reflects—also has generated insightful scholarship addressing compliance standards in the context of related topics. Among the notable works are Edward B. Foley, *How Fair Can Be Faster: The Lessons of Coleman v. Franken*, 10 ELECTION L.J. 187 (2011); Richard L. Hasen, *The Democracy Canon*, 62 STAN. L. REV. 69 (2009); and Justin Levitt, *Resolving Election Error: The Dynamic Assessment of Materiality*, 54 WM. & MARY L. REV. 83 (2012).

26. See *supra* notes 14–15 and accompanying text.

27. See *infra* Section II.A.

28. See, e.g., *Wickman v. Norway Twp. Clerk*, No. 367743, 2024 WL 3466055, at *6 (Mich. Ct. App. July 18, 2024) (“Because the Legislature included a list of exceptions, and that list does not include any exceptions regarding the circulator’s city or township, we presume that the omission was intentional.”), *appeal denied*, 17 N.W.3d 688 (Mich. 2025), *reconsideration denied*, 20 N.W.3d 566 (Mich. 2025); *Seawright v. Bd. of Elections in City of New York*, 150 N.E.3d 848, 853 (N.Y. 2020) (“It is for the legislature, not the courts, to decide when the law should ‘give way . . . to the circumstances of the moment,’ and that ‘consistent enforcement and strict adherence to legislative judgments should be reinforced—not undermined.’”); *Pugh v. Draper City*, 2005 UT 12, ¶ 11, 114 P.3d 546, 549 (highlighting that legislative intent, as expressed through the statute’s “language, purpose, and structure” require strict adherence to filing deadlines for financial disclosure statements); *Butts v. Bysiewicz*, 5 A.3d 932, 947 (Conn. 2010) (holding that the court could not intervene “when the legislature clearly ha[d] expressed its intent to require strict compliance” with a statutory filing deadline); *Queenan v. City of Louisville*, 233 S.W.2d 1010, 1012 (Ky. 1950) (“Common sense should be exercised in the interpretation of a statute as well as in its enactment. In this connection we must not overlook the Legislature’s direction to the courts when construing its acts.”).

29. When the rule derives from a regulation, governing principles of regulatory interpretation determine which standard of compliance applies; when the rule derives

“legislative intent” when describing the relevant inquiry,³⁰ though contemporary developments surrounding philosophies of statutory interpretation (a complication later discussed in more length) have somewhat reduced courts’ reliance on this term.³¹ Despite these changes in the field of statutory interpretation, the overarching insight—that a jurisdiction’s governing principles of interpretation determine, in a given scenario, which of election law’s standards of compliance will apply—has not changed.

Another consistent theme in these cases emerges from discussions of the values served by requiring either strict or substantial compliance. Courts recognize that a requirement of strict compliance has the potential to help protect the integrity of the electoral process.³² Courts recognize that a requirement of substantial compliance has the potential to help protect the right to vote.³³ With respect to both standards of compliance, moreover, courts recognize that these requirements help to ensure that an election regime operates in the manner set by statute or other positive law.³⁴ The importance of this latter value helps to explain the high-level consensus, previously discussed, regarding how to determine the relevant standard of compliance.

Yet another set of consistencies informs what is required for substantial or strict compliance to have been achieved. Across

from a constitution, governing principles of constitutional interpretation determine which standard of compliance applies; and so on.

30. See, e.g., *Griswold v. Ferrigno Warren*, 2020 CO 34, ¶ 16, 462 P.3d 1081, 1084 (explaining that state’s Election code must be interpreted to “ascertain and give effect to the General Assembly’s intent.”); *Butts*, 5 A.3d at 947 (holding that the court could not construe a statutory filing deadline as requiring only substantial compliance “when the legislature clearly ha[d] expressed its intent to require strict compliance”); *Eubanks v. Hale*, 752 So. 2d 1113, 1128 (Ala. 1999) (looking to the “Legislature’s intent” when determining which standard of compliance should apply); *Catania v. Haberle*, 522 A.2d 374, 379 (N.J. 1990) (“This Court has never announced that time limitations in election statutes should be construed to bar candidates from the ballot . . . when it is obviously not the Legislature’s intent.”); *Wells v. Ellis*, 551 So. 2d 382, 383 (Ala. 1989) (explaining that the majority of jurisdictions have “held that absentee voting laws should be liberally construed in order to effectuate the legislative purpose of protecting and furthering a citizen’s right to vote”).

31. See *infra* Section II.C.

32. See, e.g., *Sheehan v. Franken*, 767 N.W.2d 453, 460–62 (Minn. 2009) (examining how strict compliance with respect to absentee-voting rules helps to uphold the integrity of the process).

33. See, e.g., *Shambach v. Bickhart*, 845 A.2d 793, 797–802 (Pa. 2004) (explaining that a liberal construction of election rules—one that allows for “substantial conformity to the statutory requirements”—protects the right to vote); *Wells*, 551 So. 2d at 383–84 (“The majority of jurisdictions . . . has held that absentee voting law should be liberally construed in order to effectuate the legislative purpose of protecting and furthering a citizen’s right to vote. ‘Substantial compliance’ with the statutory requirements is required under this interpretation.”).

34. See *supra* notes 28–30 and accompanying text.

jurisdictions, substantial compliance requires that similar criteria be met: first, fulfillment of a rule's objectives, and second, a lack of fraud or other intentional wrongdoing.³⁵ It is true that courts will, when describing this first criterion, at times use terms other than "objective." A court might refer, for example, to fulfillment of a rule's "purpose" or "design."³⁶ It is likewise true that how a court determines a rule's objectives itself depends on interpretive principles governing in the relevant jurisdiction. And with respect to the second criterion—the absence of intentional wrongdoing—jurisdictions again might differ on how exactly to understand and apply this criterion.³⁷ Nevertheless, across the country, the law remains fairly consistent with respect to what, at a higher level, substantial compliance means and requires.³⁸ A similar pattern emerges with respect to strict compliance. Courts have recognized that strict compliance requires exact and complete fulfillment of a rule's terms—a standard that must be met even if the rule's objectives have been fulfilled—with an exception only for truly de minimis deviations.³⁹

35. See, e.g., *Williams v. Clark Cnty. Dist. Att'y*, 50 P.3d 536, 541 (Nev. 2002) ("Courts have defined substantial compliance as compliance with essential matters necessary to ensure that every reasonable objective of the statute is met."); *Adkins v. Huckabay*, 755 So. 2d 206, 218 (La. 2000) ("[I]n the absence of fraud, undue influence, or intentional wrongdoing, an absentee ballot must be counted unless there is a substantial failure to comply with the essential requirements of the absentee voting law and that irregularity adversely affects the sanctity of the ballot and the integrity of the election."); *Boardman v. Esteve*, 323 So. 2d 259, 269 (Fla. 1975) (setting forth the standard of substantial compliance in the absentee voting context to include whether the rule's "essential requirements" were met, whether "fraud" or "intentional wrongdoing" was present, and whether the irregularities undermined "the sanctity of the ballot and the integrity of the election").

36. See, e.g., *In re Estate of Lahr*, 744 P.2d 1267, 1271 (Okla. 1987) ("Substantial compliance with a statute is not shown unless it appears that the *purpose* of the statute has been served." (emphasis added)); *Spaulding v. Romack*, 113 N.E. 229, 231 (Ind. 1916) ("[A] substantial compliance with the *design* provided by the statute is all that has been required." (emphasis added)).

37. See, e.g., *Samuelson v. Cook Cnty. Officers Electoral Bd.*, 2012 IL App (1st) 120581, ¶ 38, 969 N.E.2d 468, 478 (addressing substantial compliance and noting that "no evidence of wrongdoing or bad intent was established in connection with the [failure to comply strictly]"); *Shambach v. Bickhart*, 845 A.2d 793, 799, 803 (Pa. 2004) (same, and noting that "there is no evidence of fraud"); *Adkins v. Huckabay*, 755 So. 2d 206, 218 (La. 2000) (same, and noting the importance of the "absence of fraud, undue influence, or intentional wrongdoing"); *Rosen v. McNab*, 250 N.E.2d 709, 710 (1969) (same, and noting the importance of "the absence of allegations of fraud").

38. See *supra* notes 35–37.

39. See, e.g., *Sec'y of State v. Wendland*, 558 P.3d 1199, 1205 (Nev. Ct. App. 2024) ("Strict compliance, in contrast [to substantial compliance], requires exact compliance with a statute's terms." (quoting *BMO Harris Bank v. Whittemore*, 535 P.3d 241, 245 (Nev. 2023))); *Steere v. Mason*, 493 N.Y.S.2d 554, 554 (N.Y. App. Div. 1985) ("Strict compliance would require that the precise number of pages, volumes and signatures contained in the petition be accurately and exactly set forth on the cover

In short, jurisdictions across the country grapple with many of the same fundamental tensions when they adjudicate election-related lawsuits. It is predictable, therefore, that these cases generate similar doctrines. The relevant tensions also tend to lend themselves to similar resolutions, in part because jurisdictions look to one another for guidance. With respect to compliance standards, the result is an extensive, crosscutting body of case law—generated over hundreds of years—that guides the adjudication of the many more granular issues presented by issues of compliance in an election.

In light of this rich body of case law, it is understandable if one were to assume that the doctrines in this area are clear and well-articulated. Unfortunately, they are not. It can be tempting, moreover, for a court or litigant to look across jurisdictions as a guide to help its analysis with respect to questions of compliance. Ultimately, this approach is appropriate,⁴⁰ but it is difficult to execute. As discussed in Part II, this area poses significant challenges, particularly when courts examine the case law of other jurisdictions.

II. CHALLENGES POSED BY COMPLIANCE STANDARDS IN ELECTIONS

The doctrines surrounding compliance standards in election law have a long pedigree. The relevant case law spans many generations and virtually all jurisdictions. As discussed above, this collection of decisions has produced some consensus and clarity.⁴¹ The extensive case law addressing compliance standards in election law nevertheless remains markedly confused and opaque.⁴² This observation triggers the question:

page.”). Although the courts of at least one jurisdiction have offered a somewhat more lenient definition of strict compliance, it is not clear what difference, if any, this distinction makes. *See Comm. for Pres. of Established Neighborhoods v. Riffel*, 141 P.3d 422, 424 (Ariz. Ct. App. 2006) (stating that the “strict-compliance standard . . . requires *nearly* perfect compliance” (emphasis added)). For more on the existence of a de minimis exception, see, for example, *Brill v. Lorain Cnty. Bd. of Elections*, 2024-OH-4990, ¶ 49, 251 N.E.3d 62, 75 (2024) (discussing—in context of the requirement that referendum petitions contain a “full and correct copy” of the title of the proposed ordinance—the role of de minimis errors in determining whether petitioners had strictly complied); *Riffel*, 141 P.3d at 424; *Fromson v. Lefever*, 493 N.Y.S.2d 169, 170 (N.Y. App. Div. 1985), *aff’d sub nom.*, *Barrett v. Scaringe*, 483 N.E.2d 1149, 1150 (N.Y. 1985) (“[S]trict compliance does not require invalidation in all cases, however minor and inconsequential an error may be.”); *Phillips v. Town of Scales Mound*, 63 N.E. 180, 182 (Ill. 1902) (stating in a context separate from elections, that “a strict compliance with the statute does not necessarily mean a literal and exact compliance”).

40. *See infra* Part III.

41. *See supra* notes 28–39 and accompanying text.

42. The following discussion, contained in a decision issued by a Washington state court, is illustrative:

Many Washington judicial decisions, particularly older, dense decisions, address challenges to elections on the basis of election irregularities. The

Why, despite the breadth and depth of these precedents—and despite the fundamental importance of compliance standards in election law—is this area of law so confused? And in light of this confusion, to what extent is it helpful for courts to continue looking to the case law of other jurisdictions to help wade through the morass?

The answers to these questions are nuanced and interrelated. In part, the confusion over compliance standards in election law stems from the complexity and diversity of election law regimes across the country. It also reflects judicial imprecision, across jurisdictions and through time, as courts across the country rely on the same terms and phrases in inconsistent ways. This dynamic injects incoherence into these doctrines. Finally, developments in related areas of the law, including those associated with statutory interpretation, threaten to call into question foundational concepts governing compliance standards.

This Part explores these phenomena—diversity and complexity in election law regimes, imprecision in the language, and the rise of textualism—as each relates to election law’s compliance standards. These discussions help to reveal some of the challenges courts face when trying to understand and apply the doctrines in this area, including when they turn to the case law of other jurisdictions for guidance. This analysis, in turn, provides context for the discussion that follows in Part III, which explores the value in this cross-jurisdictional examination and suggests opportunities for improvement.

A. Diversity and Complexity of Election Law Regimes

The diversity and complexity of election law regimes across the country can introduce confusion into the case law. The confusion associated with diversity is particularly acute when coupled with superficial similarities between jurisdictions. To this end, the election

Washington Supreme Court has announced at least four nonexclusive principles, tests, or standards to apply when determining whether to overturn an election based on an irregularity. First, the court will affirm an election if the election officer violated a directory, rather than a mandatory, duty. Second, the court will not interfere in an election if the election officer substantially complied with a statutory duty. Third, the court will uphold an election unless the challenger can show that the irregularity likely led to a different result in the election. Fourth, and perhaps related to principle three, the court will validate an election, despite a variance from the terms of the statute, if the election was fair and sufficient electors participated in the election so that the election, as held, constituted a reliable expression of popular opinion. Sometimes, a court applies more than one standard in a decision. Nevertheless, the differing standards could lead to contrary outcomes in the same case.

In re Feb. 14, 2017, Special Election on Moses Lake Sch. Dist. #161 Proposition 1, 413 P.3d 577, 582 (Wash. Ct. App. 2018).

laws of different jurisdictions can appear to be quite similar. For example, multiple jurisdictions might have adopted similar voter identification laws.⁴³ Moreover, when jurisdictions discuss how to understand these rules, they tend to rely on similar phrasing.⁴⁴ It can be tempting, therefore, for a court or litigant to look across jurisdictions to identify the compliance standards governing each of these rules.

However, even when rules appear, out of context, to be similar, jurisdictions often interpret them differently. A legislature might, for example, enact statutory language requiring election laws to be construed, under appropriate circumstances, to favor the exercise of choice by eligible voters.⁴⁵ This sort of statutory mandate might, in turn, affect how courts understand other election rules—including the circumstances under which either strict or substantial compliance should apply. Even without these differences in statutory law, moreover, a state's courts might, through time, have developed principles of statutory interpretation that differ from another jurisdiction's. (Indeed, a single jurisdiction's approach to statutory interpretation might itself have changed over time.) These differences in analytical approaches can further complicate courts' understandings of discrete election law rules and when they trigger strict or substantial compliance.

The punchline is that while jurisdictions tend to have overarching commonalities in this area—regarding the specific, substantive rules enacted by a legislature; the terminology used to describe the different compliance standards; and so on—these commonalities can be overwhelmed by the differences among jurisdictions with respect to their overarching election law regimes, their interpretive methods, and the case law generated through time. As a result, a court encounters hurdles when it turns to different jurisdictions for guidance as to which compliance standard applies to an election law rule before it. This dynamic not only threatens to lead courts astray in individual cases; it also contributes, more generally, to the confusion surrounding this area of the law.

43. See *supra* note 12 and accompanying text.

44. See, e.g., *supra* notes 4–5 (addressing compliance standards, including the phrasing used, in the context of absentee ballot rules).

45. See, e.g., UTAH CODE ANN. § 20A-9-401(1) (West 1994) (“This part shall be construed liberally so as to ensure full opportunity for persons to become candidates and for voters to express their choice.”); S.D. CODIFIED LAWS § 12-6-64 (2025) (“The laws of this state pertaining to primary elections shall be liberally construed so that the real will of the voters may not be defeated by a mere technicality.”); WIS. STAT. § 5.01(1) (2023–24) (“Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.”); see Richard L. Hasen, *The Democracy Canon*, 62 STAN. L. REV. 69, 123 (2009) (arguing that when election statutes are ambiguous, courts should favor voter enfranchisement, recognizing the longstanding principle that voters should not be “lost in legal brambles”).

A related factor—the complexity of election law—also contributes to this confusion.⁴⁶ For example, state constitutional mandates might, at times, supersede a compliance standard imposed by a state legislature or other lawmaking body. Many of these constitutional mandates are voter protective, and, as a result, they might impose a standard of substantial compliance even where the legislature would prefer a standard of strict compliance. At least as important is the complicated interplay between federal and state law. Federal mandates, whether constitutional or statutory, may, at times, supersede conflicting state law, including with respect to whether the state law at issue imposes a standard of either strict or substantial compliance. The Uniformed and Overseas Citizens Absentee Voting Act, for example, might, at times, supersede attempts by states to impose a standard of strict compliance with respect to certain requirements of absentee voting.⁴⁷ At the same time, the Due Process Clause of the U.S. Constitution might, on occasion, supersede attempts by states to impose a standard of substantial compliance, particularly after voting already has started.⁴⁸ Other federal mandates potentially posing complications include the Equal Protection Clause; the Elections Clause; the Civil Rights Act; the Voting Rights Act; for presidential elections, the Electoral Reform Count Act; and more. Although these federal rules apply uniformly across the country, the interplay between these mandates and underlying state mandates—like the interplay between state constitutional and statutory mandates—is sufficiently complicated to add to the complexity and confusion surrounding the law governing compliance standards.

B. Imprecision of Language

Courts' discussions of compliance standards in election rules are notoriously confusing and challenging. Discussions might use the same terms in an inconsistent manner, typically without acknowledgement;⁴⁹

46. My gratitude extends to Rob Yablon for discussions regarding the observations set forth in this paragraph.

47. See Erin Geiger Smith & Josh Bell, *Facts and Myths About the Uniform and Overseas Citizens and Absentee Voting Act*, BRENNAN CTR. FOR JUST. (Oct. 18, 2024), <https://www.brennancenter.org/our-work/research-reports/facts-and-myths-about-uniformed-and-overseas-citizens-absentee-voting-act> [https://perma.cc/X5A7-BXN2].

48. See, e.g., *Roe v. Alabama*, 68 F.3d 404, 409 (11th Cir. 1995) (concluding that it would be a violation of the Due Process Clause to count certain ballots in the 1994 election in light of the “uniform state-wide practice of excluding such ballots” before the 1994 election).

49. For an example of a court acknowledging this sort of inconsistency, see *Ballentine v. Bardwell*, 478 N.E.2d 500, 505 (Ill. App. Ct. 1985) (“[W]hile the statement of candidacy requirement of section 10–5 is mandatory in the sense that it may not be

make sweeping statements that do not appear to accurately describe the law as applied in other contexts;⁵⁰ and even, at times, include expressly articulated frustration with confusion in the doctrine.⁵¹

In part, this messiness in the doctrine reflects imprecision in the language that courts and commentators use when discussing compliance standards. This imprecision, in turn, affects how courts understand the relevant concepts.

Central to this imprecision is courts' recurring conflation of two distinct sets of terms: on the one hand, those associated with compliance standards and, on the other, those associated with the distinction between so-called "mandatory" and "directory" election rules.⁵² As previously explained, terms associated with compliance standards—most prominently, "strict compliance" and "substantial compliance"—help to indicate what degree of compliance is required for an election rule to be considered fulfilled. The distinction between "mandatory" and "directory" rules addresses a different set of issues: what remedy might be available in response to a failure to comply with the relevant rule. More specifically, if an election rule is mandatory, a failure to comply with that rule might, at times, justify the invalidation of an affected ballot, election, or other instrument.⁵³ By contrast, if an election rule is directory, a failure to comply with that rule cannot justify the invalidation of an affected ballot, election, or other instrument.⁵⁴

In this way, the mandatory-directory distinction serves a purpose similar to (but nevertheless distinct from) the purpose served by the distinction between strict and substantial compliance. Both sets of

disregarded, it is not mandatory in the sense that substantial rather than strict compliance therewith mandates removal of the candidates' names from the ballot.").

50. Compare, e.g., *State ex rel. Senn v. Bd. of Elections of Cuyahoga Cnty.*, 367 N.E.2d 879, 880 (Ohio 1977) ("The general rule in Ohio is that election statutes are mandatory and must be strictly complied with."), with *State ex rel. Myles v. Brunner*, 2008-Ohio-5097, 899 N.E.2d 120, at ¶ 18 (noting that while "election laws are mandatory and require strict compliance," substantial compliance is permissible when expressly authorized by statute (quoting *State ex rel. Ditmars v. McSweeney*, 764 N.E.2d 971, 976 (Ohio 2002))). See also *infra* note 63 and accompanying text.

51. See, e.g., *Airey v. Feliciano*, 323 A.3d 1037, 1046 (Conn. 2024) ("More recently, this court has given what at times may appear to be conflicting guidance as to the scope of the substantial compliance doctrine, especially with respect to statutes that impose mandatory duties."); *Costa v. Super. Ct.*, 128 P.3d 675, 689 (Cal. 2006) (discussing how approaching strict and substantial compliance standards "presents a potentially misleading dichotomy"); *In re Moses Lake Sch. Dist. #161*, 413 P.3d 577, 582 (Wash. Ct. App. 2018) ("We are unable to synthesize the four tests of election invalidity so we address each test separately. We invite our Supreme Court to integrate the standards into a unifying principle.").

52. See *infra* note 56 and accompanying text.

53. In the context of elections, other relevant legal instruments might include, for example, a candidate's nominating papers or an initiative petition.

54. See *supra* note 3.

doctrines reflect the need for the law of elections to accommodate some imperfections and reject others. Despite this important overlap, these distinctions are not coterminous. Instead, determining whether a rule is either mandatory or directory still leaves open the relevant question: What level of compliance is necessary for this rule to be considered fulfilled? A matrix helps to illustrate the point. As applied in a given scenario, an election rule might fit into any one of these boxes:

	<i>Remedial Classification</i>		
		<i>Mandatory Rule</i>	<i>Directory Rule</i>
<i>Compliance Standard</i>	<i>Strict Compliance Required</i>	In the absence of strict compliance, invalidation might be justified.	Even in the absence of strict compliance, invalidation cannot be justified. However, other remedies might be available.
	<i>Substantial Compliance Required</i>	In the absence of substantial compliance, invalidation might be justified.	Even in the absence of substantial compliance, invalidation cannot be justified. However, other remedies might be available.

As this matrix confirms, it is possible for a rule to be mandatory and, at the same time, to require only substantial compliance to be considered fulfilled. Indeed, it is not only possible; a substantial fraction of election rules fit this description.⁵⁵

Despite this dynamic, courts regularly conflate the distinction between one set of concepts (strict versus substantial compliance) with

55. See, e.g., *Atkinson v. Roddy*, 2013 IL App (2d) 130139, ¶ 15, 991 N.E.2d 467, 471 (“The requirements of the Election Code are mandatory. However, strict compliance is not always required of a mandatory provision of the Election Code. Substantial compliance can satisfy the requirements of a mandatory provision of the Election Code.” (citations omitted)).

the distinction between the other (mandatory versus directory designations). A court might state, for example, that a given rule is “mandatory and, therefore, . . . strict compliance with the terms of the statute is required.”⁵⁶ Contrast this passage with the following language, offered by a different court offered as a corrective: “[S]trict compliance is not always required of a mandatory provision of the Election Code.”⁵⁷ At times, courts even expressly acknowledge these slippages in terminology.⁵⁸

A related problem arises when courts use the word “directory” as a term for a rule triggering substantial compliance.⁵⁹ As previously discussed, “directory” has a meaning that is conceptually distinct from that associated with substantial compliance: It describes a rule that cannot serve as the basis for the invalidation of a ballot or other instrument, even in the absence of any compliance at all.⁶⁰

It is true that most of this imprecision in language comes in discussions that, ultimately, do not affect a court’s holding. A court might, for example, misuse the term “directory” in the course of making an otherwise reasonable ruling with respect to which compliance standard applies.⁶¹ The imprecision reflected in this language nevertheless adds incoherence to the case law and threatens to confuse courts and others seeking to understand the basic nature of these concepts.

Courts also introduce confusion into the case law through other forms of imprecision. For example, courts at times suggest that a wide swath of election laws are all subject to a standard of strict compliance, even when a closer look quickly confirms that some rules are subject to

56. *Wells v. Ellis*, 551 So. 2d 382, 383 (Ala. 1989) (“This ‘strict compliance’ construction is based on the premise that statutory requirements for applying for an absentee ballot, marking an absentee ballot, taking the prescribed affidavit, and returning the ballot and affidavit are mandatory and, therefore, that strict compliance with the terms of the statute is required.”); *see also, e.g., In re Election Contest as to Reorganization of New Effington Indep. Sch. Dist. No. 54-3*, 462 N.W.2d 185, 190 (S.D. 1990) (“As a general rule, the statutory directions to the voter with respect to the time and manner of making applications for an absentee ballot, the manner of marking the same, the taking of the prescribed affidavit, and the return of the ballot, together with the affidavit, are regarded as mandatory and strict compliance therewith is required.”).

57. *Atkinson*, 2013 IL App (2d) 130139, ¶ 15.

58. *See supra* notes 49, 51 and accompanying text.

59. *See, e.g., In re Hayden*, 313 N.W.2d 869, 876 (Wis. Ct. App. 1981) (concluding that statutes governing the manner and timing of absentee ballot delivery were “directory,” and therefore “substantial compliance” with their terms was sufficient).

60. *See supra* note 3 and accompanying text.

61. *See supra* note 59 and accompanying text. In *Hayden*, the court’s conflation—of the directory designation with the substantial compliance standard—did not affect its ultimate analysis because, on the record in that case, substantial compliance had been achieved. 313 N.W.2d at 876.

substantial compliance, or vice versa.⁶² Likewise, courts often will refer to a rule as triggering strict or substantial compliance in all circumstances, even when, in fact, the rule triggers one standard or the other depending on the context.⁶³

This imprecision, compounding over time, creates a collection of decisions that can be confusing and even misleading. In response, courts understandably seek to find clarity by looking to the case law of other jurisdictions. Frequently, however, this examination across jurisdictions unearths similarly imprecise language that, if anything, further confuses this area of the law.

C. The Rise of Textualism

Another challenge courts face when trying to understand and apply the doctrines in this area relates to developments in the field of statutory interpretation. The last few decades have seen a “Kuhnian revolution” in the field, coming in the form of textualism.⁶⁴ The textualist methodology comes in many manifestations.⁶⁵ However, all share basic commonalities, including the embrace of statutory text as central to the relevant inquiry.⁶⁶ To that end, one foundational set of textualist principles requires that courts examine the text of a statute to determine “the meaning (1) understood by the ordinary person, (2) applying standard rules of semantics, definitions, and grammar, (3) at the time the statute was enacted.”⁶⁷

62. See *supra* note 50 and accompanying text.

63. Compare, e.g., *Braunschweig v. Bd. of Supervisors*, No. 5-638, 2005 Iowa App. LEXIS 1329, at *9 (Iowa Ct. App. Nov. 9, 2005) (concluding that “there is much support for the position that special election notice statutes are mandatory and require strict compliance.”), with *Knorr v. Beardsley*, 38 N.W.2d 236, 250 (Iowa 1949) (conflating terms but nevertheless addressing the compliance standards by stating that “[i]t is a quite general rule that statutory directions as to the time and manner of giving notice of an election are mandatory and will be upheld strictly *before* an election, but that in an action brought *after* an election has been held, substantial compliance is sufficient”).

64. William N. Eskridge, Jr., Brian G. Slocum & Kevin Tobia, *Textualism’s Defining Moment*, 123 COLUM. L. REV. 1611, 1612 (2023).

65. *Id.* at 1625 (“Today, ‘textualism’ refers, at best, to many different theories that are applied inconsistently among ‘textualist’ Justices and support different answers to many of the cases before the Court.”).

66. See also *id.* at 1693–95 (referring repeatedly to the “text-centric” approach of textualism).

67. *Id.* at 1613 (footnote omitted).

Also central to the textualist methodology is the rejection of a statute's *purpose* as the lodestar for interpretation. As Justice Stephen Breyer has explained:

The textualist typically says that purposes are too difficult to find, and that, even if they were not, a statutory phrase may serve different, and opposing, purposes. They further contend that a description of purpose may reflect the views, or the language, of lobbyists or congressional staff members who are not elected, rather than the views of the elected member of Congress, and that the traditional search for purpose, consequences, and values allows unelected and life-tenured judges to substitute their own ideas of what is good for "the law" itself.⁶⁸

This skepticism toward statutory purpose further helps to differentiate textualism from the more purposivist methodologies that came before it.⁶⁹

This textualist transformation in the field of statutory interpretation has been unfolding over decades. As a result, textualism itself now has a long pedigree. Still, in the field of election law, compliance standards have been around for far longer. And, importantly, compliance standards rely on a concept that can feel difficult to square with the stricter forms of textualism. As explained, substantial compliance requires fulfillment of a rule's *objectives*.⁷⁰ A rule's objectives, in this context, is typically understood to refer to a rule's *purposes*.

The resolution of this tension is not immediately obvious. As will be discussed in more detail, textualism cannot simply displace compliance standards.⁷¹ And while it is true that textualism comes in many forms—and further that not all jurisdictions have embraced textualism to the same extent—textualism is a sufficiently dominant form of statutory interpretation that it cannot be ignored. The result is yet another challenge for courts to grapple with when seeking to understand and apply election law's compliance standards. Looking to other jurisdictions—with their varying approaches to statutory interpretation—only confirms that this tension is deep.

68. Stephen Breyer, *Pragmatism or Textualism*, 138 HARV. L. REV. 717, 721 (2025).

69. See John F. Manning, *What Divides Textualists from Purposivists*, 106 COLUM. L. REV. 70, 73–75 (2006); see also Eskridge, Jr., Slocum & Tobia, *supra* note 64, at 1612–13 (contrasting the current dominance of "new textualism" with the earlier dominance of "traditional pragmatism," which seeks to "determine the statutory meaning (1) understood by legislators, (2) passing a statute that advances public purposes, (3) as reasonably applied to current circumstances").

70. See *supra* notes 35–36 and accompanying text.

71. See *infra* Section III.C.

III. SOME SOLUTIONS FOR COMPLIANCE STANDARDS IN ELECTIONS

Election law's compliance standards—and the tendency of courts to look to other jurisdictions to answer the many questions surrounding them—has failed to produce a clear and clean set of doctrines. The answer, however, is not for courts to reject compliance standards altogether. There is a reason that the core concepts underlying these standards have virtually universal adoption across the country.⁷² As later discussed in more detail, attempts to excise these concepts from the case law of elections would be deeply destabilizing.⁷³ And, even more fundamentally, it is not clear that elections would be practically administrable if the idea of substantial compliance truly were eliminated.

Nor is the solution for courts to create silos around these doctrines and attempt to muddle through alone. Courts adjudicating election-related lawsuits tend to have to grapple with similar issues, which predictably and regularly emerge due to foundational tensions in the field. With respect to compliance standards, the breadth and depth of the precedents reflect and further confirm the central importance of these distinctions—between the need for strict versus substantial compliance—to the effective administration of elections. These longstanding precedents, accordingly, help to serve a vital purpose. They help to fortify this area of the law against criticism that may seem to justify the rejection of these distinctions—particularly when considered myopically in the context of a single lawsuit adjudicated on an extraordinarily rushed timeline. This stability, in turn, helps to strengthen foundational rules and concepts in the field.

The answer to the problems in this area is, therefore, neither to reject compliance standards nor to refuse to recognize the consistencies across jurisdictions and the insights they provide. Instead, it is to adjust the way that lawmakers and courts approach these issues. Potential opportunities for improvement come through at least three sets of responses: the first involving codification, the second involving precision of language and analysis, and the third involving reconciliation of compliance standards with the rise of textualism.

72. With respect to universal adoption of the core concepts underlying these standards, see, for example, *Roe v. Mobile Cnty. Appointment Bd.*, 676 So. 2d 1206, 1226–31 (Ala. 1995) (providing a 50-state survey on the question of compliance standards in the context of absentee ballot voting).

73. See *infra* Section III.C.

A. Codification of the Rules Governing Compliance Standards

At the outset, lawmakers should codify the rules governing compliance standards. Some jurisdictions already have taken this step.⁷⁴ When engaging in this codification, lawmakers should be careful to use the relevant terms carefully. The laws they enact should, moreover, recognize that the compliance standard applicable to one rule is not necessarily applicable to a different rule—and further that the compliance standard applicable to a given rule might even itself change, at times, based on context. To this extent, a jurisdiction could, for example, codify a presumption of substantial compliance for election rules. This presumption is consistent with the approach of many jurisdictions across the country, and it also tracks the trend, over the last century, of jurisdictions tending to adopt a default of substantial compliance over strict compliance.⁷⁵ On a more fundamental level, a presumption of substantial compliance helps to strike an appropriate balance between the central purposes served by the compliance standards: protection of the integrity of the electoral process and protection of the right to vote.⁷⁶ It does this by, on the one hand, limiting the scenarios where a ballot or other election instrument might even possibly be invalidated but, on the other hand, requiring under any scenario that the objectives of an election rule be fulfilled and that any deviation from its terms not facilitate fraud or other intentional wrongdoing. It is, moreover, merely a presumption, and therefore it can be overcome. To override this presumption, a lawmaking body could, for example, simply indicate a requirement of strict compliance in the text of the relevant rule.

If a jurisdiction is hesitant to impose a presumption of substantial compliance for all election rules, it could do so for a subset of election rules. This subset could include whichever areas of law the jurisdiction considers to be most amenable to this standard—perhaps those associated with notice in elections, for example, or in-person voting, or absentee-ballot rules that are the responsibility of election officials.⁷⁷ Or, of course, the jurisdiction could impose a presumption of strict compliance, either broadly or with respect to a subset of election law. The jurisdiction

74. See, e.g., UTAH CODE ANN. § 20A-1-404 (2008) (requiring “strict compliance” with financial disclosure filing deadlines, while allowing “substantial compliance” with other provisions of the Election Code); MINN. STAT. § 204C.29 (2024) (providing that “[a]ll returns shall be received and the votes canvassed by the canvassing board and included in its statements when there is substantial compliance with the provisions of the Minnesota Election Law”).

75. See, e.g., *Boardman v. Esteve*, 323 So. 2d 259, 264 (Fla. 1975) (noting that prior Florida cases had recognized a presumption of strict compliance with respect to absentee ballots but “reced[ing] from that rule” to recognize the opposite presumption).

76. See *supra* notes 32–33 and accompanying text.

77. See *infra* note 82.

could, in addition, expressly identify a list of factors for courts to consider when determining whether any given presumption has been overcome. Factors tending to override a presumption of substantial compliance might include, for example, whether the language of a rule expressly requires strict compliance; whether a rule sets forth precise times, dates, or numbers; whether a rule is critical to achieving finality in election results; and so on.

Under any of these scenarios, lawmakers potentially achieve several beneficial ends simply by enacting the rules governing compliance standards into positive law. Codification fortifies compliance standards against concerns that they are mere judicial creations, untethered to the dictates of lawmakers. If done well, this codification also provides clarity with respect to what these standards are and how they should apply. As will be discussed in more detail, codification also helps to reconcile compliance standards with more textualist approaches to statutory interpretation.⁷⁸ Finally, codification of these standards—explicit acknowledgements, in the code itself, of jurisdictions’ rules governing compliance standards—would help to make more sense of what otherwise might appear to be an intractable split in the case law across jurisdictions. To this end, imagine that one jurisdiction has codified a presumption of strict compliance for absentee-ballot rules, while another jurisdiction has codified a presumption of substantial compliance for absentee-ballot rules. In this scenario, it would make more sense that the law of these jurisdictions also might diverge, for example, with respect to whether a voter making a minor mistake on an absentee ballot has (or has not) complied with the relevant rule.

B. Greater Precision in the Case Law

A second potential area for improvement relies not on the legislatures, but instead on the courts. Here, improvement would come if courts were to be much more careful about the language they use when adjudicating questions involving compliance standards. Perhaps the most important adjustment in this respect relates to the distinction between compliance standards, on the one hand, and the distinction between mandatory and directory provisions, on the other. As illustrated by the matrix set forth in Part II.B., these concepts are not coterminous. Instead, it is possible—indeed, commonplace—for an election rule to be both mandatory and trigger a standard of substantial compliance.

As previously discussed, despite the possibility (and prevalence) of rules like these, courts frequently conflate these concepts.⁷⁹ They suggest

78. See discussion *infra* Section III.C.

79. See discussion *infra* Section II.B.

that mandatory rules necessarily trigger a standard of strict compliance, they use the term “directory” when they really mean that a rule triggers a standard of substantial compliance, and so on.⁸⁰ A related issue emerges when courts use inappropriately sweeping language to describe what compliance standard applies—thereby suggesting, improperly, that the same standard applies across a wide swath of election rules, even when it does not, as well as implying that a rule triggers the same compliance standard in all contexts, when this often is not the case.⁸¹

The result of these conflations and overstatements is a body of case law that can be very difficult to understand and, by extension, to apply. If courts were to be more precise in the language they use in this area, it would lead to a number of positive results. At the outset, it would encourage courts to resolve the relevant questions in a sequential way—for example, by asking whether a given rule should be understood to be directory or mandatory before turning to the separate question of what standard of compliance should apply. Sequencing of this sort helps to clarify and focus the court’s analysis, which is particularly helpful with respect to challenging issues of statutory interpretation.

Greater precision also would make clearer to courts that the same rule can, in a sense, occupy more than one box in the matrix. For example, a rule that requires strict compliance with respect to the responsibilities of a voter requires only substantial compliance with respect to responsibility of an election official.⁸²

Importantly, greater precision in how courts discuss these issues also should help to counteract any sense that a mandatory rule necessarily requires strict compliance. This particular conflation is problematic not only because it potentially misunderstands the nature of an enacted rule, but also because it does so in a way that could lead to the invalidation of a ballot or election that, by law, should not be invalidated.

Similarly, greater precision allows courts to think more carefully about the nature of directory rules. While violation of these rules cannot, by definition, justify invalidation as a remedy, it is possible that their violation could trigger some other remedy, such as an injunction

80. See, e.g., *Kulkarni v. Horlander*, 701 S.W.3d 181, 186 (Ky. 2024) (“As a general matter of interpretation, courts demand strict compliance with mandatory statutory provisions while directory provisions are subject to substantial compliance.”).

81. See discussion *infra* Section II.B.

82. See, e.g., *In re Contest of Gen. Election on Nov. 4, 2008*, 767 N.W.2d 453, 461 (Minn. 2009) (noting in the context of absentee ballots that “[a]lthough we have used a substantial compliance standard to judge errors by election officials, we have held voters strictly to statutory requirements”); *Cohen v. Rossi*, 295 A.3d 75, 91–92 (Conn. 2023) (holding that substantial compliance by election officials with statutory requirements was sufficient, particularly when the failure to strictly comply was not attributable to the voters).

requiring an official to comply with the directory rule in question.⁸³ If a litigant is seeking such relief, the compliance standard triggered by that rule potentially becomes relevant—both with respect to whether the rule has not been complied with in the first place and also with respect to the scope of the requested remedy.

More generally, greater precision in courts' discussions of compliance standards helps to inform and clarify other broad principles of election law, including the presumption against invalidation of an election. It does so in a manner that facilitates the ability of courts to look to the case law of other jurisdictions for guidance, which further strengthens these cross-cutting principles.

C. Reconciling Textualism with Compliance Standards

In the area of compliance standards, a final set of improvements involves the role of statutory interpretation. Here, as previously discussed, a tension arises when the law requires application of a standard of substantial compliance, on the one hand, and a form of textualism serves as the preferred methodology of statutory interpretation, on the other. The trouble here primarily derives from textualism's text-based focus and its resistance to purpose-driven analysis. At the core of substantial compliance is the recognition that statutes have objectives, and those objectives are not necessarily coterminous with the statute's exact terms.⁸⁴ As a result, it may be possible for a person to fail to comply with a statute's exact terms but nevertheless comply with its objectives—

83. See, e.g., *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1062 (2020) (referring to a “directory” rule as “a directive from the Legislature that should be followed but the failure to provide the information does not result in invalidation of the ballot”); *Ballentine v. Bardwell*, 478 N.E.2d 500, 505 (Ill. App. Ct. 1985) (“[A]ll the requirements of the election law are mandatory in the sense that they impose a duty of obedience on those who come within their purview, and even directory provisions may not be disregarded.”); *Siedschlag v. May*, 2 N.E.2d 836, 837–38 (Ill. 1936) (“Directory provisions are not intended by the Legislature to be disregarded, but where the consequences of not obeying them in every particular are not prescribed the courts must judicially determine them.” (quoting *People ex rel. Agnew v. Graham*, 108 N.E. 699, 703 (Ill. 1915))). Cf. *Nageak v. Mallott*, 426 P.3d 930, 941 (Alaska 2018) (“All provisions of the election law are mandatory, if enforcement is sought before election in a direct proceeding for that purpose; but after election all should be held directory only, in support of the result, unless of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.”).

84. See *supra* notes 35–37 and accompanying text.

and, in so doing, achieve adequate compliance with that statute.⁸⁵ This logic can be difficult to square, at least on the surface, with central tenets of textualism.

The most steadfast adherents to a textualist methodology—and in particular, to the stricter forms of this methodology—might be willing to disrupt longstanding understandings of compliance standards, and even overrule well-established precedents, rather than deviate from their preferred textualist methodology.⁸⁶ Even a willingness to engage in this sort of disruption, however, cannot justify a rejection of election law's compliance standards. At the outset, the depth and breadth of the case law surrounding substantial compliance—case law that reflects virtually universal adoption, across the country, of the core concept and its basic application—implicate so many facets of election law that it would be deeply destabilizing even to try to excise this standard from the doctrine.⁸⁷ More fundamentally, it is not clear that, as a practical matter, elections would be administrable if the idea of substantial compliance truly were eliminated.

To this end, if all election rules, in all contexts, triggered a standard of strict compliance, one of two scenarios could unfold. In the first scenario, the law otherwise would not change in response to this development. In that scenario, so many minor deviations (by voters, officials, and others) would affect so many ballots or other facets of an election—and potentially would require, based on surrounding doctrines, invalidation of so many of these ballots and other election instruments—that it would threaten to undermine the core function of the election, which is to facilitate an electorate's exercise of choice. It would do so, moreover, in a manner that threatens to significantly undercut the opportunity for an eligible voter to cast a ballot and have it counted. (To this end, recall that the strict compliance standard would apply not only to rules imposed on a voter, but also to the many rules imposed on election officials—and therefore that voters might routinely see their ballots invalidated, through no fault of their own, as a result of minor deviations by election officials.)

The more likely scenario, however, if substantial compliance were rejected as a concept, is that the surrounding doctrines would change.

85. Substantial compliance also typically requires, in addition to fulfillment of a rule's objectives, that there be a lack of fraud or other intentional wrongdoing. *See supra* notes 35–36 and accompanying text.

86. Eskridge, Jr., Slocum & Tobia, *supra* note 64, at 1678–79 (discussing the willingness of some jurists to overrule precedents deemed inconsistent with their preferred interpretive methodology).

87. *See supra* note 72 and accompanying text (addressing the virtually universal adoption of the core concepts underlying these standards). *See generally supra* Part I (describing the importance of compliance standards, including with respect to the vast body of case law in this area).

More specifically, surrounding doctrines would adjust to compensate for the absence of substantial compliance and, more specifically, to respond to the critical need that the compliance standards have helped to serve for generations. More election rules would be deemed directory, for example, despite the distortion that alteration triggers in the doctrine—and despite the challenges that the directory designation itself poses under textualism.⁸⁸ Or perhaps the understanding of strict compliance—which currently requires exact and complete fulfillment of a rule’s term, with an allowance for only truly *de minimis* deviations⁸⁹—would be watered down to approximate something closer to substantial compliance. This watering down might occur notwithstanding the important role played by the stricter standard—and, again, despite the challenges that this watered down approach would itself poses under textualism.⁹⁰ Or perhaps remedies might, more generally, become harder to request and be granted, even in scenarios where they otherwise would be considered appropriate or even necessary—yet again, despite the textualist-based objections this approach would trigger.⁹¹ The list of potential changes is long, and each comes with the potential for distortion and other side effects.

88. Distortions would arise because treating a rule as directory—rather than treating it as mandatory with a requirement of substantial compliance—eliminates the possibility that an affected instrument could ever be invalidated based on the violation of that rule, even if there has been no compliance at all. Stated otherwise, a shift toward the “directory” designation, invoked to avoid the “substantial compliance” designation, would predictably allow some instruments to remain in effect even when they should be invalidated. More generally, the “directory” designation poses challenges under the stricter forms of textualism insofar as it reflects the conclusion that some enacted text need, in a sense, not be followed—or, at least, it need not be followed with respect to whether an affected instrument can continue to remain in effect. *See, e.g., In re Canvass of Absentee & Mail-in Ballots*, 241 A.3d at 1062 (referring to a “directory” rule as “a directive from the Legislature that should be followed but the failure to provide the information does not result in invalidation of the ballot”).

89. *See supra* note 39 and accompanying text.

90. Watering down the meaning of strict compliance—so that it approaches something closer to substantial compliance—compromises the ability of a lawmaking body to enact a preferred election regime. As discussed above, a requirement of strict compliance can serve various purposes, including by helping to protect the integrity of the electoral process. *See supra* notes 32–34 and accompanying text. Watering down the meaning of strict compliance also does not meaningfully escape the tensions that textualism poses in this context. The potentially problematic disconnect—between the terms of the statute and what is required for compliance—still remains; it is simply labelled differently.

91. Courts might, for example, bolster justiciability doctrines, adjust remedial rules, or otherwise tinker with surrounding case law in an effort to avoid the harsh results that otherwise would start to adhere in the absence of a more nuanced compliance regime. To the extent that these changes—serving as proxies, in a sense, for the function previously served by substantial compliance—deviated from the text of an enacted rule or otherwise relied on a nontextualist methodology, they would reintroduce the sorts of concerns triggered by the standard of substantial compliance.

Under either of these scenarios, moreover, the courts would be forced, at times, simply to disregard the intention of the legislatures or other lawmaking bodies. Through time, these lawmaking bodies have ratified courts' understandings of substantial compliance by declining to abrogate court decisions or otherwise have expressed their approval of this approach in ways that are not affirmatively codified.⁹² Strict adherents to textualism may not care about these data points. But for those who do, this result itself is deeply problematic. As a final point, once a jurisdiction has codified a substantial compliance standard into law, even the most ardent textualist cannot simply ignore the statutory mandate.

Potential solutions to this set of problems—those presented by how textualism interacts with the compliance standards—come in multiple forms. At the outset, jurisdictions should codify the rules surrounding election law's compliance standards into law. This reform has multiple benefits, as previously discussed.⁹³ As relevant here, this enactment would help to mitigate concerns of those reluctant to look beyond the enacted text to understand the meaning of a statute or other law.

Courts, in turn, should recognize that substantial compliance has long played a fundamental role in election law—and one that cannot simply be eliminated through aggressive reconceptualization of the doctrine. As discussed, law necessarily must grapple with the reality of legal imperfection in elections. To this end, it must find a way of distinguishing between imperfections that matter and imperfections that do not. Substantial compliance is a longstanding, well-established doctrine in the field, and it has this status for a reason. Other doctrines attempting to respond to this set of tensions have their own challenges under a strictly textualist approach to interpretation, as previously alluded to. Despite substantial compliance's reliance on a form of purposivism, therefore, textualism must find a way to accommodate its existence. Tellingly, it has done so in other areas presenting similarly deep tensions.⁹⁴

Finally, courts should continue to look across jurisdictions to understand and strengthen the case law surrounding compliance standards. Despite the challenges associated with this approach,⁹⁵ it helps

92. See *supra* note 74 and accompanying text.

93. See discussion *supra* Sections III.A, III.C.

94. Jurists committed to textualism must grapple with this sort of tension, for example, when they engage in severability analysis in response to a statute that has been deemed, in some respect, to be unconstitutional. See Lisa Marshall Manheim, *Beyond Severability*, 101 IOWA L. REV. 1833, 1884–85 (2016) (“[I]f ‘rewriting’ a statute is understood, as it commonly is, to refer to atextual or otherwise nonstandard statutory analysis, then there is no way for a court to avoid ‘rewriting’ a constitutionally disrupted statute.”).

95. See discussion *supra* Section II.A.

to confirm that substantial compliance reflects longstanding, widely accepted principles; that substantial compliance is consistent with (and, at times, expressly recognized by) positive law rather than an untethered invention of the courts; and that substantial compliance has been integrated into the law of virtually all jurisdictions, not just jurisdictions associated with certain partisan, legal, or methodological ideologies. In these ways, examination of case law across the country—while problematic in various respects—ultimately helps bolster this area in positive ways.

CONCLUSION

The doctrines surrounding compliance standards in elections are deeply rooted in case law that spans many generations and virtually all jurisdictions. These rules exist for good reason. Election law's reliance on these doctrines help to resolve an inevitable tension in election law: between, on the one hand, the need for elections to comply with law and, on the other, the inevitable errors and imperfections that affect each election. The doctrine surrounding these standards is nevertheless convoluted and difficult to understand and apply. These shortcomings reflect the diversity and complexity of election law regimes across the country, imprecision in the ways that courts tend to discuss these concepts, and tensions that emerge when compliance standards encounter textualist forms of statutory interpretation. These challenges are, in some respects, compounded when courts look to the case law of other jurisdictions for guidance. To improve these doctrines, jurisdictions should consider a multifaceted approach, one that involves lawmakers codifying the rules governing compliance standards; courts using more precise language when adjudicating compliance issues; and both courts and lawmakers finding ways of reconciling basic principles of compliance with those of textualism. Through such reforms, jurisdictions can bolster the doctrines surrounding compliance standards and, by extension, election law.

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