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THE CASE AGAINST RESTRICTING VOTING ACCESS

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INTRODUCTION

The United States has endured the most contentious post-election period in modern history, as former President Donald Trump challenged the results of an election that President Joe Biden won by 7 million votes nationwide—albeit by slim majorities in several swing states (Arizona, Nevada, Georgia, Pennsylvania, Michigan and Wisconsin) that propelled him to a 306-to-232 Electoral College victory.

The former president and his supporters filed no fewer than 61 lawsuits challenging various aspects of the vote, attempted to sway legislatures to discard certified electoral votes and even attempted to convince Congress (and the vice president) to refuse to certify some states' electors.[1] The Trump team succeeded only in one lawsuit involving a negligible number of Pennsylvania votes.[2] Nevertheless, this sustained campaign to overturn the election results has had a notable and deleterious effect on public trust in the nation's election system.

The latest polls found that more than three-quarters of Republican voters did not trust the final vote outcome. Trump's allegations were wide-ranging and often far-

fetched. Despite the lack of evidence, some election skeptics seem to place more faith in unfounded social-media assertions than in the decisions made by state election officials, the courts and even the federal Department of Justice, which found no serious instances of election fraud.[3] Now, numerous Republicans at the national and state levels are proposing a variety of post-election voting reforms, seemingly in response to former President Trump's unsubstantiated post-election claims of rampant voter fraud.[4] While some proposed reforms merit serious deliberation, efforts to repeal no-excuse absentee voting and ban ballot drop boxes will do little—if anything—to improve election integrity and deserve more scrutiny.

THE LATEST STATE PROPOSALS

In Pennsylvania—one of the states that received substantial post-election scrutiny given President Biden's slim 1.2-percentage-point victory—Senate President Pro Tempore Jake Corman (R-34) recently announced the formation of a special bipartisan legislative committee.[5] It will review all aspects of the recently concluded general election including voting security and the uniformity of election processes across the state. The committee will also study the state's absentee-voting process and look at Pennsylvania court decisions in response to various 2020 election challenges.

While it is within a legislature's purview to audit past elections, the recent efforts in Pennsylvania may end up serving as more of a partisan exercise than an honest attempt at identifying abnormalities and systemic issues. Although Pennsylvania lawmakers' have not introduced specific legislative changes to date, they are not the only state contemplating legislative changes to voting practices.

The Georgia Senate Republican Caucus intends to pass substantive reforms that threaten to curtail Georgians' access to absentee voting. Traditionally, absentee voting was reserved for those with an excuse (such as an infirmity or travel during election time), but most states now allow it on an "at-will" or "no-excuse" basis. However, according to a recent statement, the caucus plans to eliminate at-will absentee voting and "crack down on ballot harvesting by outlawing drop boxes."[6]

Republicans in many other states have proposed similar voting restrictions. For instance, Michigan Republicans have announced their intention to review a 2018 ballot initiative that authorized no-excuse absentee voting and same-day registration, with the obvious goal of limiting the widespread use of mail-in ballots.[7] Some Ohio lawmakers also want to end no-excuse absentee voting in its entirety.[8]

Likewise, Texas Republicans—who battled a court ruling that tried to loosen the state's unusually strict absentee-voting standards last year—have introduced bills to further

clamp down on mail-in voting.[9] One bill would limit the use of absentee ballots. Another would make it a felony to offer to help a voter fill out a ballot. And in Arizona, lawmakers have introduced legislation to ban voters from dropping off mail ballots at polling places.[10] Many of these proposals will not effectively eliminate absentee voter fraud—but they will make it more difficult for people to vote.

REINING IN NO-EXCUSE ABSENTEE VOTING

No-excuse absentee voting is a paradigm that permits legal voters to cast an absentee ballot without needing to produce an approved excuse. Initially, all states that permitted absentee voting required voters to meet certain requirements in order to enjoy the privilege of casting a ballot in absentia. These included limiting absentee voting to only voters with sanctioned excuses, like being ill or out of town on Election Day. However, beginning in the 1970s, states began considering ways to reduce barriers to absentee voting, and numerous states eventually abolished the excuse requirement for absentee voting altogether.[11] As of May 2020, 34 states no longer require an excuse to vote absentee.[12]

This transition to a no-excuse model was not particularly controversial on any large scale before the latest election. Instead, it was widely viewed as a means to remove excessive red tape to expand access to voting and make it more convenient. However, as the 2020 election cycle approached and passed, no-excuse absentee voting began to garner criticism. Critics denounced the process as either being responsible for rampant voter fraud or at least creating a path for fraud—without providing anything beyond anecdotal evidence and potential scenarios.

Despite what these critics claim, no-excuse absentee voting still must undergo the same rigorous process to ensure ballots are legitimate, including ballot tracking measures and signature verification. These safeguards are highly effective, too. A signature match audit in Cobb County, Georgia, showed a 99.99 percent accuracy rate.[13] In California, Georgia and elsewhere, absentee voters can even track their ballot in a similar way that one tracks an overnight-delivery package to ensure that election officials count their ballots.

Beyond this, absentee voting in general has been exceedingly secure. For example, Oregon—which has relied on an all vote-by-mail system since 2000—has only had 15 cases of any kind of voter fraud out of many millions of votes, according to The Heritage Foundation's Election Fraud Database.[14] Washington, which has relied on a similar model for around a decade, has had zero proven cases of voter fraud since then, per The Heritage Foundation.[15] While zero cases should be the goal, this is indicative of a very secure system.

In addition, abolishing no-excuse voting will not close any purported paths to fraud. If lawmakers repeal no-excuse absentee voting, then only approved excuses could be the basis for absentee voting. Election administrators do not have the time, resources or expertise to determine whether every single absentee voter request excuse is valid. In reality, they will likely rely on the honor system and accept all seemingly appropriate excuses as valid—regardless of whether they are true or not. As a realistic result, voters who are willing to commit felonies to flout the election rules will presumably not be dissuaded from doing so out of fear of violating an honor system.

In the end, moving to an excuse-only absentee system would do nothing to combat fraud, and may instead suppress voter turnout. If the absentee voting paradigm reverted to this form, then only registered voters with serious ailments or travel plans would presumably be permitted to cast an absentee ballot, but this model is fraught with other problems. After all, many voters have no advanced knowledge, for example, over whether they might be sick or out of town on Election Day.

The COVID-19 pandemic, which led to expanded no-excuse voting, highlights the challenges with this system. Many Americans were legitimately concerned about subjecting themselves to infection risks during sometimes-long waits in voting lines. Yet in states including Texas and Wisconsin, officials insisted that this was not a valid excuse. Individuals should be able to make such personal decisions, rather than be forced to choose between perceived health risks and their desire to vote.

Many Americans prefer the convenience and flexibility provided by no-excuse absentee voting. In fact, studies suggest that Americans from all political persuasions appreciate and rely on absentee voting.[16] In the lead up to the 2020 election, 65 percent of voters particularly expressed support for no-excuse absentee voting—although Trump's attack on the system may have since reduced those percentages.[17]

ELIMINATING BALLOT DROP BOXES

In addition to reconsidering no-excuse absentee voting, many lawmakers and activists have called on states to ban the use of ballot drop boxes, which are essentially an extension of absentee voting. These are official receptacles where voters can personally deposit their completed ballots for elections officials to later collect. To be clear, this does not refer to the private ballot boxes that some political groups have used in California, under that state's troubling ballot-harvesting law.[18]

While seemingly innocuous, official ballot drop boxes became a lightning rod in the 2020 election cycle, but their

use is not new. Before 2020, eight state governments expressly permitted the use of ballot drop boxes, while many other areas approved their use to some degree, and for understandable reasons.[19] Drop boxes provide voters a convenient voting option. They allow those who mistrust the mail service to vote absentee, and in many cases, it gives them a 24-hour voting option.[20]

Ironically, many Republicans questioned the ability of the U.S. Postal Service to handle something as important as a ballot, yet are now proposing rules that would eliminate a reasonable alternative. When COVID-19 began spreading across the United States, additional states began examining voting methods that were conducive to social distancing, and one of the tools that many settled on was expanded ballot drop box usage. Around three quarters of states relied on ballot drop boxes in the 2020 general election.[21]

Despite the widespread usage and benefits, opponents of drop boxes have denounced them and claimed that they open the door to ballot tampering, voter fraud and ballot harvesting.[22] Officials should always guard against illicit voting activities, but when used properly, drop boxes have proven to be remarkably safe and secure.

As with mail-in ballots, every ballot inserted into a ballot drop box must undergo a thorough process to ensure each vote is legitimate. In advance of the 2020 election, the United States Cybersecurity and Infrastructure Security Agency (CISA) released a list of recommendations for the various kinds of ballot drop boxes, which included placing them in highly visible areas that are well-lit 24 hours a day and monitoring them 24/7 with security cameras or a human observer.[23] These protections discourage voter fraud, but the design of the drop boxes themselves makes them highly secure: outdoor drop boxes are built to be securely anchored, locked and tamperproof.[24]

When a sport utility vehicle careened into a drop box near Olympia, Wash., the ballots were unharmed.[25] Thanks in part to ballot drop box security measures, a suspected arsonist's attack on a drop box near Los Angeles led to minimal damage; the response was quick enough that election officials identified the owners of the affected ballots and sent them replacements.[26] No form of voting is entirely impervious to malefactors, but if states meet or exceed the CISA's recommendations, Americans can rest assured that ballot drop boxes are safe and secure modes of voting.

Given all of the benefits and protections of ballot drop boxes, it is easy to see why they are so popular. In the 2016 general election, around 75 percent of Coloradans cast their vote using a drop box[27] and 57 percent of voters in Washington state used them.[28] In 2020, however, millions more Americans performed their civic duty using a drop box, and to great effect. It is likely that many voters would be dismayed to see this option curtailed.

BACKGROUND VOTER FRAUD AND RESTRICTIONS

Modern American elections have been notable for their high level of integrity, even though the nation has had its share of serious controversies. The American system of government is decentralized, so state election rules and the competence of local officials varies. We all know the old joke—bury me in Chicago, so I can stay active in politics after I die. It is not really a laughing matter, but some big-city political machines have been known for their electoral corruption.

In Chicago's 1928 "pineapple" primary (the pineapple refers to the hand grenades that agitators used to disrupt voting), election violence claimed the lives of two politicians amidst a wave of shootings and bombings.[29] Stories are still written about the 1960 presidential race, where John F. Kennedy "beat Richard Nixon by 9,000 votes in Illinois by capturing what some considered a suspiciously high 450,000 advantage in Cook County," as one Chicago publication reported.[30]

Election fraud involves more than ballot stuffing. The Deep South has a long and troubling history of suppressing Black voters. Every state in the former Confederacy imposed poll taxes, literacy tests and arbitrary voting requirements that officials designed specifically to disenfranchise Black voters. Groups such as the Ku Klux Klan intimidated and even murdered Black citizens who were trying to cast their votes.[31] Although virtually everyone now denounces such egregious examples of suppression, modern forms of suppression remain troubling. For instance, policies that force people to wait in line for hours to cast a vote also suppress voting.

Thanks to a variety of federal laws, U.S. Supreme Court decisions and intense nationwide efforts to root out such abuses, the United States has largely relegated these problems to history's dustbin. That does not mean that every election is perfect, or isolated fraud does not occur. These are government-run processes, and are fraught with all the problems one finds whenever the government manages databases and handles large-scale operations. In a presidential election with more than 150 million ballots, one is bound to find some misbehavior.

Even The Heritage Foundation, which maintains a voter-fraud database to highlight what it views as a serious nationwide problem, found only 1,311 proven cases of election fraud going back more than two decades.[32] The Brookings Institution looked at all of that database's listed fraud causes in all five states that allowed universal vote-by-mail prior to 2018 (Colorado, Hawaii, Oregon, Utah and Washington) and

found only 44 total cases of voter fraud in general elections with nearly 50 million total ballots cast.

That said, R Street has long opposed efforts to legalize ballot harvesting—the practice by which political parties, unions and activist groups collect people's ballots and turn them into elections offices. Such a practice threatens to create an environment conducive to voter intimidation. While California, which legalized that practice in 2016, is the only state to allow it, it has been a source of constant controversy. In this year's election, the state GOP was caught setting up its own private ballot boxes, which mimicked the look of official drop-off locations. Courts deemed their efforts to have been legal under state law.[33] We support strict limits on harvesting, as well as rules that stifle plans to promote online balloting.

CONCLUSION

Secure elections require that governments uphold safeguards to ensure the integrity of our voting systems, but recent proposals related to no-excuse absentee voting and ballot drop boxes will have little-to-no effect on voting fraud. Such restrictions will, however, place barriers on voting and would likely suppress voter participation. Expanding absentee balloting is a good idea that is not, in and of itself, an invitation for fraud. Instead of seeking to ban tried-and-true methods of voting, lawmakers should instead look to ensure that eligible voters have the utmost opportunity to safely exercise their voting rights.

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